

Passed by both Houses



New South Wales

Police Amendment (Police Promotions) Bill 2006

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Police Act 1990 No 47	2
4 Amendment of Police Regulation 2000	2
5 Repeal of Act	2
Schedule 1 Amendment of Police Act 1990	3
Schedule 2 Amendment of Police Regulation 2000	23

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Police Amendment (Police Promotions) Bill 2006

Act No , 2006

An Act to amend the *Police Act 1990* and the *Police Regulation 2000* with respect to the promotion and appointment system for police officers (other than constables and executive officers); and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Amendment (Police Promotions) Act 2006*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Police Act 1990 No 47

The *Police Act 1990* is amended as set out in Schedule 1.

4 Amendment of Police Regulation 2000

The *Police Regulation 2000* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Police Act 1990

(Section 3)

[1] Section 3 Definitions

Insert “or rank or grade within a rank of police officer” after “in NSW Police” in the definition of *merit* in section 3 (1).

[2] Section 3 (1), definition of “merit”

Insert “or rank or grade” after “position” wherever occurring in paragraphs (a) and (b).

[3] Section 3 (1)

Insert in alphabetical order:

non-executive administrative officer—see Part 6A.

non-executive police officer—see Part 6.

promotion list means a list prepared under section 70.

[4] Sections 24 and 39 and Schedule 2

Omit “Special Crime and Internal Affairs” wherever occurring.

Insert instead “Professional Standards Command”.

[5] Parts 6–6B

Omit Part 6. Insert instead:

Part 6 Non-executive police officers

Division 1 Preliminary

62 Officers to whom Part applies

This Part applies to all police officers (other than the Commissioner and members of NSW Police Senior Executive Service).

63 Definitions

In this Part:

appointment means appointment by way of promotion or transfer or otherwise.

non-executive commissioned police officer means a commissioned police officer to whom this Part applies.

non-executive police officer means a police officer to whom this Part applies.

vacant position means:

- (a) a position that is not held by a person, or
- (b) a position to which a person is temporarily appointed, or
- (c) a position that is temporarily held by a person who is temporarily appointed to another position in accordance with section 67 (2).

Division 2 Appointment of non-executive police officers

64 Appointments to non-executive police officer positions

- (1) An appointment (whether by way of transfer or promotion or otherwise) as a non-executive police officer is to be made by the Commissioner.
- (2) It does not matter whether the person appointed is or is not already a member of NSW Police.
- (3) In particular, it does not matter whether the person appointed is or is not a police officer at the time of appointment.
- (4) As soon as practicable after a person is appointed (whether by way of transfer or promotion or otherwise) as a non-executive police officer, the Commissioner is required to notify the Police Integrity Commission of the identity of the person so appointed.

65 Filling non-executive positions by either police or administrative officers

- (1) If the Commissioner is satisfied that a position (other than a position designated for members of NSW Police Senior Executive Service) is suitable for either a police officer or an administrative officer, the position may, for the purpose of the selection process, be designated as a position available to both police and administrative officers.
- (2) Before a person is appointed to any such vacant position, the Commissioner must determine whether it is to be the position of a police officer or an administrative officer (and the provisions of this Part or Part 6A relating to the filling of such a vacancy apply accordingly).

66 Appointments to be made on merit

- (1) This section applies to appointments to vacant positions of non-executive police officers (other than constables).

-
- (2) In deciding to appoint a person (other than by way of promotion) to a vacant position of a non-executive police officer, the Commissioner must, from among the applicants who are eligible for appointment, select the applicant who has, in the opinion of the Commissioner, the greatest merit.
 - (3) The Commissioner is, for the purpose of determining the merit of persons for appointment (other than by way of promotion) to a vacant position of a non-executive police officer, to have regard to:
 - (a) the nature of the duties of the position, and
 - (b) the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties.
 - (4) In deciding to appoint a person by way of promotion to a vacant position of a non-executive police officer, the Commissioner must appoint a person from the promotion list for the rank or grade within the rank concerned who is a person available for appointment and who has the greatest merit according to rankings on the list.
 - (5) Despite subsection (4), the Commissioner may, in the case of a position identified by the Commissioner as requiring specialist qualifications, appoint a person by way of promotion to any such position from the promotion list for the rank or grade concerned who has the greatest merit according to rankings on that list of persons who, in the opinion of the Commissioner, have the qualifications required for that position.

