



New South Wales

# Police Amendment (Promotion Reviews) Regulation 2007

under the

Police Act 1990

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Police Act 1990*.

JOHN WATKINS, M.P.,  
Minister for Police

## Explanatory note

The amendments made to the *Police Act 1990* and the *Police Regulation 2000* by the *Police Amendment (Police Promotions) Act 2006* implemented a new promotion and appointment system for police officers (other than constables and executive officers) based on selection for, and appointment from, promotion lists for particular ranks or grades within ranks. An integral part of the new promotion system involves persons attempting and successfully completing certain eligibility requirements for placement on a promotion list. The eligibility requirements comprise pre-qualifying assessments, promotion examinations, management performance reviews and eligibility programs.

The object of this Regulation is to make provision for the reviewing of a person's performance (or of a person's results) in relation to the eligibility requirements for placement on a promotion list. In the case of a pre-qualifying assessment, a promotion examination or an eligibility program, the review will be conducted by the Executive Director, Corporate Services, NSW Police Force. In the case of a decision made in relation to a person's management performance review, the review of the decision will be conducted by a Management Performance Review Panel convened by the Executive Director.

The Regulation also provides for a Promotions Review Committee to review decisions as to the ranking of persons on promotion lists. The Review Committee may review a decision made in relation to an eligibility requirement, but only if the person concerned has been disadvantaged by the failure to comply with the procedural requirements at the previous stage of the review process.

The Regulation also provides for a Ministerially appointed person to review decisions to remove or suspend persons from a promotion list on integrity grounds as well as decisions to refuse, on integrity grounds, persons the right to participate in the process to obtain placement on a promotion list.

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Explanatory note

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This Regulation is made under the *Police Act 1990*, including sections 70 (2) and 219 (the general regulation-making power).

## **Police Amendment (Promotion Reviews) Regulation 2007**

under the

Police Act 1990

### **1 Name of Regulation**

This Regulation is the *Police Amendment (Promotion Reviews) Regulation 2007*.

### **2 Commencement**

This Regulation commences on 2 March 2007.

### **3 Amendment of Police Regulation 2000**

The *Police Regulation 2000* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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### Schedule 1 Amendments

(Clause 3)

[1] **Part 2, Division 2D, heading**

Omit “and reviews”.

[2] **Part 2, Division 2E**

Insert after Division 2D:

#### **Division 2E Reviews in relation to promotion lists**

##### **Subdivision 1 Preliminary**

###### **18O Definitions**

In this Division:

*eligibility program* means a program relating to a person’s eligibility for placement on a promotion list.

*Executive Director* means the Executive Director, Corporate Services, NSW Police Force.

*management performance review* means a performance review relating to a person’s eligibility for placement on a promotion list.

*pre-qualifying assessment* means an assessment relating to a person’s eligibility for placement on a promotion list.

*promotion examination* means an examination relating to a person’s eligibility for placement on a promotion list.

*Review Committee* means the Promotions Review Committee established under clause 18Y.

*Review Panel* means a Management Performance Review Panel convened under clause 18U.

###### **18P Delegation**

The Executive Director may delegate the exercise of any function of the Executive Director under this Division (other than this power of delegation) to any other member of the NSW Police Force.

##### **Subdivision 2 Pre-qualifying assessments**

###### **18Q Review of performance in pre-qualifying assessment**

- (1) A person may apply to the Executive Director for a review of the person’s performance in a pre-qualifying assessment.

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- (2) A person who attempts a pre-qualifying assessment must be advised that the person is entitled to apply for a review of the person's performance in the assessment.
  - (3) The grounds for applying for a review under this clause are limited to the following matters:
    - (a) the assessment process (including matters such as the date and timing of the assessment, work requirements, the applicant's health and any circumstances that disadvantaged the applicant when attempting the assessment),
    - (b) the form and content of the assessment,
    - (c) the mark awarded for the assessment based on the answers or assignment provided by the person.
  - (4) An application for a review under this clause must:
    - (a) be in writing and state the grounds on which the application for review is made, and
    - (b) be made no later than 72 hours after the person is notified of the person's results in the pre-qualifying assessment.
  - (5) However, an application may be made before the person is notified of the person's results.
  - (6) After reviewing the applicant's performance in the pre-qualifying assessment, the Executive Director may:
    - (a) affirm the person's results in the pre-qualifying assessment, or
    - (b) vary the person's results, or
    - (c) allow the person to attempt the pre-qualifying assessment again.
  - (7) The applicant is to be notified in writing of the Executive Director's decision within 72 hours after the Executive Director receives the application for the review. However, failure to notify the applicant within that 72-hour period does not invalidate the Executive Director's decision in relation to the review.
  - (8) Except as provided by clause 18Z (2), the decision of the Executive Director in relation to a review under this clause is final and is not subject to any further review.

