

Passed by both Houses



New South Wales

Police Amendment (Promotions) Bill 2020

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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,*

, 2020



New South Wales

Police Amendment (Promotions) Bill 2020

Act No _____, 2020

An Act to amend the *Police Act 1990* and the *Police Regulation 2015* with respect to the promotions process for non-executive police officers to the ranks of sergeant, inspector and superintendent; 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.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Police Amendment (Promotions) Act 2020*.

2 Commencement

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

Schedule 1 Amendment of Police Act 1990 No 47

[1] Section 3 Definitions

Omit the definition of *promotion list* from section 3(1).

[2] Section 63 Definitions

Insert in alphabetical order—

specialist position means a position at the rank of sergeant, inspector or superintendent identified by the Commissioner as requiring specialist qualifications or unique knowledge, skills or experience.

vacant specialist position means—

- (a) a specialist position that is not held by a person, or
- (b) a specialist position to which a police officer is appointed on a provisional basis, in accordance with section 66AB, or
- (c) a specialist position in which a police officer is appointed to act, in accordance with section 66A.

[3] Section 63, definition of “vacant position”

Omit paragraphs (b) and (c). Insert instead—

- (b) a position in which a police officer is appointed to act, in accordance with section 66A.

[4] Sections 65(2), 75(2) and 219(2)(h)

Insert “or vacant specialist position” and “or vacant specialist positions” after “vacant position” and “vacant positions”, respectively and wherever occurring.

[5] Section 66, heading

Insert “and promotion appointments” after “Appointments”.

[6] Section 66(1)–(3)

Insert “and vacant specialist positions” and “or a vacant specialist position” after “constables)” and “non-executive police officer”, respectively and wherever occurring.

[7] Section 66(4)

Omit “from the promotion list for the rank concerned who is a person available for appointment and who has the greatest merit according to rankings on the list”.

Insert instead “who has, in the opinion of the Commissioner, the greatest merit as determined in accordance with the regulations”.

[8] Section 66, note

Omit the note to section 66(4). Insert at the end of the section—

Note. Sections 66AC and 66A contain an exception to subsection (4) and this section, respectively.

[9] Sections 66AA and 66AB

Omit the sections. Insert instead—

66AA Promotion appointments to specialist positions

- (1) In deciding to appoint a police officer by way of promotion to a vacant specialist position, the Commissioner must appoint the officer who has, in the

opinion of the Commissioner, the greatest merit as determined in accordance with the regulations.

- (2) The Commissioner may require a police officer applying for appointment by way of promotion to a vacant specialist position to undergo a psychological assessment of the officer's suitability for the position.
- (3) The Commissioner may not appoint a police officer by way of promotion to a vacant specialist position for which a psychological assessment is required if the officer—
 - (a) refuses to undergo the assessment, or
 - (b) fails to satisfy any requirement or criteria relevant to the assessment.

Note. Section 66A contains an exception to this section.

66AB Promotion appointments to specialist positions requiring specific qualifications—provisional appointments

- (1) This section applies in relation to a vacant specialist position that requires a specific qualification if none of the applicants for the position holds the qualification.
- (2) The Commissioner may appoint by way of promotion to the position a police officer who does not hold the qualification.
- (3) The Commissioner must appoint the police officer to the position on a provisional basis for a period (the *provisional period*) determined by the Commissioner.
- (4) The Commissioner must permanently appoint the police officer to the position if—
 - (a) the officer obtains the qualification within the provisional period, and
 - (b) the officer has, in the opinion of the Commissioner, demonstrated satisfactory performance in the position within the provisional period.
- (5) If the police officer is not permanently appointed under subsection (4) within the provisional period, at the end of the provisional period the officer returns to the rank and grade the officer would have held at the end of the provisional period had the officer not been provisionally appointed to the specialist position.
- (6) Section 66AA applies to an appointment under this section.

Note. Section 66A contains an exception to this section.

[10] Section 66AC, heading

Omit “**Promotion appointments**”. Insert instead “**Appointments**”.

[11] Section 66A

Omit sections 66A and 67. Insert instead—

66A Acting appointments

- (1) The Commissioner may appoint a police officer to act in a non-executive police officer position if—
 - (a) the position is vacant, or
 - (b) the holder of the position is suspended, sick or absent.
- (2) The police officer, while acting in the position, has all the functions of the holder of the position.

- (3) The Commissioner may, at any time, terminate the appointment of the police officer to act in the position.
- (4) This section does not prevent the payment of an allowance to a police officer for exercising any or all of the functions of a non-executive police officer position if a police officer is not appointed to act in the position under this section.
- (5) An appointment made under subsection (1)(a) must not be for a period longer than 12 months.
- (6) Sections 66, 66AA and 66AB do not apply to an appointment under this section.