67 Temporary appointments

- (1) The Commissioner may appoint an officer temporarily to a position of a non-executive police officer that is vacant or the holder of which is suspended, sick or absent.
- (2) Without limiting subsection (1), the Commissioner may appoint temporarily to a vacant position of a non-executive police officer a police officer who is on the relevant promotion list for the rank or grade concerned, or is in the process of gaining the requisite qualifications for placement on that list, subject to the following:
 - (a) before the appointment can be made, the Commissioner and officer must agree, in writing, as to the command in which the officer will serve if the officer is not permanently appointed to the vacant position, and

- (b) if the officer has permanently relocated his or her principal residence because of the temporary appointment, the officer is entitled to the costs and expenses of any further relocation agreed to under paragraph (a), those costs and expenses to be calculated in accordance with any relevant industrial award or enterprise agreement for transferred officers under the *Industrial Relations Act 1996*, and
 - (c) if the officer has relocated his or her principal place of residence because of the temporary appointment and has entered into an agreement, in writing, with the Commissioner to stay within the command to which the officer has been transferred if the officer is not permanently appointed to the vacant position, the officer cannot be involuntarily transferred under section 69 (except in accordance with action taken under section 173 (2) (d)) within a period of 3 years after the relocation.
- (3) An officer who ceases to be temporarily appointed to a position in accordance with subsection (1) and who is not permanently appointed to the position has no right of return to the position from which the officer was temporarily appointed, unless:
 - (a) the officer has entered into an agreement under subsection (2) (a) to return to the command from which the officer was temporarily appointed, and
 - (b) no other officer has been appointed to the position from which the officer was temporarily appointed.
- (4) An administrative officer may not be appointed under this section to the position of a police officer.
- (5) The Commissioner may, at any time, terminate a temporary appointment under this section.
- (6) Section 66 does not apply to a temporary appointment under this section.

68 Statutory declaration as to misconduct

- (1) The Commissioner must, before appointing an officer temporarily under section 67 or otherwise under this Part, require the officer to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the officer has not knowingly engaged in specified misconduct or any other misconduct.
- (2) An officer who fails or refuses, or who is unable, to provide a statutory declaration in accordance with any such requirement is ineligible for appointment under the relevant provision.

- (3) The failure, refusal or inability of an officer to provide a statutory declaration in accordance with any such requirement must not be taken into consideration for a purpose other than the assessment of the officer's eligibility to be appointed to the position concerned.

69 Transfer of non-executive police officers

- (1) If the Commissioner considers it to be in the interests of NSW Police to do so, the Commissioner may transfer a non-executive police officer from one non-executive police officer position to another non-executive police officer position or non-executive administrative officer position.
- (2) Such a transfer may be made if:
- (a) the position to which the officer is transferred entitles its holder to the same level of remuneration as the officer's former remuneration, or
 - (b) the position to which the officer is transferred entitles its holder to a lower level of remuneration than the officer's former remuneration and:
 - (i) the officer consents to the transfer at the lower level of remuneration, or
 - (ii) the officer requested the transfer or the transfer is made pursuant to an order under section 173, or
 - (c) the officer concerned is being transferred from the rank of superintendent to which the officer is permanently appointed to another position within that rank—regardless of whether the position to which the officer is transferred entitles its holder to a remuneration that is the same as or different from the officer's former remuneration.
- (3) An officer transferred under subsection (2) (c) is entitled, for the balance of the term for which the officer holds office pursuant to section 74, to the same level of remuneration in respect of the new position as the officer's former remuneration if the position to which the officer is transferred ordinarily entitles its holder to a level of remuneration that is lower than the officer's former remuneration (unless the officer requested the transfer or it was made pursuant to an order under section 173).
- (4) A transfer under this section may be made only if the officer possesses the qualifications determined by the Commissioner for the other position.

- (5) The transfer under this section of a police officer to a non-executive administrative officer position may not be made without the approval of the police officer.
- (6) Section 66 does not apply to a transfer under this section.