**Subdivision 3 Promotion examinations**

**18R Review of performance in promotion examination**

- (1) A person may apply to the Executive Director for a review of the person's performance in a promotion examination.
- (2) A person who attempts a promotion examination must be advised that the person is entitled to apply for a review of the person's results in the examination.
- (3) The grounds for applying for a review under this clause are limited to the following matters:
  - (a) the process of the examination (including matters such as the date and timing of the examination, work requirements, the applicant's health and any circumstances that disadvantaged the applicant when sitting the examination),
  - (b) the form and content of the examination,
  - (c) the mark awarded for the examination based on the answers provided by the person.
- (4) An application for a review under this clause must:
  - (a) be in writing and state the grounds on which the application for review is made, and
  - (b) be made no later than 72 hours after the person is notified of the person's results.
- (5) However, an application may be made before the person is notified of the person's results.
- (6) If an application for a review is made on the ground referred to in subclause (3) (c), the person's examination is to be remarked by 2 independent markers (with the average of those marks being the result of the remark).
- (7) After reviewing the applicant's results in the promotion examination, the Executive Director may:
  - (a) affirm the person's results in the examination, or
  - (b) vary the person's results by adopting the results of the remark under subclause (6), or
  - (c) allow the person to resit the examination.

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- (8) The applicant is to be notified in writing of the Executive Director's decision within 72 hours after the Executive Director receives the application for review. However, failure to notify the applicant within that 72-hour period does not invalidate the Executive Director's decision.
  - (9) Except as provided by clause 18Z (2), the decision of the Executive Director in relation to a review under this clause is final and is not subject to any further review.

#### **Subdivision 4 Management performance reviews**

##### **18S Application for review of performance management decision**

- (1) A person who is subject to a management performance review may apply to the Executive Director for a review of any decision made in relation to the management performance review.
- (2) A person who is subject to a management performance review must be advised that the person is entitled to apply for a review of any decision made in relation to the management performance review.
- (3) The grounds for applying for a review under this clause are limited to the following matters:
  - (a) the management performance review process (including matters such as work requirements, the applicant's health and any circumstances that disadvantaged the applicant when undertaking the management performance review),
  - (b) the mark awarded for the management performance review,
  - (c) the calling into question of the applicant's conduct in connection with the management performance review.
- (4) An application for a review under this clause must:
  - (a) be in writing and state the grounds on which the application for review is made, and
  - (b) be made no later than 7 days after the person is given notice of any mark for the management performance review.
- (5) However, an application may be made before the person is given such notice.

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### **18T Referral of application to Review Panel**

The Executive Director is to refer any application under clause 18S to a Review Panel within 48 hours after the Executive Director receives the application.

### **18U Convening of Management Performance Review Panels**

- (1) The Executive Director may convene such number of Management Performance Review Panels as the Executive Director considers appropriate to deal with applications for reviews under this Subdivision.
- (2) A Review Panel consists of the following members:
  - (a) a representative of the Police Association of NSW appointed by the President of the Police Association of NSW,
  - (b) a Superintendent appointed by the Commissioner,
  - (c) a police officer who is a Human Resources Manager and who is appointed by the Executive Director, Human Resources, NSW Police Force as the Chairperson of the Review Panel.
- (3) Subject to this clause, a member of a Review Panel holds office for such period (not exceeding 12 months) as is specified in the member's instrument of appointment, but is eligible for re-appointment.
- (4) Each person who is responsible for appointing a member of a Review Panel may appoint a person as an alternate member to act during the absence or illness of the member concerned. An alternate member has and may exercise, while acting as a member, the functions of the person for whom he or she is the alternate member.
- (5) A member (including any alternate member) may be removed from office at any time by the person who appointed the member.

