

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Police Act 1990* and the *Police Integrity Commission Act 1996* arising out of a statutory review of the *Police Act 1990*.

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* (the **Police Act**) set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Police Integrity Commission Act 1996* 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 and 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

Consistency with Public Sector Employment and Management Act 2002

The statutory review of the Police Act recommended that certain provisions of that Act be amended to align them with similar provisions in the *Public Sector Employment and Management Act 2002*, including provisions about the appointment of staff. The amendments set out below generally make changes so as to reflect provisions of that Act.

Schedule 1 [1] amends section 25 of the Police Act to provide that an acting Commissioner of Police is to be appointed by the Minister, rather than by the Governor on the recommendation of the Minister. The amendment also enables an acting Commissioner to be appointed if the Commissioner is suspended. **Schedule 1 [2]** makes a consequential amendment.

Schedule 1 [3] amends section 26 of the Police Act to enable the Commissioner to be re-appointed before his or her term of office expires.

Schedule 1 [4] amends section 37 of the Police Act to enable an allowance to be paid to a police officer who is exercising all or any of the functions of a position, even though the person has not been appointed to act in the position.

Schedule 1 [5] amends section 40 of the Police Act to enable an executive officer to be re-appointed before his or her term of office expires.

Schedule 1 [6] amends section 41 of the Police Act to provide that a contract of employment of an executive officer may constitute an instrument of appointment.

Schedule 1 [7] inserts proposed section 50 into the Police Act to empower the Commissioner to retire an executive officer who is found on medical grounds to be unfit to discharge or incapable of discharging the duties of the officer's position.

Schedule 1 [8] inserts proposed section 66A into the Police Act. The proposed section provides for the appointment of officers to act in non-executive police officer positions if the positions are vacant or the holders are suspended, sick or absent. Currently, this situation is dealt with by way of temporary appointments.

Schedule 1 [12] amends section 72 of the Police Act to provide that the position of a non-executive police officer becomes vacant if the officer abandons his or her employment in the NSW Police Force.

Schedule 1 [13] inserts proposed section 72A into the Police Act to empower the Commissioner to retire a non-executive police officer who is found on medical grounds to be unfit to discharge or incapable of discharging the duties of the officer's position.

Schedule 1 [14] substitutes section 82D of the Police Act. The proposed section

provides for the appointment of officers to act in non-executive administrative officer positions if the positions are vacant or the holders are suspended, sick or absent. Currently, this situation is dealt with by way of temporary appointments.

Schedule 1 [15] amends section 82H of the Police Act to provide that the position of a non-executive administrative officer becomes vacant if the officer abandons his or her employment in the NSW Police Force.

Schedule 1 [16] inserts proposed section 82HA into the Police Act to empower the Commissioner to retire a non-executive administrative officer who is found on medical grounds to be unfit to discharge or incapable of discharging the duties of the officer's position.

Schedule 1 [17] amends section 90 of the Police Act to set out circumstances when a person may be employed as a temporary employee and to make it clear that such employment is subject to any other provisions of the Act concerning the employment of temporary employees. **Schedule 1 [9]–[11]** make consequential amendments.

Schedule 1 [18] inserts proposed sections 91 and 91AA into the Police Act. Proposed section 91 stipulates a maximum period for temporary employment at any one time of 3 years (rather than the current period of 4 months) and provides for re-employment of a temporary employee to be in accordance with guidelines issued by the Commissioner. Proposed section 91AA limits the employment of temporary employees for periods of 12 months or more to employees selected on merit.

Schedule 1 [19] inserts a note to Part 8 of the Police Act relating to provisions of the *Public Sector Employment and Management Act 2002* that apply to members of the NSW Police Force.

Complaints against police

Schedule 1 [20] amends section 129 of the Police Act to make it clear that complaints made directly to the Police Integrity Commission (the **PIC**) or the Ombudsman are not required to be entered into the complaints information system unless the PIC or the Ombudsman so directs.

Schedule 1 [21] amends section 144 of the Police Act to make it clear that the power to investigate a complaint includes the power to take any action necessary to resolve the complaint in the manner that the Commissioner thinks fit, including using alternative dispute management procedures.

Schedule 1 [22] substitutes section 148A of the Police Act. The proposed section confers on the Commissioner an express power to decide to take no further action in relation to a complaint.

Schedule 1 [23] amends section 154 of the Police Act to enable the Ombudsman to request the Commissioner to review a decision to take no further action in relation to a complaint.

Functions of Ombudsman relating to complaints

Currently, the Ombudsman may make a special report to Parliament at any time about any matter connected with the exercise of the Ombudsman's functions under the Police Act relating to complaints.

Schedule 1 [24] amends section 160 of the Police Act to enable the Ombudsman to report to the Minister and the Commissioner on any such matter.

Schedule 1 [25] inserts proposed sections 161 and 161A into the Police Act.

Proposed section 161 re-enacts the provisions relating to special reports to Parliament. Proposed section 161A enables the Ombudsman to omit police information, and requires the Ombudsman to omit critical police information, from copies of reports given to complainants or police officers. The amendment also removes a requirement that the Ombudsman prepare and supply certain pamphlets.

Schedule 1 [26] amends section 162 of the Police Act to enable the Ombudsman to consult with the Minister about other matters, in addition to complaints, related to the exercise of the Ombudsman's functions under Part 8A of that Act.

Schedule 1 [27] amends section 163 of the Police Act to enable the Ombudsman to

publish police information (including critical police information) to the Minister as well as the Commissioner.

Savings and transitional provisions

Schedule 1 [28] amends Schedule 4 to the Police Act to enable the making of regulations containing savings and transitional provisions consequential on the enactment of the proposed Act.

Schedule 1 [29] amends Schedule 4 to the Police Act to insert a transitional provision consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Police Integrity

Commission Act 1996

The Schedule amends the *Police Integrity Commission Act 1996* to make the following amendments consequential on the amendments made to the Police Act by Schedule 1:

- (a) an amendment providing for the Police Integrity Commission to notify the Commissioner of Police instead of the Ombudsman of the completion of an investigation into a police complaint or a decision to discontinue an investigation (**Schedule 2 [1]**),
- (b) an amendment enabling the making of regulations containing savings and transitional provisions consequential on the enactment of the proposed Act (**Schedule 2 [2]**),
- (c) an amendment inserting a transitional provision consequent on the enactment of the proposed Act (**Schedule 2 [3]**).