

[Act 2001 No 114]



New South Wales

Police Service Amendment (Promotions and Integrity) Bill 2001

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Police Service Act 1990* to make changes to the police promotions system to improve its integrity and efficiency, and
- (b) to make a minor consequential amendment to the *Police Integrity Commission Act 1996*, and
- (c) to amend the *Government and Related Employees Appeal Tribunal Act 1980* with respect to the appointment, on a full-time or part-time basis, of the Senior Chairperson, an Acting Senior Chairperson or a Chairperson of the Government and Related Employees Appeal Tribunal.

* Amended in committee—see table at end of volume.

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 the date of assent.

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

Clause 4 is a formal provision giving effect to the amendment to the *Police Integrity Commission Act 1996* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Government and Related Employees Appeal Tribunal Act 1980* set out in Schedule 3.

Schedule 1 Amendment of Police Service Act 1990

Integrity reports concerning applicants for promotion

Schedule 1 [1] requires the Minister, before recommending the appointment of a person as Commissioner, to obtain an integrity report from the Commander, Special Crime and Internal Affairs, in addition to reports from the Police Integrity Commission and anyone else the Minister considers appropriate.

Schedule 1 [2] requires the Commander, Special Crime and Internal Affairs, to furnish the report to the Minister.

Schedule 1 [7] requires the Commissioner, before a person is appointed to an executive position, to obtain an integrity report from the Commander, Special Crime and Internal Affairs, in addition to reports from the Police Integrity Commission and anyone else the Commissioner considers appropriate.

Schedule 1 [8] requires the Commander, Special Crime and Internal Affairs, to furnish the report to the Commissioner.

Schedule 1 [9] provides that, if the vacant executive position is that of the Commander, Special Crime and Internal Affairs, the report to the Commissioner is to be furnished by a Deputy Commissioner nominated by the Commissioner.

Schedule 1 [12] imposes a duty on the Commissioner, before appointing a person, by way of promotion, to a vacant non-executive police officer position, to make inquiries as to the person's integrity from the Police Integrity Commission, the Commander, Special Crime and Internal Affairs, and anyone else the

Commissioner considers appropriate, and to have regard to any information that comes to the Commissioner's attention as to the person's integrity.

Schedule 1 [14] provides that the Police Integrity Commission and the Commander, Special Crime and Internal Affairs, are required to furnish the report to the Commissioner.

Schedule 1 [13] makes a consequential amendment.

By **Schedule 1 [29]**, provision is made for the amendments to extend to a position that is a vacant position when the amendments commence.

The amendments also provide that the provision of all Police Integrity Commission reports is subject to the provisions of the *Police Integrity Commission Act 1996*—see **Schedule 1 [2]**, **[8]** and **[14]**.

Making of statutory declarations as to integrity by applicants for police officer promotional positions

The Act is amended to require an applicant for a promotional appointment to a vacant police officer position to provide a statutory declaration that the applicant has not knowingly engaged in any misconduct. An applicant who does not provide the statutory declaration is ineligible for appointment. The failure to provide a statutory declaration cannot be taken into consideration for a purpose other than the assessment of the person's eligibility to be appointed to the vacant position.

Schedule 1 [3] amends the Act in relation to the appointment of the Commissioner.

Schedule 1 [5] amends the Act in relation to the appointment of an executive officer. **Schedule 1 [18]** amends the Act in relation to the appointment of a non-executive commissioned officer. **Schedule 1 [22]** amends the Act in relation to the appointment of a sergeant. By **Schedule 1 [29]**, provision is made for the amendments to extend to a person who is an applicant for a vacant position when the amendments commence.

Eligibility lists

Schedule 1 [10] inserts proposed section 39A into the Act. It enables the Commissioner to create an eligibility list for an executive position that has been advertised. It is consistent with arrangements for senior executive service appointments under the *Public Sector Management Act 1988* and has similarities with the provision for eligibility lists for non-executive positions in section 67A of the *Police Service Act 1990*.

Schedule 1 [17] extends the life of an eligibility list for non-executive police officer positions from 6 months to 12 months.

Filling of vacancy arising from temporary appointment of preferred applicant

Schedule 1 [11] creates a definition of *vacant position* for the purposes of these provisions. A *vacant position* is a police officer position:

- (a) that is not held by a person, or
- (b) to which a temporary appointment has been made, or
- (c) that is held by a person who is temporarily appointed to another position in accordance with the new arrangements under proposed section 66 (1A) (to be inserted by **Schedule 1 [15]**), or
- (d) that is held by a person who has ceased to be temporarily appointed to another position in accordance with the new arrangements and has no right of return to the position.