70 Promotion lists

- (1) The Commissioner is to establish promotion lists of police officers eligible for promotion to the rank or grade within a rank of sergeant, senior sergeant, inspector and superintendent.
- (2) The regulations may make provision for or with respect to the following matters:
 - (a) the requirements for placement on a promotion list,
 - (b) without limiting paragraph (a), criteria for eligibility to undertake requirements (including meeting quota requirements),
 - (c) the ranking of police officers on a promotion list,
 - (d) the period for which a police officer may remain on a promotion list or replacement promotion lists for the same rank or grade within a rank,
 - (e) the appointment of persons from a promotion list to a rank or grade within a rank to which the list applies,
 - (f) reviews of assessment of requirements for placement on a promotion list and of ranking on a promotion list,
 - (g) reviews or appeals against a decision to suspend or remove a person from a promotion list, or to refuse a person the right to participate or continue to participate in any part of the process to obtain placement on a list, on integrity grounds,
 - (h) without limiting paragraph (f) or (g), the procedures for and conduct of reviews,
 - (i) circumstances in which a person may be removed or suspended from or restored to a promotion list,
 - (j) the period for which, or the circumstances in which, a promotion list remains current,
 - (k) notification of a decision to suspend or remove a person from a promotion list, or to refuse a person the right to participate or continue to participate in any part of the process to obtain placement on a list, on integrity grounds.

71 Integrity matters

- (1) It is the duty of the Commissioner:
 - (a) before selecting a person to complete an eligibility program for a rank or grade within a rank of police officer, to make inquiries (from the Commander, Professional Standards Command, and from any other person or body the Commissioner thinks appropriate), as to the integrity of the person, and
 - (b) before appointing a person, by way of promotion, as a non-executive police officer, to make inquiries (from the Police Integrity Commission, the Commander, Professional Standards Command, and from any other person or body the Commissioner thinks appropriate), as to the integrity of the person.
- (2) It is the duty of the Commissioner to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under subsection (1) or otherwise) as to the integrity of a person referred to in that subsection.
- (3) The Police Integrity Commission, subject to the *Police Integrity Commission Act 1996*, and the Commander, Professional Standards Command, are required to furnish a report to the Commissioner (on the basis of information available to the Commission or the Commander and without the need for any special investigation or inquiry) on any person the subject of an inquiry referred to in subsection (1).
- (4) The Commissioner may change a decision to appoint a person under this Part before the person is appointed if the Commissioner receives information as to the person's integrity (being information that was not considered when the decision to appoint the person was made) which causes the Commissioner to form the opinion that the person is not a suitable person to be so appointed.
- (5) If the Commissioner changes such a decision, the Commissioner may decide, in accordance with this Part to appoint instead (from the persons who are eligible for appointment) the person who the Commissioner is of the opinion at the time has the greatest merit.

- (6) The Commissioner may suspend or remove a person from a promotion list or any part of a process relating to placement on a promotion list if the Commissioner receives information as to the person's integrity (being information that was not previously considered) which causes the Commissioner to form the opinion that the person is not a suitable person to remain on the list or be placed on the list.

72 Vacation of non-executive police officer positions

- (1) A non-executive police officer's position becomes vacant if the officer:
- (a) dies, or
 - (b) completes a term of office and is not appointed for a further term, or
 - (c) is removed from office, or retires or is retired from office, under this or any other Act, or
 - (d) resigns his or her position in writing addressed to the Commissioner.
- (2) The retirement or resignation of a non-executive police officer does not take effect until:
- (a) the Commissioner accepts the retirement or resignation, or
 - (b) the officer has given the Commissioner at least 4 weeks' notice in writing of the day on which the officer intends to retire or resign and the officer is not under suspension from office on that day.

73 Approval to engage in other paid employment

A non-executive police officer must not engage in any paid employment outside the duties of his or her position without the approval of the Commissioner.

Division 3 Term of office of non-executive commissioned police officers

74 Five year term contracts

- (1) Subject to this Act, a non-executive commissioned police officer holds office for the term of office specified in an instrument of appointment issued by the Commissioner for the purposes of this section.

- (2) The instrument operates as an appointment of the officer for the term of office so specified. The appointment is separate and distinct from the appointment of the officer to the officer's non-executive police officer position by the Commissioner under section 64.
- (3) The term of office is to be 5 years or the officer's balance of service to retirement (whichever is shorter).
- (4) An officer's *balance of service to retirement* is the period up to the officer's projected date of retirement from NSW Police, as determined by the Commissioner after consultation with the officer.

75 Entitlement to further terms

- (1) Until retirement, a non-executive commissioned police officer is entitled (if otherwise qualified) to appointment for a further term of office in accordance with section 74 on the expiration of each current term of office, unless the Commissioner has decided that the officer is not to be appointed for a further term and notified the officer of that decision at least 6 months before the expiration of the current term of office.
- (2) The appointment of an officer for a further term of office does not constitute an appointment to a vacant position for the purposes of Division 2.