[12] Section 68

Omit the section. Insert instead—

68 Declaration as to misconduct

- (1) Before appointing a police officer to act in a non-executive police officer position under section 66A, the Commissioner must require the officer to provide a declaration that the officer has not knowingly engaged in specified misconduct or any other misconduct.
- (2) A police officer who fails, refuses or is unable to provide the declaration is ineligible for appointment to the position.
- (3) The failure, refusal or inability of a police officer to provide the declaration must not be taken into consideration for a purpose other than the assessment of the officer's eligibility to be appointed to the position.

[13] Section 70 Promotion lists

Omit the section.

[14] Section 71 Integrity matters

Omit section 71(1). Insert instead—

- (1) Each of the following is a duty of the Commissioner—
 - (a) before a non-executive police officer participates in a process relating to the person's promotion to the rank of sergeant, inspector or superintendent—to make inquiries as to the integrity of the officer,
 - (b) before appointing a person by way of promotion as a non-executive police officer—to make inquiries as to the integrity of the person of the following—
 - (i) the LECC,
 - (ii) the Commander, Professional Standards Command,
 - (iii) any other person the Commissioner considers appropriate.

[15] Section 71(3)

Omit "subsection (1)". Insert instead "subsection (1)(b)".

[16] Section 71(6)

Omit "a promotion list or any part of a process relating to placement on a promotion list" and "to remain on the list or be placed on the list".

Insert instead "any part of a process relating to the person's promotion" and "to participate in the process", respectively.

[17] Section 73

Insert after section 72—

73 Regulations relating to promotion of non-executive police officers

- (1) The regulations may make provision for or with respect to the promotion of non-executive police officers to the rank of sergeant, inspector or superintendent.
- (2) In particular, the regulations may make provision for or with respect to the following matters—
 - (a) the requirements and processes for promotion,
 - (b) the criteria for eligibility to participate in a process for promotion,
 - (c) the appointment of police officers to positions,
 - (d) the procedures for and conduct of reviews.

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

Omit “(including obtaining a place on any relevant promotion list)”.

[19] Section 219 Regulations

Omit section 219(2)(l). Insert instead—

- (l) a review of the process for promoting non-executive police officers established by amendments made by the *Police Amendment (Promotions) Act 2020*.

Schedule 2 Amendment of Police Regulation 2015

[1] Clause 3 Definitions

Omit the definitions of *eligibility program*, *eligibility requirement*, *management performance review*, *pre-qualifying assessment*, *principal promotion list*, *promotion examination*, *Review Committee*, *Review Panel* and *sergeants reserve promotion list* from clause 3(1).

[2] Clause 12 Appointments to specialist positions—required time at rank

Omit the clause.

[3] Part 2, Division 3

Omit Divisions 3–7 of Part 2. Insert instead—

Division 3 Promotion of non-executive police officers

Subdivision 1 Preliminary

19 Application

This Division applies to the promotion of non-executive police officers to the rank of sergeant, inspector or superintendent.

20 Definitions

In this Division—

appointed person—see clause 30.

eligible non-executive police officer—see clause 21.

position-based assessment for a position means an assessment, including at least a written application and an interview, of a police officer's suitability for the position against the pre-established standards for the position.

pre-established standards for a position means the capability, knowledge, qualification and experience standards for the position.

promotion rank—see clause 21.

rank-based assessment for a rank means the following assessments of a police officer's suitability for the rank—

- (a) an assessment of the officer's individual capabilities against the capabilities required for the rank,
- (b) an assessment of the officer's technical skills and operational knowledge against the technical skills and operational knowledge required for the rank.

required time at rank for a rank means a period of not less than 2 years at the rank.

Subdivision 2 Promotions process

21 Eligibility criteria to participate in promotions process

A non-executive police officer (an *eligible non-executive police officer*) is eligible to participate in the process for promotion to the rank (the *promotion rank*) of sergeant, inspector or superintendent under this Division, if—

- (a) the officer has completed the required time at rank for the rank below the promotion rank, and

- (b) the Commissioner—
 - (i) has made inquiries as to the integrity of the officer under section 71(1)(a) of the Act, and
 - (ii) following the making of those inquiries, is satisfied the officer is suitable to participate in the process.

22 Stage A—Rank-based assessments

- (1) Before applying for a promotion to a promotion rank in accordance with clause 23, an eligible non-executive police officer must, to the satisfaction of the Commissioner, successfully complete the rank-based assessment for the promotion rank.
- (2) The officer must have successfully completed the assessment not more than 2 years before the day of making the application.