### **18V Procedure for conducting review**

- (1) The procedure for conducting a review by a Review Panel is, subject to the Act and this Subdivision, to be determined by the Commissioner.
- (2) A review by a Review Panel is not to be conducted by way of a hearing that involves any person appearing before the Review Panel.



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- (3) In conducting a review, the Review Panel may consider any information that is relevant to the management performance review concerned.
  - (4) The Chairperson of a Review Panel is to preside at a meeting of the Review Panel.
  - (5) A decision supported by a majority of the votes cast at a meeting of a Review Panel is the decision of the Panel concerned.
  - (6) A person who was involved in a decision the subject of a review may not be a member of the Review Panel considering the decision concerned.

**18W Decision of Review Panel**

- (1) The Review Panel may, following its review of a decision made in relation to a management performance review:
  - (a) affirm the decision, or
  - (b) vary the decision, or
  - (c) set aside the decision and make a decision in substitution for the decision set aside.
- (2) The applicant is to be notified in writing of the Review Panel's decision within 72 hours after the decision is made. However, failure to notify the applicant within that 72-hour period does not invalidate the Review Panel's decision.
- (3) Except as provided by clause 18Z (2), the decision of the Review Panel is final and is not subject to review by any person or body.

**Subdivision 5 Eligibility programs**

**18X Review of eligibility program results**

- (1) A person may apply to the Executive Director for a review of the results obtained by the person in an eligibility program.
- (2) A person who undertakes an eligibility program must be advised that the person is entitled to apply for a review of the person's results in the program.
- (3) The grounds for applying for a review under this clause are limited to the following matters:
  - (a) the process of the eligibility program (including matters such as the date and timing of the program, work requirements, the applicant's health and any circumstances that disadvantaged the applicant when undertaking the program),

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- (b) the form and content of the program,
  - (c) the mark awarded for the program based on the answers or assignments provided by the person.
- (4) An application for a review under this clause must:
- (a) be in writing and state the grounds on which the application for review is made, and
  - (b) be made no later than 7 days after the person is notified of the person's results.
- (5) However, an application may be made before the person is notified of the person's results.
- (6) If an application for a review is made on the ground referred to in subclause (3) (c), the work provided by the person in relation to the eligibility program is to be remarked by 2 independent markers (with the average of those marks being the result of the remark).
- (7) After reviewing the applicant's results in the eligibility program, the Executive Director may:
- (a) affirm the person's results in the program, or
  - (b) vary the person's results by adopting the results of the remark under subclause (6), or
  - (c) allow the person to undertake all or any part of the program again.
- (8) The applicant is to be notified in writing of the Executive Director's decision within 7 days after the Executive Director receives the application for review. However, failure to notify the applicant within the 7-day period does not invalidate the Executive Director's decision.
- (9) Except as provided by clause 18Z (2), the decision of the Executive Director in relation to a review under this clause is final and is not subject to any further review.

### **Subdivision 6 Promotions Review Committee**

#### **18Y Establishment and composition of Promotions Review Committee**

- (1) A Promotions Review Committee is established.
- (2) The Review Committee consists of the following members:
  - (a) an employer representative appointed by the Commissioner,

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- (b) an employee representative appointed by the President of the Police Association of NSW,
  - (c) an independent person appointed by the Minister as the Chairperson of the Promotions Review Committee.
- (3) Subject to this clause, a member of the Review Committee holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible for re-appointment.
  - (4) Each person who is responsible for appointing a member of the Review Committee may appoint a person as an alternate member to act during the absence or illness of the member concerned. An alternate member has and may exercise, while acting as a member, the functions of the person for whom he or she is the alternate member.
  - (5) A member (including any alternate member) may be removed from office at any time by the person who appointed the member.

**18Z Application for review by Review Committee**

- (1) A person may apply to the Review Committee for a review of a decision as to the ranking of the person on a promotion list.
- (2) A person may apply to the Review Committee for a review of a decision in relation to the person's performance in an eligibility requirement, but only on the ground that the person has been disadvantaged by a failure to comply with the procedural requirements at the previous stage of the review process (including, for example, failing to be notified of the decision of the relevant person or body within the required time period).
- (3) An application under this clause:
  - (a) is to be in writing and state the grounds on which the application is made, and
  - (b) is to be made not later than 7 days after the person is notified of the decision concerned (or within such longer period as the Review Committee may allow in a particular case).
- (4) In this clause, *eligibility requirement* means any of the following:
  - (a) a pre-qualifying assessment,
  - (b) a promotion examination,
  - (c) a management performance review,
  - (d) an eligibility program.

