



NSW Legislative Council Hansard (Proof)

Police Amendment (Police Promotions) Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 19 September 2006 (Proof).

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [2.45 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the Police Amendment (Police Promotions) Bill 2006. The promotion system has been a major cause of dissatisfaction for officers within NSW Police for some time. The Government is strongly committed to reforming the police promotions system and has worked continually to improve the promotions process. In 2002 a ministerial inquiry into the NSW Police promotions system was initiated under section 217 of the Police Act 1990 by the former Minister for Police. The objectives of this inquiry were to identify concerns held by members of NSW Police about the current promotions system and to initiate improvements to that system. The inquiry was chaired by former Assistant Commissioner Geoff Schuberg and included senior members of NSW Police and the New South Wales Police Association. The report of the ministerial inquiry into police promotions, known as the Schuberg report, was finalised in December 2003. The inquiry identified some serious concerns about the operation of the existing system including, but not limited to:

- The need to reduce significant delays associated with position-specific appointment through the greater use of eligibility lists. Under the current system vacant positions were being left unfilled and officers who had demonstrated their suitability for promotion were not being promoted because an officer's eligibility was limited to particular locations.
- The isolation of the existing promotions system from professional development and training systems. Officers were being appointed to supervisory roles without having adequate training or any clear understanding of the requirements of the position.
- Importantly, the promotion of inexperienced and junior officers into critical command or supervisory positions, and those officers then sometimes acting or relieving at higher rank.
- The ongoing use of relieving arrangements to bypass the promotions system and confer an unfair advantage on officers who were given the opportunity to act in a position, often for lengthy periods, prior to the position being advertised and filled through the current promotions system.
- The difficulties associated with the review by commanders of workplace performance. Police were concerned about inaccurate assessment and possible bias within some command management teams and the impact of this on their promotional opportunities.
- The requirement for all applicants to complete all stages of the promotions process, even if they had little realistic chance of being appointed.
- The perception that inadequate weight was being placed on experience, and the need for recognition and appropriate weighting of length of service.
- A protracted and costly appeals process. The need for a review of the promotion appeals system was identified. There were significant delays in appointment, cost—both time and monetary—and "bad blood" resulting from the Government and Related Employees Appeal Tribunal [GREAT] promotional appeal system.

The Schuberg report was subsequently released at the New South Wales Police Association annual conference on 24 May 2004. In order to implement key recommendations from the Schuberg report, the former Minister for Police convened a high-level working party in July 2004, chaired by the Hon. Peter Anderson, AM, which included representatives from NSW Police and the New South Wales Police Association. The report of the working party "Review and Implementation of the Report of the Ministerial Inquiry into Police Promotions", December 2004, proposed the implementation of a new police promotion system based on the recommendations of the Schuberg report. The report was approved by Cabinet in April 2005.

In August 2005 the Minister released a consultation report on the proposed new promotion system to enable comment by officers of NSW Police. During November 2005 a delegation from the working party visited eight locations across the State. The objective of the information sessions was to identify and address any police concerns about the new system. Members of NSW Police have now provided their views on the new promotions model. The chair of the working party has also met with the commissioner's executive team and the New South Wales Police Association executive to discuss the new promotions model and made a detailed presentation to the Police Association's annual conference in May this year. The consultation process is now finished and every effort has been made to incorporate the feedback received from officers into the new promotion model, where possible.

Significant expertise and effort has gone into reviewing the police promotion system, identifying and addressing the issues of most concern to NSW Police officers, identifying shortcomings of the existing system and developing a system to remove those shortcomings. The result of these efforts is a best practice promotions model that will address many of the inadequacies of the existing promotion system. It is imperative that any police promotion system be as timely, fair and equitable as possible. The new system gives all officers who seek promotion an equal opportunity to be promoted if they have the requisite skills, knowledge and experience. The model also removes unrealistic expectations of promotional opportunities by advising applicants for promotion of the likelihood of success at an early stage of the promotions process. The differences that exist within the current promotion system between ranks are removed and a similar system applied equally to the rank of sergeant, inspector and superintendent. The proposed system is not, however, applicable to grades within the rank of constable or to the police senior executive service.

I now take the opportunity to briefly explain how the new promotion system will work. The promotion system utilises an annual promotion list for each rank, being the rank of sergeant, inspector and superintendent. It also utilises another promotion list for the grade of senior sergeant. This list is used for all vacancies occurring within the year for which the list is current. I will explain this concept in further detail shortly. The new system is based on an annual cycle. The promotions process therefore starts one year before the promotion list is created. The new promotion system establishes a three-staged process designed to identify officers with the requisite skills for promotion and ensure that the best applicants for the job are appointed. An officer must successfully complete this process before being placed on a promotion list.