76 Ground for decision not to re-appoint

- (1) The only ground for a decision by the Commissioner that a non-executive commissioned police officer is not to be appointed for a further term of office is that the officer is unable to meet required standards of operational competence, discipline or integrity.
- (2) The regulations may make provision for a review of a decision of the Commissioner under this section.

77 Performance reviews

A non-executive commissioned police officer's performance must be reviewed, at least annually, by the Commissioner or by some person nominated by the Commissioner. The review is to have regard to performance criteria determined by the Commissioner for the officer's position and any other relevant matter.

78 Promotion, transfer and re-appointment following resignation

- (1) When a non-executive commissioned police officer is appointed by way of promotion to another position in NSW Police as a non-executive commissioned police officer, the officer is to be appointed for a new term of office in accordance with section 74 in the rank or grade within a rank to which the officer is promoted.
- (2) When a non-executive commissioned police officer is transferred to another position in NSW Police as a non-executive commissioned police officer, the officer is not to be appointed for a new term of office, and the officer's existing term of office continues in the transferred position.
- (3) When a non-executive commissioned police officer is re-appointed under section 103 (Re-appointment of employees resigning to contest Commonwealth elections) of the *Public Sector Employment and Management Act 2002* the officer is to be appointed for a new term of office that is equivalent to the balance of the officer's term of office as at resignation.

79 Powers of dismissal, removal and suspension not affected

Nothing in this Division limits or otherwise affects any power under this Act to dismiss, suspend or remove a non-executive commissioned police officer.

Division 4 Appointment and promotion of constables

80 Appointment and promotion of constables

- (1) The Commissioner may, subject to this Act and the regulations, appoint any person of good character and with satisfactory educational qualifications as a police officer of the rank of constable.
- (2) A person when first appointed as such a police officer is to be appointed on probation in accordance with the regulations.
- (3) The Commissioner may dismiss any such probationary police officer from NSW Police at any time and without giving any reason.
- (4) The promotion of police officers within the rank of constable is subject to the regulations.

Part 6A Non-executive administrative officers

Division 1 Preliminary

81 Officers to whom Part applies

This Part applies to all administrative officers (other than members of NSW Police Senior Executive Service).

82 Definitions

In this Part:

appointment means appointment by way of promotion or transfer or otherwise.

eligibility list means an eligibility list prepared under section 82F.

non-executive administrative officer means an administrative officer to whom this Part applies.

vacant position means:

- (a) a position that is not held by a person, or
- (b) a position to which a person is temporarily appointed.

Division 2 Appointment of non-executive administrative officers

82A Appointments to non-executive administrative officer positions

- (1) An appointment (whether by way of transfer or promotion or otherwise) to the position of a non-executive administrative officer is to be made by the Commissioner.
- (2) It does not matter whether the person appointed is or is not already a member of NSW Police.
- (3) As soon as practicable after a person is appointed (whether by way of transfer or promotion or otherwise) as a non-executive administrative officer, the Commissioner is required to notify the Police Integrity Commission of the identity of the person so appointed.

82B Advertising of vacancies

If it is proposed to make an appointment under this Part to a vacant position of a non-executive administrative officer, the Commissioner:

- (a) may advertise the vacancy (in such manner as the Commissioner thinks fit) among police or administrative officers (or only administrative officers) or generally, or
- (b) may, in such cases as the Commissioner thinks appropriate and with the approval of the Minister, appoint an administrative officer without advertising the vacancy, or
- (c) may, if there is an eligibility list that is current and applicable to the position, appoint an administrative officer from the list without advertising the vacancy.

82C Appointment on merit

- (1) In deciding to appoint a person to a vacant non-executive position of administrative officer which has been duly advertised:
 - (a) the Commissioner may only select a person who has duly applied for appointment to the vacant position, and
 - (b) the Commissioner must, from among the applicants eligible for appointment to the position, select the applicant who has, in the opinion of the Commissioner, the greatest merit.
- (2) In deciding to appoint a person to a vacant non-executive position of administrative officer which has not been duly advertised:
 - (a) the Commissioner may only select an administrative officer, and
 - (b) the Commissioner must, from among the eligible officers, select the officer who has, in the opinion of the Commissioner, the greatest merit.
- (3) Despite subsection (2), in deciding to appoint a person to a vacant position as a non-executive administrative officer that has not been advertised in accordance with this Act because it is an eligibility list position, the Commissioner must, from among the persons who are on the relevant eligibility list and who are available for appointment, select the person with the greatest merit according to the order of merit in that eligibility list.