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### **18ZA Procedure for conducting review**

- (1) The procedure for conducting a review under this Subdivision is, subject to the Act and this Subdivision, to be determined by the Review Committee.
- (2) A review by the Review Committee is not to be conducted by way of a hearing involving persons appearing before the Review Committee.
- (3) In conducting a review, the Review Committee is to consider:
  - (a) any written information provided by the applicant, and
  - (b) any information provided by the Commissioner.
- (4) The Review Committee may:
  - (a) require the applicant to provide further information in relation to the application, and
  - (b) obtain expert advice in relation to any matter that is subject to the review, and
  - (c) inform itself in such other manner as the Committee thinks appropriate.
- (5) The Commissioner must, if requested to do so by the Review Committee, provide to the Committee any information that is relevant to the decision concerned.
- (6) The Chairperson of the Review Committee is to preside at a meeting of the Review Committee.
- (7) A decision supported by a majority of the votes cast at a meeting of the Review Committee is the decision of the Committee.
- (8) A person who was involved in a decision the subject of a review may not be a member of the Review Committee considering the decision concerned.

### **18ZB Decision of Review Committee**

- (1) The Review Committee may, following its review:
  - (a) affirm the decision the subject of the review, or
  - (b) vary the decision, or
  - (c) set aside the decision and make a decision in substitution for the decision set aside.
- (2) Any such review must be completed not later than 14 days after the application for the review is made.

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- (3) The Review Committee must notify the Commissioner and the applicant of its decision, and the reasons for the decision, as soon as practicable after making the decision.
  - (4) The decision of the Review Committee is taken to be the decision of the Commissioner and is to apply accordingly.
  - (5) The decision of the Review Committee is final and is not subject to review by any person or body.

### **Subdivision 7 Other reviews**

#### **18ZC Review of decisions made on integrity grounds**

- (1) A person may apply to the Commissioner for a review of the decision:
  - (a) to suspend or remove the person from a promotion list on integrity grounds, or
  - (b) to refuse, on integrity grounds, the person the right to participate, or continue to participate, in any part of the process to obtain placement on a promotion list.
- (2) An application for a review under this clause must:
  - (a) be in writing and state the grounds on which the application is made, and
  - (b) be made no later than 7 days after the person is notified of the decision concerned.
- (3) If an application under this clause is made, the Commissioner is to refer the application within 48 hours to a person who is appointed by the Minister for the purpose of conducting the review (referred to in this Subdivision as the *appointed person*).

#### **18ZD Procedure for conducting review**

- (1) The procedure for conducting a review under this Subdivision is, subject to the Act and this Subdivision, to be determined by the appointed person.
- (2) Any such review is not to be conducted by way of a hearing involving persons appearing before the appointed person.
- (3) In conducting the review, the appointed person may have regard to:
  - (a) any written information provided by the applicant, and

- (b) any information provided by the Commissioner (including any information as to the integrity of the applicant, being information in respect of which the decision the subject of the review was based).
- (4) The Commissioner is authorised to provide any such information to the appointed person.
- (5) The appointed person may:
  - (a) require the applicant to provide further information in relation to the application, and
  - (b) obtain expert advice in relation to any matter that is subject to the review, and
  - (c) inform himself or herself in such other manner as the appointed person thinks appropriate.
- (6) The Commissioner must, if requested to do so by the appointed person, provide to the person any information that is relevant to the decision concerned.

**18ZE Decision of appointed person**

- (1) The appointed person may, following his or her review of the decision the subject of review:
  - (a) affirm the decision, or
  - (b) vary the decision, or
  - (c) set aside the decision and make a decision in substitution for the decision set aside.
- (2) The appointed person must notify the Commissioner and the applicant of the appointed person's decision, and the reasons for the decision, as soon as practicable after making the decision.
- (3) The decision of the appointed person is taken to be the decision of the Commissioner and is to apply accordingly.
- (4) The decision of the appointed person is final and is not subject to review by any person or body.