In order to match demand for officers with supply, NSW Police will now project the number of vacancies for each rank before the start of each promotion cycle. These projections are based on historical information, trends in attrition and an improved work force planning capacity which will enable NSW Police to proactively manage their work force requirements. This projection enables NSW Police to estimate the number of persons who are able to pass through each stage of the promotions process. Before commencing the promotions process an officer must now complete two years at rank. This gives an officer the opportunity to further develop the skills he or she needs to be promoted.

The first stage of the promotions process modifies the existing rank-based pre-qualifying assessment process. This stage involves a multiple choice computer-based assessment that tests an officer's technical and professional knowledge. Any officer seeking promotion must undertake this assessment. However, only three times the number of officers needed for the promotion list, being the number of projected vacancies, are able to undertake the rank-based promotions examination. An officer who does not progress to stage two is entitled to a review of his or her mark. An officer who progresses to stage two is able to undertake the rank-based promotions examination. The examination will be designed to test an officer's job-related knowledge, analysis, decision-making and judgment.

Following completion of the examination, an applicant's management performance rating then becomes relevant to the process. This involves an assessment of an officer's workplace performance over a period of time. During this stage an integrity check is also conducted. The pre-qualifying assessment and promotion examination marks are then combined with the management performance review to give the officer a mark. This mark will determine whether an individual will go through to stage three. An officer who does not progress to stage three is entitled to a review of his or her promotion examination mark or his or her management performance review score. The officer is also entitled to be debriefed on why he or she has been unsuccessful.

An officer who progresses to stage three is able to undertake the rank-based eligibility program. This program is aimed at not only testing an applicant but ensuring officers are qualified for the rank to which they seek to be promoted. The eligibility program is a residential program that is made up of a number of components, including an interview and an assessment centre process. The focus of this program is on assessing an applicant's suitability for promotion. This provides the opportunity to assess their attitudes, behaviours and values, which are not able to be assessed in a formal examination environment. If an applicant successfully completes the program he or she is eligible to be placed on the promotion list. An officer who does not successfully complete the eligibility program is entitled to a review of a component of that program where that component is able to be reviewed. The officer is also entitled to be debriefed on why he or she has been unsuccessful.

The eligibility mark determines an officer's merit and is the mechanism by which officers are ranked on the

promotion list. The eligibility mark is made up of the marks achieved in the pre-qualifying assessment, the promotion examination, the management performance review and the eligibility program. The eligibility mark also includes a weighting for years of service. All of these results are then given a weighting. Weightings to be given to the various components of the proposed promotion system are to be determined in accordance with relevant academic research and industry norms. It is expected that the eligibility program will receive the heaviest weighting within the eligibility mark. A person will be placed on the promotion list for each rank in accordance with his or her eligibility mark—from highest to lowest.

The promotion list for a rank applies to all positions within that rank. A promotion list is current for one year unless all persons are promoted before the 12-month period. If officers remain on a promotion list, they will be integrated into the next promotion list and re-ranked according to their eligibility mark. An applicant can remain on promotion lists for three years before having to requalify. A person who is ranked the highest on the promotion list will have the option to accept any available vacant position or wait until another vacancy arises that better suits his or her situation. Following this decision, the person next on the list will then have the option to accept any available vacancy or wait until another vacancy arises.

A person will have 72 hours within which to accept the promotion that is offered. This process enables appointments to vacant positions to be made very quickly. The use of promotion lists in this way will significantly reduce delays in filling vacant positions. Officers will be trained and have completed the promotions process prior to a vacancy arising. The use of promotions lists for all positions within a rank will also remove barriers to appointments being made in remote and hard to fill locations as they are not qualified by geographic location. The exceptions to this process are positions that are designated as specialist. A person will not be able to accept a specialist vacant position unless he or she has relevant specialist qualifications.

I now turn to the amendments made to the Police Act 1990 and the Police Regulation 2000 to establish this new promotion system for police officers. Schedule 1 provides for amendments to the Act to establish the new police promotion system for non-executive positions of the rank of sergeant, inspector and superintendent and the grade of senior sergeant. The bill amends the Act to provide for the following:

- appointment by way of promotion is from promotions lists, and not by individual application and selection for individual positions;
- appointment to any position by way of promotion is to be made by appointment of the highest ranked available officer from a promotion list for the rank concerned;
- individuals seeking placement on a promotion list must have spent the requisite time at the rank below (being at least two years) and must successfully complete a pre-qualifying assessment, a promotion examination, an applicant evaluation and an eligibility program;
- 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);
- a new promotion list for each rank or grade will be prepared each year and an applicant who does not accept promotion can remain on a list only for three years before having to requalify for the list;
- individual vacancies will no longer be advertised given that position-specific appointment is no longer relevant;
- the number of places on the promotion list for each rank will be estimated at the beginning of each promotion cycle and the numbers of candidates accordingly restricted on the basis of quotas determined by those estimates; and
- the removal of the right of appeal to the Government and Related Employees Appeal Tribunal [GREAT] against an appointment of another applicant to a particular position. In the place of this, there will be a review mechanism for each stage of the promotions process.