Schedule 1 [15] (proposed section 66 (1A)) enables the Commissioner to appoint an officer temporarily to a police officer position that is a vacant position if the officer is selected for, or is the preferred applicant for, the position, subject to several safeguards. They are:

- (a) before the appointment can be made, the Commissioner and the officer must agree as to the command in which the officer will serve if the officer is not permanently appointed to the position, and
- (b) if the officer is not permanently appointed to the position because another officer is selected for it, the officer retains his or her rights of appeal, and
- (c) if the officer has relocated his or her principal place of residence because of the temporary appointment, the costs and expenses of any further relocation are to be paid by the Police Service, and
- (d) if the officer has relocated his or her principal place of residence because of the temporary appointment and has agreed with the Commissioner to stay within the command to which the officer has been transferred if the officer is not permanently appointed to the position, the officer cannot be transferred (except in accordance with employee management action for misconduct or unsatisfactory performance), within a period of 3 years after the relocation.

Schedule 1 [15] (proposed section 66 (1B)) provides that an officer who ceases to be temporarily appointed to a position in accordance with the new arrangements, and who is not permanently appointed to the position has no right of return to his or her previous position unless appropriate arrangements have been agreed with the Commissioner to do so or no other officer has been selected for, or is the preferred applicant for, the position from which the officer was temporarily appointed.

Schedule 1 [16] defines *preferred applicant* for the purposes of the new arrangements.

Withdrawal of selection on integrity grounds

Schedule 1 [20] inserts proposed sections 71A and 71B into the Act. Proposed section 71B enables the Commissioner to change a decision to appoint a person to a non-executive commissioned police officer position before the person is appointed, or before a promotion appeal made against the Commissioner's decision is commenced to be heard, if the Commissioner receives adverse information as to the person's integrity. Proposed section 71A specifies the circumstances in which a person ceases to be selected for appointment.

Schedule 1 [23] inserts proposed sections 77A and 77B into the Act. The proposed sections make the same provisions in relation to the appointment of sergeants.

Schedule 1 [19] makes consequential amendments.

By **Schedule 1 [29]**, provision is made to extend the proposed sections to an appointment decision made before its commencement.

Promotional appeals

Schedule 1 [24] repeals section 81A of the Act and thereby abolishes the appeal to the Government and Related Employees Appeal Tribunal (*GREAT*) by a constable against a decision to promote another constable to a higher grade in that rank.

Schedule 1 [21] makes a consequential amendment.

Schedule 1 [25] modifies the procedure under section 81D of the Act for appeals to GREAT. The modifications are as follows:

- (a) a notice of appeal must be accompanied by a summary of the grounds of the appeal and the particulars alleged to support those grounds,
- (b) the Senior Chairperson or a Chairperson may require an appellant to provide further written particulars concerning the appeal,
- (c) GREAT is to be constituted by the Senior Chairperson or a Chairperson sitting alone,
- (d) GREAT may strike out an appeal if:
 - (i) the appeal is frivolous or vexatious, or
 - (ii) the appellant is not able to put forward an arguable case in favour of his or her appointment,
- (e) evidence is to be given on oath.

Schedule 1 [26] substitutes section 81E of the Act. The substituted section gives the Commissioner the option of appointing a successful appellant to GREAT to the contested vacant position or of not making the appointment and of recommencing the selection process.

By **Schedule 1 [29]**, provision is made:

- (a) to extend section 81D of the Act, as amended by Schedule 1 [25], to appeals made before the commencement of the amendment that were not commenced to be heard before that commencement, and
- (b) to extend section 81E of the Act, as inserted by Schedule 1 [26], to appeals made before the commencement of that section that are finally determined after that commencement.

Revocation of promotional appointment because of misconduct in obtaining promotion

Schedule 1 [27] inserts proposed Division 2A (sections 183A–183E) into Part 9 of the Act.

Proposed section 183A provides that the Commissioner may make an order to revoke a promotional appointment of an officer who is found to have engaged in misconduct that has assisted the promotion.

Proposed section 183B sets out the process that is to be followed in relation to the making of a revocation order.

Proposed section 183C provides for the effect of a revocation order.

Proposed section 183D limits the opportunity for administrative review of a revocation order.

Proposed section 183E imposes limitations on the Commissioner's power to delegate functions under the proposed Division.

By **Schedule 1 [29]**, provision is made to extend the proposed Division to a promotion made before its commencement.

Miscellaneous amendments

Schedules 1 [4] and **[6]** make amendments by way of statute law revision.

Schedule 1 [28] enables regulations of a savings and transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Police Integrity Commission Act 1996

Schedule 2 makes a consequential amendment to the *Police Integrity Commission Act 1996* to enable the admissibility of evidence given before the Police Integrity Commission in proceedings relating to orders revoking promotional appointments because of misconduct under proposed Division 2A of Part 9 of the *Police Service Act 1990*.

Schedule 3 Amendment of Government and Related Employees Appeal Tribunal Act 1980

The amendments made by **Schedule 3** enable the appointment of the Senior Chairperson (except for a Senior Chairperson who is not a holder of judicial office), an Acting Senior Chairperson or a Chairperson of GREAT on a part-time basis (as well as a full-time basis).