-
- (4) The Commissioner is, for the purpose of determining the merit of the persons eligible for appointment to a vacant position of a non-executive administrative officer under this section, to have regard to:
- (a) the nature of the duties of the position, and
 - (b) the abilities, qualifications, experience, standard of work performance and personal qualities of those persons that are relevant to the performance of those duties.
- (5) If an administrative officer has a right of appeal to GREAT against an officer the Commissioner has decided to appoint, the appointment is not to be made (except by way of temporary appointment under this Part):
- (a) until the expiration of the time for lodging notice of such an appeal, or
 - (b) if such a notice of appeal is lodged, until the Tribunal has determined the appeal or the appeal is withdrawn.
- (6) In this section:
- eligibility list position* means a position to which a current eligibility list is applicable.
- relevant eligibility list*, in relation to a position, means an eligibility list that is current and applicable to the position.

82D Temporary appointments

- (1) The Commissioner may appoint an officer temporarily to a position of a non-executive administrative officer if the position is a vacant position or the holder is suspended, sick or absent.
- (2) The Commissioner may, at any time, terminate a temporary appointment under this section.
- (3) Sections 82B and 82C do not apply to a temporary appointment under this section.

82E Transfer of non-executive administrative officers

- (1) If the Commissioner considers it to be in the interests of NSW Police to do so, the Commissioner may transfer a non-executive administrative officer from one non-executive administrative officer position to another non-executive administrative officer position or non-executive police officer position.

- (2) Such a transfer may be made if:
 - (a) the position to which the officer is transferred entitles its holder to the same level of remuneration as the officer's former remuneration, or
 - (b) the position to which the officer is transferred entitles its holder to a lower level of remuneration than the officer's former remuneration and the officer consents to the transfer at the lowest level of remuneration.
- (3) A transfer under this section may be made only if the officer possesses the qualifications determined by the Commissioner for the other position.
- (4) Sections 82B and 82C do not apply to a transfer under this section.

82F Eligibility lists

- (1) When a vacant position of a non-executive administrative officer to which this section applies is advertised in accordance with this Act, the Commissioner may, in connection with a determination of the merit of the persons eligible for appointment to the position, create an eligibility list for the position.
- (2) An eligibility list for a position is a list of eligible applicants (namely the persons who duly applied for appointment to the position and are eligible for appointment) arranged in order of merit as determined by the Commissioner.
- (3) An eligibility list for a position remains current:
 - (a) in the case of a list prepared for a base grade or entry level position of a non-executive administrative officer—for 12 months after the list was created, or
 - (b) in the case of a list prepared in relation to any other position—for 6 months after the list was created.
- (4) An eligibility list need not comprise all the eligible applicants so long as the applicants on the list are those of greatest merit. An eligibility list may even comprise only one eligible applicant so long as that applicant is the applicant of greatest merit.
- (5) An eligibility list is applicable not only to the position in relation to which it was created but also to any other position that the Commissioner determines it should be applicable to on the basis that the position is substantially the same as the position in relation to which the list was created.

- (6) In this section:
base grade or entry level position means a position of administrative officer to which no administrative officer, employed in the same classification of work as that to which the position relates, could be promoted.

82G Integrity matters

- (1) It is the duty of the Commissioner before appointing a person to a vacant position of a non-executive administrative officer, to make inquiries (from any person or body the Commissioner thinks appropriate), as to the person's integrity.
- (2) It is the duty of the Commissioner, to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under subsection (1) or otherwise) as to the integrity of a person referred to in that subsection.
- (3) The Police Integrity Commission is authorised (but not required) to furnish a report to the Commissioner on any person the subject of an inquiry under this section.

82H Vacation of non-executive administrative officer positions

- (1) A non-executive administrative officer's position becomes vacant if the officer:
 - (a) dies, or
 - (b) is removed from office, or retires or is retired from office, under this or any other Act, or
 - (c) resigns his or her position in writing addressed to the Commissioner.
- (2) The retirement or resignation of a non-executive administrative officer does not take effect until:
 - (a) the Commissioner accepts the retirement or resignation, or
 - (b) the officer has given the Commissioner at least 4 weeks' notice in writing of the day on which the officer intends to retire or resign and the officer is not under suspension from office on that day.

82I Approval to engage in other paid employment

A non-executive administrative officer must not engage in any paid employment outside the duties of his or her position without the approval of the Commissioner.

