

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the Police Act 1990 and the Police Regulation 2000 to implement 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,
- (b) to make amendments consequential on the establishment of the new system and other savings and transitional provisions.

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 that gives effect to the amendments to the Police Act 1990 set out in Schedule 1.

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Clause 4 is a formal provision that gives effect to the amendments to the Police Regulation 2000 set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent. Section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Police Act 1990

Current promotion system for positions of sergeant, inspector and superintendent

The Police Act 1990 (the Principal Act) currently requires police officer positions of all ranks to be selected on merit (that is, on the basis of qualifications, aptitude, integrity, diligence and good conduct). Applicants for positions of sergeant, inspector and superintendent apply for specified positions within particular areas.

Appointments may be made by way of transfer or promotion. Appointments may be withdrawn on integrity grounds. The Commissioner of Police (the Commissioner) may establish an eligibility list for a particular position or positions of the same kind.

The Principal Act requires the advertisement of specified vacancies and confers a right of appeal to the Government and Related Employees Appeal Tribunal on unsuccessful applicants for promotion to sergeant or inspector. Appointment of successful applicants is subject to conclusion of appeal processes. The Police Regulation 2000 (the Principal Regulation) contains additional provisions specifying eligibility requirements for appointment to a promotion position, including time at rank and completion of pre-qualifying assessments.

New promotion system for positions of sergeant, inspector and superintendent

The amendments made to the Principal Act establish a new promotion system for non-executive positions of the rank of sergeant, inspector and superintendent and the grade of senior sergeant. The new system has the following elements:

- (a) appointment to a position by way of promotion is to be made by selection of the highest ranked available officer from a promotion list for the rank concerned, and not by individual application and selection for individual positions,
- (b) an officer offered a promotion position will have 72 hours to accept the position before it is offered to another officer,
- (c) individuals seeking placement on a promotion list must have spent the requisite time at rank and must successfully complete a pre-qualifying

assessment, a promotion examination, an applicant evaluation and an eligibility program,

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(d) officers who qualify for a promotion list will be given an eligibility mark and will be ranked according to order of merit (from the highest mark to the lowest),

(e) a new promotion list for each rank or grade within a rank will be prepared for each year and an unsuccessful applicant may remain on a list for only 3 years before having to re-qualify for the list,

(f) individual vacancies will no longer be advertised and instead the number of estimated vacancies for each rank concerned will be advertised annually,

(g) candidates for progression through the promotion list requirements will be selected on the basis of merit and numbers of candidates restricted on the basis of quotas determined with respect to projected vacancies,

(h) there will be no right of appeal to the Government and Related Employees Appeal Tribunal against an appointment of another applicant to a particular position but there will be a right to review of a decision that an applicant has failed to complete a promotion qualification and as to the applicant's mark and removal from a promotion list.

Schedule 1 [1] amends section 3 of the Principal Act to extend the concept of merit to positions of a particular rank or grade within a rank as well as individual positions.

Schedule 1 [2] makes a consequential amendment.

Schedule 1 [3] amends section 3 of the Principal Act to insert definitions of non-executive administrative officer, non-executive police officer and promotion list.

Schedule 1 [4] updates a reference to a title.

Schedule 1 [5] omits Part 6 of the Principal Act and inserts proposed Parts 6–6B. Proposed Part 6 (Non-executive police officers) contains provisions giving effect to the new promotion and appointment scheme for police officers (other than the Commissioner and members of NSW Police Senior Executive Service)

(non-executive police officers). The proposed Part:

(a) contains application and definitions provisions (proposed sections 62 and 63), and

(b) re-enacts provisions requiring appointments (other than by way of promotion) to be made by the Commissioner and permitting certain positions to be filled by either police officers or administrative officers (proposed sections 64 and 65), and

(c) re-enacts the requirement for appointments (other than by way of promotion) to be merit-based and requires promotion appointments to be made from a promotion list for the rank or grade within a rank concerned, with appointment offered to the highest-ranked available officer on the list concerned (or, in the case of specialist vacancies, the highest-ranked qualified officer) (proposed section 66), and

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(d) re-enacts the provisions enabling temporary appointments to vacant positions, subject to changes consequential on the change to the promotion list system, and provisions requiring conduct declarations for those and other appointments (proposed sections 67 and 68), and

(e) re-enacts provisions enabling the Commissioner to transfer non-executive police officers without being required to comply with the merit-based

appointment and other appointment provisions (proposed section 69), and
(f) requires the Commissioner to establish promotion lists for positions of sergeant, senior sergeant, inspector and superintendent and enables regulations to be made with respect to promotions lists and reviews of decisions relating to such lists and the promotion process (proposed section 70), and

(g) re-enacts provisions requiring the Commissioner to make certain inquiries into a person's integrity before appointing the person to a non-executive police officer position and requires such inquiries to be made before a person is selected to complete an eligibility program for a rank or grade within a rank for placement on a promotion list (proposed section 71), and

(h) re-enacts provisions that set out the circumstances when a position is vacated (proposed section 72), and

(i) re-enacts the prohibition on engaging in outside paid employment without the Commissioner's permission (proposed section 73), and

(j) re-enacts the provisions dealing with the term of office of non-executive commissioned police officers (proposed sections 74–79), and

(k) re-enacts the provisions relating to the appointment of constables (proposed section 80).