I would now like to take the opportunity to address some of the reforms in more detail. The promotion system for police officers is now substantially different from the system for administrative officers. This has necessitated the creation of two separate parts within the Act. Specifically, the bill amends the Act to repeal part 6, which previously dealt with all non-executive officers of NSW Police—being both administrative and police officers—and inserts a new part 6 dealing with appointment of non-executive police officers and a new part 6A dealing with the appointment of non-executive administrative officers.

Part 6—non-executive police officers—substantially re-enacts the existing provisions in relation to the general appointment of non-executive police officers. Appointment under the Act can be by way of promotion, transfer or otherwise. However, the bill has replaced previously existing provisions dealing with police promotions with provisions that give effect to the new promotion scheme for police officers—other than the commissioner, members of NSW Police Senior Executive Service and temporary employees and non-executive police officers.

There are a number of key changes to part 6. First, I refer to appointment on merit, as outlined in proposed section 66. The provision relating to merit has been amended to reflect that promotional appointments are now to be made from a promotion list for the rank concerned, to the officer with the greatest merit being:

- the highest-ranked available officer on the list concerned; or
- in the case of vacancies identified by the Commissioner as requiring additional. specialist qualifications, the highest ranked officer who has the requisite specialist qualifications for such a vacancy.

The second change relates to the promotions lists, as set out in proposed section 70. Previously the use of eligibility lists was limited to specific positions within specific locations. The new promotion list has a much broader application and will apply to all positions within the rank to which the list applies. The bill replaces the provision that previously dealt with eligibility lists—section 67A—with a new provision requiring the commissioner to establish promotion lists for the ranks of sergeant, inspector and superintendent, and the grade of senior sergeant. The provision also provides for regulations to be made with respect to promotions lists, for applicants to be appointed to the applicable promotion list if qualified, and for a review process of decisions relating to such lists and the promotion process. Specifically, the section prescribes that the regulations may make provision for:

- the requirements for placement on a promotion list;
- the ranking of police officers on a promotion list; the period for which a police officer may remain on a promotion list or replacement promotion lists;
- the appointment of persons from a promotion list; reviews of requirements for placement on a promotion list and of ranking on a promotion list;
- reviews or appeals against a decision to remove a person from the promotion process or suspend or remove a person from a promotion list, on integrity grounds;
- the procedures for conduct of reviews;
- the circumstances in which a person may be removed or suspended from or restored to a promotion list;
- the period for which, or the circumstances in which, a promotion list remains current;
- notification of a decision to suspend or remove a person from a promotion list.

The third change relates to integrity matters, as outlined in proposed section 71. This provision substantially re-enacts the existing provisions requiring the commissioner to make certain inquiries into a person's integrity before the person can be appointed to a non-executive police officer position. This means that prior to appointment whether by way of promotion or otherwise, an integrity clearance must be received. However, the new system introduces an additional integrity check, which requires the commissioner to make inquiries about a person before he or she undertakes the eligibility program. This new integrity check has been adopted in response to concerns identified with the existing promotions process. Under the current system a person can progress through the entire promotions process without being aware that there may be an integrity issue preventing his or her promotion. This wastes the time and resources of both the individual and NSW Police.

The additional check means that an individual who would be prevented from being promoted due to an integrity issue does not undertake the whole promotions process before becoming aware that he or she is unable to be promoted. Where integrity clearance procedures delay an officer's entry into the eligibility program, the officer's PQA and examination results remain valid for a three-year period from the day an applicant's formal written notification of clearance through integrity procedures is dated. The requirements that the commissioner make inquiries with the Police Integrity Commission and the Commander, Professional Standards Command as to an officer's integrity before promoting that officer still applies. The commissioner retains the discretion to refuse to promote the person on integrity grounds. Section 71 also allows the commissioner to suspend or remove a person from a promotion list or any part of the promotion process if the commissioner receives any information about a person's integrity that causes him to form the opinion that the person is not suitable. This provision ensures that integrity of individual officers who seek promotion remains paramount.