82J Eligibility of non-executive administrative officers for appointment to Public Service

- (1) A non-executive administrative officer may apply for a position in the Public Service as if the officer were an officer of the Public Service.
- (2) A non-executive administrative officer who applies for such a position, or is appointed as an officer of the Public Service, is to be taken (for the purposes of the *Public Sector Employment and Management Act 2002*, the *Government and Related Employees Appeal Tribunal Act 1980* and the *Industrial Relations Act 1996* and for any other purposes) to be an officer of the Public Service in relation to the application or appointment.

Division 3 Promotion appeals by non-executive administrative officers to GREAT

83 Appeal to GREAT against promotions of administrative officers

The provisions of the *Government and Related Employees Appeal Tribunal Act 1980* relating to promotion appeals apply to non-executive administrative officers as if those officers were employees, and the Commissioner were their employer, within the meaning of that Act.

Part 6B Industrial matters relating to non-executive officers

84 Application of Part

- (1) This Part applies to all members of NSW Police (other than the Commissioner, members of NSW Police Senior Executive Service and temporary employees).
- (2) In this Part:

non-executive officer means a member of NSW Police to whom this Part applies.

85 Commissioner to be employer for industrial matters

The Commissioner is to be the employer of non-executive officers for the purposes of any proceedings relating to non-executive officers held before a competent tribunal having jurisdiction to deal with industrial matters.

86 Commissioner may determine salary, wages etc

- (1) The salary, wages or other remuneration of a non-executive officer is, except in so far as provision is otherwise made by law, such as may be determined from time to time by the Commissioner.
- (2) A non-executive officer may sue for and recover the amount of the remuneration of the officer that is determined under this section.

87 Commissioner may enter into agreements

- (1) The Commissioner may enter into an agreement with any association or organisation representing a group or class of non-executive officers with respect to industrial matters.
- (2) The Commissioner is not authorised to enter into such an agreement with respect to a matter if the Industrial Relations Commission does not have jurisdiction to make an award or order with respect to that matter because of section 405 of the *Industrial Relations Act 1996*.
- (3) An agreement under this section binds all non-executive officers in the class or group affected by the agreement, and no such officer (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.

88 Industrial arbitration or legal proceedings excluded in relation to appointments

- (1) The appointment of or failure to appoint a person to a vacant non-executive position, or any matter, question or dispute relating to such an appointment or failure, is not an industrial matter for the purposes of the *Industrial Relations Act 1996*.
- (2) Subsection (1) applies whether or not any person has been appointed to a vacant non-executive position.
- (3) No proceedings for an order in the nature of prohibition, certiorari or mandamus, or for a declaration or injunction or for any other relief, lie in respect of the appointment of or failure to appoint a person to a vacant non-executive position, the entitlement or non-entitlement of a person to be so appointed or the validity or invalidity of any such appointment.
- (4) Subsection (3) does not affect the operation of the *Government and Related Employees Appeal Tribunal Act 1980*.

- (5) The failure of a non-executive commissioned police officer to be appointed for a further term of office as provided by section 75 is for the purposes of this section taken to be a failure to appoint a person to a vacant non-executive position.
- (6) In this section:
non-executive position means the position of a member of NSW Police to whom this Part applies.
vacant position, in relation to the position of a police officer or an administrative officer, has the same meaning as it has in Parts 6 and 6A, respectively.

[6] Section 91A Appointment of long-term temporary employees to permanent positions

Omit the definition of *non-executive administrative position* from section 91A (1).

Insert instead:

non-executive administrative position means a position of a non-executive administrative officer (as defined in Part 6A).

[7] Section 183A Revocation of promotional appointment by Commissioner

Insert “(including obtaining a place on any relevant promotion list)” after “promotion” where secondly occurring.

[8] Section 219 Regulations

Insert after section 219 (2) (k):

- (l) a review of the promotion list system for the appointment of non-executive police officers established by amendments made by the *Police Amendment (Police Promotions) Act 2006*.

[9] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Police Amendment (Police Promotions) Act 2006

[10] **Schedule 4**

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Police Amendment (Police Promotions)
Act 2006**

Definitions

In this Part:

amending Act means the *Police Amendment (Police Promotions) Act 2006*.

pre-2006 promotion laws means this Act, and the *Police Regulation 2000*, as in force before their amendment by the amending Act.

promotion list has the same meaning as it has in Part 6 of this Act.