Proposed Part 6A (Non-executive administrative officers) contains provisions re-enacting the appointment scheme for administrative officers in NSW Police (other than members of NSW Police Senior Executive Service) (non-executive administrative officers). The proposed Part:

(a) contains application and definitions provisions (proposed sections 81 and 82), and

(b) re-enacts provisions dealing with appointments, advertising of vacancies, temporary appointments, transfer of officers, eligibility lists, vacation of positions, engaging in other paid employment, eligibility for appointment to the Public Service and promotion appeals (proposed sections 82A, 82B, 82D–82F and 82H–83), and

(c) re-enacts the requirement for appointments to be merit-based and enables the Commissioner to have regard to the nature or duties of the position and the abilities, qualifications, experience, standard of work performance and personal qualities of the persons on the list (proposed section 82C), and
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(d) re-enacts provisions requiring the Commissioner to make certain inquiries into a person's integrity before appointing the person to a non-executive administrative officer position (proposed section 82G).

Proposed Part 6B (Industrial matters relating to non-executive officers) re-enacts provisions relating to industrial matters common to both non-executive police officers and non-executive administrative officers.

Schedule 1 [6] amends section 91A of the Principal Act to make an amendment consequential on the insertion of proposed Part 6A.

Schedule 1 [7] amends section 183A of the Principal Act to enable the Commissioner to revoke a promotion if the officer is found to have engaged in misconduct that assisted the officer in obtaining a place on the relevant promotion list.

Schedule 1 [8] amends section 219 of the Principal Act to enable regulations to be made requiring a review of the promotion list system to be carried out.

Schedule 1 [9] enables regulations containing savings and transitional provisions to be made.

Schedule 1 [10] inserts savings and transitional provisions into Schedule 4 to the

Principal Act as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Police Regulation 2000

Schedule 2 [1] amends the Principal Regulation to make consequential amendments.

Schedule 2 [2] omits clause 6A of the Principal Regulation relating to eligibility lists as a consequence of the repeal of the current section 67A of the Principal Act.

Schedule 2 [3] amends clause 16 of the Principal Regulation to omit a provision that limits certain constables to applying for promotion to positions other than sergeant.

Under the new system all constables will only be able to apply for promotion to the rank of sergeant if they achieve placement on the promotion list for sergeant or senior sergeant.

Schedule 2 [4] inserts Divisions 2A–2D of Part 2 of the Principal Regulation.

Proposed Divisions 2A–2C:

(a) provide that a person is eligible for appointment to a position of the rank of sergeant if the person is, or has previously been, appointed to the rank of sergeant or above or is on the sergeants promotion list at the time the appointment is made (proposed Division 2A), and

(b) provide that a person is eligible for appointment to a position of the grade of senior sergeant if the person is, or has previously been, appointed to the rank of senior sergeant or above or is on the senior sergeants promotion list at the time the appointment is made (proposed Division 2A), and

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(c) provide that a person is eligible for appointment to a position of the rank of inspector if the person is, or has previously been, appointed to the rank of inspector or above or is on the inspectors promotion list at the time the appointment is made (proposed Division 2B), and

(d) provide that a person is eligible for appointment to a position of the rank of superintendent if the person is, or has previously been, appointed to the rank of superintendent or above or is on the superintendents promotion list at the time the appointment is made (proposed Division 2C).

Proposed Division 2D inserts new provisions relating to the requirements for placement on promotion lists for ranks or grades within ranks. The proposed Division:

(a) establishes the requirements for placement on a promotion list, including previous service of at least 2 years at the rank below, completion of a pre-qualifying assessment with a mark sufficient for inclusion in the quota to complete the promotion examination and management performance review, completion of the pre-qualifying assessment, promotion examination and management performance review so as to meet the quota requirements to proceed to undertake the eligibility program and successful completion of the eligibility program (proposed clause 18H), and

(b) sets out requirements for inclusion on the senior sergeants promotion list for senior constables who have met the requirements for placement on the sergeants promotion list and existing sergeants (proposed clause 18H), and

(c) enables the Commissioner to determine quotas for persons who may attempt to complete eligibility requirements for placement on a promotion list and the period within which successive attempts to meet eligibility requirements may be made (proposed clause 18I), and

(d) provides for persons on promotion lists to be ranked in order of merit according to their eligibility marks (which are to be determined by the Commissioner on the basis of marks for eligibility requirements) (proposed clause 18J), and

(e) provides that a promotion offer will remain open for 72 hours, unless the

period is extended by the Commissioner in a particular case (proposed clause 18K), and

(f) removes a person from a promotion list if the person is appointed to the rank or grade within a rank to which the list applies (proposed clause 18L), and

(g) provides that a promotion list remains current for 12 months or until all persons on the list are appointed, whichever occurs first, and that eligible persons may be included on replacement lists (proposed clauses 18M and 18N).

Schedule 2 [5] requires the Minister to carry out a review of the promotion system established for non-executive police officers by the proposed Act within 6 months after 2 years after the establishment of the first promotion list.