In relation to advertising vacancies the new promotion system no longer requires an applicant to apply for individual positions. The introduction of the promotion list concept for all vacancies within a rank and the elimination of the process of selection and appointment to a particular position remove the necessity to advertise a particular vacant position. However, the commissioner will advise as to the number of vacancies that will be available for the upcoming year. This requirement will be covered in the policy dealing with promotions and the policy dealing with transfers.

I turn now to schedule 2 "Amendment of Police Regulation 2000—requirements for appointment". The regulation has also been amended in accordance with the decision of Cabinet to set out the requirements for appointment to the rank of sergeant, inspector, superintendent, and to the grade of senior sergeant. An officer is eligible for appointment to the rank of sergeant, inspector and superintendent, or the grade or senior sergeant, only by way of promotion, if he or she achieves placement on the promotion list for the relevant rank or grade covered under proposed new clauses 18A to 18G of the regulation. This ensures that a person cannot be promoted unless he or she is on a promotion list. The eligibility requirements for placement on a promotion list for each rank are set out in proposed new clause 18H. These requirements are:

- the completion of two years at the rank below before being eligible to commence the promotions process, that is undertake the pre-qualifying assessment for the rank of sergeant, inspector and superintendent;
- the undertaking of a pre-qualifying assessment with a mark sufficient for inclusion in the quota to complete the promotion examination and management performance review;
- the completion of the pre-qualifying assessment, promotion examination and management review to meet the quota requirements to proceed to undertake the eligibility program; and
- the successful completion of the eligibility program.

The requirements for placement on the senior sergeant's promotion list differ slightly:

- Existing sergeants are not required to fulfil time at rank requirements or undertake the pre-qualifying assessment as they are deemed to have already fulfilled those requirements.
- An existing sergeant may be required to undertake the sergeant's promotion examination if there are a large number of applicants for placement on the senior sergeant's promotion list. How that officer performs in the examination will determine if he or she meet the quota requirements to proceed to undertake the sergeant's eligibility program.
- If an existing sergeant is successful in completing the sergeant's eligibility program he or she will be placed and ranked on the senior sergeant's promotion list in accordance with his or her eligibility program mark only.
- Senior constables who seek promotion to the grade of senior sergeant must have achieved placement on the sergeant's promotion list and have applied for placement on the senior sergeant's promotion list.
- A senior constable's performance in the eligibility program alone will determine if he or she meet the quota requirements for placement on the senior sergeant promotion list.
- A person who is qualified for more than one promotion list may be placed on more than one promotion list at any one time.

Proposed new clause 181 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 new clause 18J provides that persons on promotion lists are to be ranked according to their eligibility marks. Proposed new clause 18K provides that a promotion offer will remain open for 72 hours, unless the period is extended by the commissioner in a particular case. Proposed new clause 18L 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. The clause also provides that the commissioner must notify a person in writing if the person is suspended or removed from the list on integrity grounds. Proposed new clause 18M provides that a promotion list remains current for 12 months or until all persons on the list are appointed, whichever occurs first.

Proposed new clause 18N provides that an eligible person may be included on a replacement promotion list. However, a person can remain on a promotion list or replacement promotion list for only three years before he or she must re-qualify. Any person placed on a replacement promotion list will be re-ranked according to his or her eligibility mark. This may mean that they are ranked higher on the replacement promotion list than on the previous list or alternatively that they are lower placed, depending on the eligibility marks obtained by other officers coming through the promotion process. Part 6A deals with non-executive administrative officers and re-enacts the appointment scheme for administrative officers in New South Wales

In relation to police, other than members of the NSW Police senior executive service and temporary employees, there are no changes from the existing provisions dealing with administrative officers. Part 6B re-enacts provisions relating to industrial matters common to both non-executive police officers and non-executive administrative officers. The new system provides for a right of review of a decision that an applicant has failed to successfully complete a promotion qualification as to the applicant's mark and removal from a promotion list. This replaces the previously existing right of appeal to GREAT. The review mechanism will be incorporated into

the regulations following recommendations by the Promotions Implementation Steering Committee as to the appropriate review mechanism and procedures. It is expected that the review will take the following form:

- in respect of the examination it will involve a review by two independent markers who would review or re-mark the officer's examination results in accordance with the promotions examination review policy, which is yet to be finalised and is still before the project steering committee;
- will involve an independent marker who would review or re-mark the officer's eligibility program results, where those results are able to be reviewed, in accordance with the eligibility program review policy, which is yet to be finalised and is still before the project steering committee;
- that all officers will be notified that they must elect to apply for a review or re-mark within seven days of receiving their pre-qualifying, examination or eligibility program result;
- that all officers are notified that if they elect not to apply for a review or re-mark within the seven-day period, they are precluded from subsequently appealing their pre-qualifying, examination or eligibility program results at a later stage in the promotion process.