23 Stage B—Promotion applications

- (1) An eligible non-executive police officer who has successfully completed the rank-based assessment for the promotion rank may apply for a promotion to the relevant rank when a position for the rank is advertised.
- (2) An officer who applies for a promotion to the advertised position must undertake the position-based assessment for the position.
- (3) A decision about promotion must be based on the outcome of the position-based assessment to determine the officer best suited to the requirements of the position.
- (4) The following principles apply in relation to a decision about promotion—
 - (a) pre-established standards for a position are to be expressed as levels against each capability or other requirements for the position,
 - (b) an officer may be appointed to a position only if the officer meets the pre-established standards for the position.

Subdivision 3 Review of promotion decisions

24 Review of Stage A Rank-based assessments

- (1) A non-executive police officer may apply to the Commissioner for a review of the Commissioner's determination of the officer's completion of the rank-based assessment.
- (2) The application may only be made on the following grounds—
 - (a) that the whole or a part of the process relating to the assessment was irregular,
 - (b) that the outcome of an assessment of the officer's individual capabilities was unreasonable, having regard to all the circumstances,
 - (c) that the outcome of an assessment of the officer's technical skills and operational knowledge was incorrect, having regard to all the circumstances.
- (3) The application—
 - (a) must be in writing and state the grounds on which the application is made, and
 - (b) may be made no later than 48 hours after the officer is notified of the Commissioner's determination.

25 Review of Stage B Position-based assessments

- (1) A non-executive police officer may apply to the Commissioner for a review of the outcome of the officer's position-based assessment.
- (2) The application may only be made on the ground that the whole or a part of the process relating to the assessment was irregular, and is not a review of the merits of the outcome.
- (3) The application—
 - (a) must be in writing and state the grounds on which the application is made, and
 - (b) may be made no later than 48 hours after the officer is notified of the outcome of the assessment.
- (4) The permanent appointment of an officer in the position to which the review relates cannot be implemented until the review has been completed.

26 Commissioner's assessment of grounds for review

- (1) On receiving an application for a review, the Commissioner must—
 - (a) assess the grounds supporting the application, and
 - (b) decide whether the application discloses a ground on which the application may be made.
- (2) If the application discloses a ground on which the application may be made, the Commissioner must—
 - (a) convene a Review Panel for the purposes of determining the application, and
 - (b) refer the application to the Review Panel for determination.
- (3) The decision of the Commissioner under this clause is final and is not subject to any further review.

27 Composition of Review Panel

- (1) A Review Panel must consist of the following members—
 - (a) an employer representative appointed by the Commissioner,
 - (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 Review Panel.
- (2) A person who was involved in the determination or outcome the subject of the review may not be a member of the Review Panel considering the determination or outcome.

28 Procedure for conducting review

- (1) A review by a Review Panel must not be conducted by way of a hearing that involves persons appearing before the Review Panel.
- (2) In conducting the review, the Review Panel may consider any information the Panel considers relevant to the determination or outcome the subject of the review.

29 Decision of Review Panel

- (1) In determining an application for a review under clause 24(1), the Review Panel may—
 - (a) affirm the determination, or
 - (b) vary the determination, or
 - (c) set aside and substitute the determination, or
 - (d) allow the officer to attempt a rank-based assessment again.
- (2) In determining an application for a review under clause 25(1), the Review Panel may—
 - (a) if satisfied the process relating to the assessment was not in any way irregular—affirm the outcome, or
 - (b) if satisfied the process relating to the assessment was in any way irregular—recommend the outcome be revoked and another assessment process be carried out.
- (3) A decision supported by a majority of the members of a Review Panel is the decision of the Panel.
- (4) The Review Panel must, within 72 hours of making the decision, notify the Commissioner and the applicant of the decision and the reasons for the decision.
- (5) A failure by the Review Panel to give the notice within the period prescribed under subclause (4) does not invalidate the decision.
- (6) A decision of the Review Panel under this clause is final and is not subject to any further review.

Subdivision 4 Review of decisions made on integrity grounds

30 Application for review of decisions made on integrity grounds

- (1) A non-executive police officer may apply to the Commissioner for a review of the following decisions made on integrity grounds—
 - (a) that the officer is unsuitable to participate in a process for promotion,
 - (b) to suspend or remove the officer from any part of a process for promotion.
- (2) The application must be—
 - (a) in writing and state the grounds on which the application is made, and
 - (b) made no later than 7 days after the officer is notified of the decision.
- (3) Within 48 hours of receiving the application, the Commissioner must refer the application to the person appointed by the Minister for the purposes of conducting the review (the *appointed person*).