Application of pre-2006 appointment and promotion provisions

- (1) The pre-2006 promotion laws continue to apply to or in respect of the appointment of officers by way of promotion to positions of the rank or grade within a rank of sergeant, senior sergeant, inspector and superintendent (other than positions of executive officers within the meaning of Part 5 of this Act).
- (2) The pre-2006 promotion laws cease to so apply to or in respect of appointments to positions of a particular rank or grade within a rank when a promotion list is first established for that rank or grade under this Act (as amended by the amending Act).
- (3) Despite subclause (2), an appeal may be made and dealt with in accordance with the pre-2006 promotion laws, in respect of an appointment made under those laws, after they cease to apply.
- (4) The application of this Act, as amended by the amending Act, to a rank or grade within a rank for which a promotion list has been established does not affect the continuing application of the pre-2006 promotion laws to a rank or grade within a rank for which a promotion list has not been established.
- (5) This clause has effect subject to the regulations.

Preparation of first promotion lists

- (1) Police officers may undertake qualification and assessment procedures for placement on the first promotion lists for particular ranks or grades within ranks.

- (2) This Act, and the *Police Regulation 2000*, as amended by the amending Act, apply to the extent necessary to enable the establishment of the first promotion lists and qualification for placement on those lists.
- (3) To avoid doubt, a person who is undertaking qualification for placement on a first promotion list for a rank may, before that list is established, continue to apply for positions of that rank in accordance with the pre-2006 promotion laws.
- (4) This clause has effect subject to the regulations.

Eligibility lists

An eligibility list in force under section 67A immediately before its repeal by the amending Act in respect of a position of an administrative officer continues in force and is taken to have been made under section 82F, as inserted by the amending Act.

Schedule 2 Amendment of Police Regulation 2000

(Section 4)

[1] The whole Regulation

Omit “section 73” wherever occurring. Insert instead “section 80”.

[2] Clause 6A Eligibility lists

Omit the clause.

[3] Clause 16 Promotion of constables

Omit clause 16 (2).

[4] Part 2, Divisions 2A–2D

Omit Divisions 2A–2C of Part 2. Insert instead:

Division 2A Appointment of sergeants

18A Application of Division

This Division applies to appointments by way of promotion under Part 6 of the Act.

18B Requirements for appointment as sergeant

A person is not eligible to be appointed to a position of the rank of sergeant (other than the grade of senior sergeant) unless the person:

- (a) is, or has previously been, permanently appointed to the rank of sergeant or above, or
- (b) is on the sergeants promotion list that is in force when the appointment is made.

18C Requirements for appointment as senior sergeant

A person is not eligible to be appointed to the rank and grade of senior sergeant unless the person:

- (a) is, or has previously been, permanently appointed to the grade of senior sergeant or a rank higher than sergeant, or
- (b) is eligible for placement on the senior sergeants promotion list that is in force when the appointment is made.

Division 2B Appointment of inspectors

18D Application of Division

This Division applies to appointments by way of promotion under Part 6 of the Act.

18E Requirements for appointment as inspector

A person is not eligible to be appointed to a position of the rank of inspector unless the person:

- (a) is, or has previously been, permanently appointed to the rank of inspector or above, or
- (b) is on the inspectors promotion list that is in force when the appointment is made.

Division 2C Appointment of superintendents

18F Application of Division

This Division applies to appointments by way of promotion under Part 6 of the Act.

18G Requirements for appointment as superintendent

A person is not eligible to be appointed to a position of the rank of superintendent unless the person:

- (a) is, or has previously been, permanently appointed to the rank of superintendent or above, or
- (b) is on the superintendents promotion list that is in force when the appointment is made.

Division 2D Promotion lists and reviews

18H Establishment of promotion lists

- (1) A person may be placed on the promotion list for a rank or grade within a rank of police officer if the person meets the requirements for placement set out in this clause.
- (2) A person is eligible to be placed on a promotion list (other than the senior sergeants promotion list) if:
 - (a) the person has completed the required time at rank before applying to complete the pre-qualifying assessment for that rank or grade within a rank, and

