

[Act 2002 No 105]



New South Wales

Police Amendment (Appointments) Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Police Act 1990* (*the Act*) as follows:

- (a) to allow the Commissioner of Police (*the Commissioner*) to transfer police superintendents from a non-executive position to which the officer is permanently appointed within that rank to another non-executive position within that rank regardless of whether the remuneration payable with respect to the position to which the officer is to be transferred is the same as or different from the officer's former remuneration,
 - (b) to replace the requirement that applicants for appointment to the office of Commissioner, or to a vacant executive position, position of non-executive commissioned police officer or position of a police officer of the rank of sergeant, provide a statutory declaration relating to disclosure of misconduct, with a requirement that, before recommending the appointment of, or appointing (as the case may be), a person to such an office or position, the Minister or Commissioner (as the case may be) must require the person to
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provide a statutory declaration relating to disclosure of misconduct, and must have regard to the statutory declaration so provided,

- (c) to provide that the proposed statutory declaration requirements relating to vacant executive positions do not apply in relation to a person who has applied for such a position and who is not, and has never been, a police officer (whether in New South Wales or elsewhere),
- (d) to provide that before appointing temporarily to a vacant police officer position an officer who is selected for, or who is the preferred applicant for, the position, the Commissioner must require the officer to provide a statutory declaration relating to disclosure of misconduct,
- (e) to provide that a person who fails or refuses or who is unable to provide a statutory declaration in accordance with a requirement made under the proposed provisions is ineligible for appointment to the office or position concerned.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Police Act 1990* set out in Schedule 1.

Schedule 1 Amendments

Statutory declaration requirements relating to appointments

Schedule 1 [1] amends section 24 of the Act to remove the requirement that applicants for appointment to the office of Commissioner provide a statutory declaration that the applicant has not knowingly engaged in specified misconduct or any other misconduct (referred to in this explanatory note as a *statutory declaration relating to disclosure of misconduct*). Instead, before recommending the appointment of a person to the office of Commissioner, the Minister must require the person to provide such a statutory declaration. A person who fails or refuses or who is unable to provide a statutory declaration is ineligible for appointment.

Explanatory note

Schedule 1 [2] repeals section 38A of the Act which requires applicants for appointment to a vacant executive position to provide a statutory declaration relating to disclosure of misconduct. **Schedule 1 [9] and [11]** repeal sections 70 and 76A of the Act which contain the same requirement for a statutory declaration but in relation to applicants for appointment by way of promotion to a vacant position of non-executive commissioned police officer or to a vacant position of a police officer of the rank of sergeant.

Schedule 1 [3] amends section 39 of the Act to provide that before recommending the appointment of, or appointing, a person to a vacant executive position, the Commissioner must require the person to provide a statutory declaration relating to disclosure of misconduct, and must have regard to the statutory declaration so provided. A person who fails or refuses or who is unable to provide a statutory declaration is ineligible for appointment. A person who has applied for a vacant executive position who is not, and has never been, a police officer (whether in New South Wales or elsewhere) is not subject to the proposed statutory declaration requirements.

Schedule 1 [5] amends section 66 of the Act to provide that before appointing temporarily to a vacant police officer position an officer who is selected for, or who is the preferred applicant for, the position, the Commissioner must require the officer to provide a statutory declaration relating to disclosure of misconduct. An officer who fails or refuses or who is unable to provide a statutory declaration is ineligible for appointment to the position concerned. **Schedule 1 [10] and [12]** amend sections 71 and 77 of the Act to make the same provision in relation to the appointment of a person to a vacant position of non-executive commissioned police officer or to a vacant position of a police officer of the rank of sergeant.

Schedule 1 [4], [6], [8], [13] and [14] make consequential amendments.

Transfer of non-executive officers

Schedule 1 [7] amends section 67 of the Act to allow the Commissioner to transfer a police superintendent from a non-executive position to which the officer is permanently appointed within that rank to another non-executive position within that rank regardless of whether the remuneration payable with respect to the position to which the officer is to be transferred is the same as or different from the officer's former remuneration. If the transfer is to a position that would ordinarily entitle its holder to a level of remuneration that is lower than the officer's former remuneration, the officer is entitled to the same level of remuneration in respect of that position as the officer's former remuneration (unless the transfer was requested by the officer or ordered because of misconduct or unsatisfactory performance on the part of the officer). This entitlement applies only in respect of the balance of the officer's term of office.

Savings and transitional provisions

Schedule 1 [15] allows regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [16] makes provision of a savings and transitional nature, namely:

- (a) an amendment made by Schedule 1 [1], [3], [5], [10] or [12] is to extend to the appointment of a person to an office or position that was advertised but not filled before the commencement of the amendment, and
- (b) the amendment made by Schedule 1 [7] is not to apply to or in respect of a transfer to a position that was advertised but not filled before the commencement of that amendment.