31 Procedure for conducting review

- (1) The procedure for conducting the review must be determined by the appointed person.
- (2) However, the review must not be conducted by way of a hearing that involves persons appearing before the appointed person.
- (3) In conducting the review, the appointed person may consider—
 - (a) any written information provided by the officer, and

- (b) any information provided by the Commissioner on which the decision the subject of the review was based, including information as to the integrity of the officer.
- (4) The Commissioner is authorised to provide the information referred to in subclause (3)(b) to the appointed person.
- (5) The appointed person may—
 - (a) require the officer to provide further information in relation to the application, and
 - (b) obtain expert advice in relation to any matter that is relevant to the review, and
 - (c) inform themselves in any other manner as the appointed person thinks appropriate.
- (6) The Commissioner must, if asked by the appointed person, provide to the person any information relevant to the decision the subject of the review.

32 Decision of appointed person

- (1) In determining the application, the appointed person may—
 - (a) affirm the decision, or
 - (b) vary the decision, or
 - (c) set aside and substitute the decision.
- (2) The appointed person must, as soon as practicable after making the decision, notify the Commissioner and the applicant of the decision and the reasons for the decision.
- (3) The decision of the appointed person is taken to be the decision of the Commissioner.
- (4) The decision of the appointed person under this clause is final and is not subject to any further review.

[4] Clause 57 Remedial performance programs

Omit “job-stream responsibilities” wherever occurring in clause 57(1). Insert instead “job responsibilities”.

[5] Clause 57(2)

Omit the subclause. Insert instead—

- (2) In this clause—
job responsibilities, in relation to a police officer, means the responsibilities and duties that attach to the officer’s rank and position within the NSW Police Force.

[6] Clause 71 Acting or relieving in non-executive police officer positions

Omit “employees)” from clause 71(b).

Insert instead “employees) or vacant specialist positions”.

[7] Clause 73 Members refusing promotion or appointment

Omit “Except as provided by clause 28(3), a”. Insert instead “A”.

[8] Clause 145A One-off extension of period of eligibility to be placed on promotion list

Omit the clause.

[9] Clauses 148 and 149

Insert after clause 147—

148 Savings and transitional—non-executive police officers on promotion lists consequent on enactment of Police Amendment (Promotions) Act 2020

- (1) This clause applies to a non-executive police officer who, immediately before the commencement of the amending Act, was—
 - (a) on a current promotion list, or
 - (b) eligible for placement on a proposed promotion list.
- (2) The officer is taken to be eligible to apply for a promotion under the Act as follows—
 - (a) for a position of the rank for which the current promotion list or proposed promotion list was or would have been prepared,
 - (b) for the period for which the officer was to remain on, or would have remained on, the current promotion list or proposed promotion list, or until the officer has been promoted, whichever is earlier.

- (3) In this clause—

amending Act means the *Police Amendment (Promotions) Act 2020*.

current promotion list means a list prepared under repealed section 70 that was current immediately before the commencement of the amending Act.

proposed promotion list means a list that would have been prepared under repealed section 70 for the year 2020.

repealed section 70 means section 70 of the Act as in force before the commencement of the amending Act.

149 Savings and transitional—non-executive police officers provisionally appointed to vacant specialist positions consequent on enactment of Police Amendment (Promotions) Act 2020

- (1) This clause applies to a non-executive police officer who, immediately before the commencement of the amending Act, was appointed to a vacant specialist position under subsection (3) of repealed section 66AA.

Note. The appointment to a vacant specialist position under subsection (3) of repealed section 66AA is an appointment on a provisional basis.
- (2) The officer is taken to have been appointed to the position on a provisional basis for a period ending 12 months after the commencement of the amending Act (the *transitional period*).
- (3) The Commissioner must permanently appoint the officer to the position if—
 - (a) the officer successfully completes the rank-based assessment for the rank to which the vacant specialist position relates within the transitional period, and
 - (b) the officer holds the specialist qualification, or unique knowledge, skills or experience required for the position, and
 - (c) if the Commissioner requires the officer to undergo a psychological assessment of the officer's suitability for the position—the officer undergoes the assessment and satisfies the requirements or criteria relevant to the assessment, and

- (d) the officer has, in the opinion of the Commissioner, demonstrated satisfactory performance in the position within the transitional period.
- (4) If the officer is not permanently appointed under subclause (3) within the transitional period, at the end of the transitional period—
 - (a) the provisional appointment ends, and
 - (b) the officer returns to the rank and grade the officer would have held at the end of the transitional period had the officer not been provisionally appointed to the vacant specialist position under subsection (3) of repealed section 66AA.
- (5) In this clause—
 - amending Act** means the *Police Amendment (Promotions) Act 2020*.
 - rank-based assessment** has the same meaning as in Division 3 of Part 2.
 - repealed section 66AA** means section 66AA of the Act as in force before the commencement of the amending Act.