-
- (b) the person has, within the last 3 years, obtained a mark in the pre-qualifying assessment for that rank or grade within a rank and has, on the basis of the person's mark in that assessment, been determined by the Commissioner to meet the quota requirements for selecting persons to proceed to undertake the promotion examination and management performance review for that rank or grade within a rank, and
 - (c) the person has, within the last 3 years, completed the promotion examination, and the management performance review, for that rank or grade within a rank, and
 - (d) the person has, on the basis of the person's performance in the pre-qualifying assessment and that examination and review, been determined by the Commissioner to meet the quota requirements for selecting persons to proceed to undertake the eligibility program for that rank or grade within a rank, and
 - (e) the person has, within the last 3 years, successfully completed the eligibility program and obtained an eligibility mark, as determined by the Commissioner, for that rank or grade within a rank.
- (3) The **required time at rank** for the purposes of subclause (2) is:
- (a) in the case of a person applying for placement on the sergeants promotion list—a period of, or periods totalling, not less than 2 years at the rank of senior constable, and
 - (b) in the case of a person applying for placement on the inspectors promotion list—a period of, or periods totalling, not less than 2 years of appointment (including temporary appointment under Part 6 of the Act or an appointment to act in an executive position under the Act) at the rank of sergeant or a higher rank, and
 - (c) in the case of a person applying for placement on the superintendents promotion list— a period of, or periods totalling, not less than 2 years of appointment (including temporary appointment under Part 6 of the Act or an appointment to act in an executive position under the Act) at the rank of inspector or a higher rank.

- (4) A person is eligible to be placed on the senior sergeants promotion list if:
- (a) the person is on, or has received an eligibility mark for, the sergeants promotion list and:
 - (i) the person applies for placement on the senior sergeants promotion list, and
 - (ii) the person has, on the basis of the person's performance in the eligibility program for the sergeants promotion list, been determined by the Commissioner to meet the quota requirements for placement on the senior sergeants promotion list, or
 - (b) the person is a police officer of the rank of sergeant and:
 - (i) if required to do so by the Commissioner, the person has successfully completed the senior sergeants promotion examination and has, on the basis of the person's performance in that examination, been determined by the Commissioner to meet the quota requirements to proceed to undertake the sergeants eligibility program, and
 - (ii) the person has successfully completed the sergeants eligibility program and obtained an eligibility mark, as determined by the Commissioner, and
 - (iii) the person has, on the basis of the person's performance in the eligibility program, been determined by the Commissioner to meet the quota requirements for placement on the senior sergeants promotion list.
- (5) A person who is qualified for more than one promotion list may be placed on more than one promotion list at any one time.

181 Eligibility requirements

- (1) The Commissioner may:
- (a) determine quotas for the number of persons who may be selected to attempt eligibility requirements for placement on a promotion list in each year, and
 - (b) determine quotas for the number of persons who may be placed on the senior sergeants promotion list in each year, and
 - (c) from time to time determine the standard for successful completion of an eligibility requirement.

-
- (2) The Commissioner may from time to time determine the period within which successive attempts to complete the same eligibility requirement may be made and may limit the number of attempts to successfully complete an eligibility requirement that a person is permitted to make.
 - (3) In this Division:
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.

18J Ranking on promotion lists

- (1) Persons placed on a promotion list are to be ranked on that list in order according to the eligibility mark of each person.
- (2) The eligibility mark of a person on a promotion list is to be determined for the person by the Commissioner on the basis of marks determined for each eligibility requirement.
- (3) The Commissioner may determine the weighting to be given to each eligibility requirement for the purpose of calculating eligibility marks for a promotion list.

18K Time for acceptance of promotion offers

A person who is on a promotion list and who is offered an appointment to a rank or a grade within a rank to which the list applies is taken to have refused the offer if the person fails to accept the appointment within 72 hours of the offer being made, or within such longer period as the Commissioner may allow in a particular case.

18L Removal or suspension from list

- (1) A police officer who is appointed by way of promotion to a rank or grade within a rank to which a promotion list applies is to be removed from the list.
- (2) The Commissioner must notify a person in writing if the person is suspended or removed from a promotion list on integrity grounds.

18M Currency of promotion list

A promotion list remains current:

- (a) for the period of 12 months after it is established, or
- (b) until all persons on the list have been removed from the list,

whichever occurs first.

18N Eligible persons to be included in replacement promotion lists

- (1) A person who is on a promotion list for a rank or a grade within a rank is to be included on any replacement promotion list, if the person remains eligible to be placed on such a promotion list.
- (2) A person may not be included in a replacement promotion list if the person was last awarded an eligibility mark more than 3 years before the promotion list is established.

[5] Clause 110

Insert after clause 109:

110 Review of promotion system

- (1) The Minister is to review the promotion system established for non-executive police officers by the amendments made to the Act and this Regulation by the *Police Amendment (Police Promotions) Act 2006*.
- (2) The review is to be undertaken as soon as possible after 2 years after the establishment of the first promotion list under that system and is to be completed within 6 months.