It is expected that the proposed review processes should be comparable with the Board of Studies New South Wales processes for marking and remarking. An independent standing review panel will also be created to review eligibility marks and rankings on all promotion lists. The panel will be able to take into account special considerations in appropriate circumstances. All review processes will be completed within 14 days of application during which time no appointments will be made. There have been a few changes to the new promotion system from that previously proposed. The new system originally made provision for appointments by way of promotion to the grades of chief inspector. However, following the conclusion of the award negotiations in relation to the rank of inspector and the overlapping pay scales now applicable to that rank, no further promotional appointments will be made to the grade of chief inspector, and the grade will eventually cease to exist.

Therefore the new promotion system does not provide a promotion system for the appointment of chief inspectors. The new promotion system has also changed following the consultation process. The Act now makes provision for a review of an integrity matter that prevents appointment by way of promotion. The Act previously allowed for an applicant for promotion who was prevented from being promoted due to an integrity matter to appeal to GREAT. The Act now provides for the regulations to establish a mechanism for review relating to a decision to suspend or remove someone from the promotions process on the basis of an integrity matter. The review mechanism will be incorporated into the regulations following recommendations by the Promotions Implementation Steering Committee as to the appropriate review mechanism and procedures.

As a result of the consultation process, the proposed promotions model has been changed so that the combined score in the pre-qualifying assessment, the promotions examination and the management performance review, would determine whether an officer could proceed to undertake the eligibility program. This change was viewed as a desirable improvement to the system, resulting in greater fairness to the applicants, and did not depart from the fundamental promotions model concept. These changes to the police promotion system accord with the overall objectives of the new police promotion model. The changes as a result of the consultation process have resulted in improved efficacy and fairness in the promotions process.

The regulations provide also that the Minister will carry out a review of the promotion system established for non-executive police officers two years after the establishment of the first promotion list, with the review to be completed within six months of that time. This is to ensure that the promotion system is working as intended and that the objectives of the new system are being achieved. The Act makes provision for the existing and proposed system to operate at the same time during 2007. The existing promotion system will continue to apply in respect of appointments by way of promotion to positions within the rank of sergeant, inspector and superintendent, and the grade of senior sergeant until the first promotion list is established for the relevant rank or grade within a rank.

As the new promotion system is predicated on an annual cycle for each rank, it takes approximately one year for officers to complete the different eligibility requirements in order to be placed on the promotion list for each rank. The Police Amendment (Police Promotions) Bill 2006 applies to the extent necessary to enable the establishment of the first promotion list and qualification for placement on those lists. During the time that a person is seeking to qualify for placement on a promotion list for the new system, officers will be given the opportunity to apply for promotion under the old promotion system. Existing qualifications such as the pre-qualifying assessment and assessment centre scores are not, however, transferable to the new promotion system.

Once the promotion list is formed for a particular rank, appointments can be made immediately from that list. Given that it takes one year for a person to complete the promotions process, the first appointments under the new promotion system cannot occur until 2008. However, the new system will commence from 1 January 2007.

Appointments by way of promotion under the new system will not occur before 1 January 2008. The Act maintains the right of appeal to GREAT in respect of any appointment made under the existing system, even after commencement of the new system. A comprehensive communications strategy will notify police when the old system will be phased out and when the new promotion system will begin to apply to each rank. At all times officers will be notified of key dates for old and new.

Unmet expectations of promotional opportunities are, understandably, a cause of frustration for officers within NSW Police. Some level of dissatisfaction with the police promotion system will always exist, given the large number of potential applicants for a relatively small number of positions and given the nature of the policing profession where unsuccessful applicants remain within NSW Police. Whilst these frustrations will never be entirely alleviated, they can be managed through a fairer and more equitable promotion system that provides officers with a realistic understanding of promotional prospects early in their careers and offers professional development opportunities outside the promotion system.

The new promotion system creates an equitable system of promotion that ensures that a person is not prevented from achieving promotion other than by their individual performance during the process. The promotions process is simplified by using one promotion list for all vacancies in a rank for a 12-month period. This reduces the delays associated with the existing promotions process. The new system removes the current costly and protracted appeal system and replaces it with a comprehensive system of review. The new system will ensure that integrity in the promotion process and of candidates for promotion is a fundamental principle of the police promotion system. I believe the new promotion system to be fair and equitable, giving all officers an equal opportunity to apply for a promotional position if they have the requisite skills, knowledge and experience. This bill ensures that there is an appropriate legislative framework for the new promotion system. I commend the bill to the House.