



New South Wales

Police Amendment (Senior Executive Transfers) Bill 2004

Explanatory note

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

Overview of Bill

Part 3.2 of the *Public Sector Employment and Management Act 2002* (**Part 3.2**) contains provisions relating to the movement of staff across the public sector (which includes NSW Police) on a permanent basis. Part 3.2 includes provisions that enable the Commissioner of Police (subject, because of section 91 (2) of that Act, to the *Police Act 1990*) to transfer a member of the NSW Police Senior Executive Service to another position in NSW Police or other employment in NSW Police or to the service of another public sector agency. Section 60 of the *Police Act 1990* currently has the effect of limiting the flexibility of the arrangements under Part 3.2 for the internal transfer of staff by preventing the transfer of an executive officer to a non-executive position or a position at lower remuneration than an officer's existing level of remuneration.

The object of this Bill is to amend the *Police Act 1990* (the **Principal Act**):

- (a) so that Part 3.2 will enable a member of the NSW Police Senior Executive Service to be transferred to a non-executive position or (with the consent of the executive officer) a position at a lower level of remuneration, and

- (b) to make an associated amendment to make it clear that Division 3 of Part 5 of the Principal Act (including the merit appointment provisions) does not apply to such a transfer, and
- (c) to make various consequential amendments.

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.

Mobility of executive officers

Schedule 1 [3] omits section 60 of the Principal Act to achieve the object described in paragraph (a) of the Overview above and replaces it with a new section that clarifies the relationship of Part 3.2 of the *Public Sector Employment and Management Act 2002* to certain provisions of the Principal Act. The new section makes it clear that the provisions of Division 3 of Part 5 of the Principal Act do not apply to a transfer of an executive officer to a vacant executive position under Part 3.2. As a result, section 39 of the Principal Act (which requires appointments to vacant positions to be made on merit and for certain integrity checks to be carried out before a person is appointed to a vacant executive position) will clearly not apply to the transfer of a member of the NSW Police Senior Executive Service to another position in NSW Police.

Schedule 1 [2] amends section 53 of the Principal Act to make it clear (consistently with section 78 of the *Public Sector Employment and Management Act 2002*) that an executive officer who is transferred to a position at a lower level of remuneration is not entitled to compensation under that section. (Section 53 provides, for example, that an executive officer who has no right of return to the public sector who is removed from office and ceases to be an executive officer and is not re-appointed to the same or another executive position is entitled to compensation.)

Schedule 1 [5] inserts clause 67 into Schedule 4 to the Principal Act to make it clear that the amendments extend to positions vacant at the commencement of the amendments.

Unattached executive officers

Schedule 1 [1] amends section 51 of the Principal Act to put it beyond doubt that (consistently with section 77 (3) (c) of the *Public Sector Employment and Management Act 2002*) an unattached executive officer is to be regarded as holding an equivalent (though notional) executive position in NSW Police to that from which he or she was removed for the purposes of section 87 of the *Public Sector Employment and Management Act 2002*.

Savings and transitional regulations

Schedule 1 [4] amends Schedule 4 to the Principal Act to insert a power to make savings and transitional regulations consequent on the enactment of the proposed Act.



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New South Wales

Police Amendment (Senior Executive Transfers) Bill 2004

No. , 2004

A Bill for

An Act to amend the *Police Act 1990* with respect to the transfer of executive officers from and within NSW Police; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Amendment (Senior Executive Transfers) Act 2004*.

2 Commencement

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

3 Amendment of Police Act 1990 No 47

The *Police Act 1990* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 51 Removal of executive officers from office

Insert at the end of section 51 (3) (b):

, and

- (c) is, for the purposes of section 87 of the *Public Sector Employment and Management Act 2002*, to be regarded as holding an equivalent (though notional) executive position in NSW Police.

[2] Section 53 Compensation where executive officer has no right to return to public sector

Insert after section 53 (1):

- (1A) This section does not apply to an executive officer who consents to a transfer under Part 3.2 of the *Public Sector Employment and Management Act 2002* at a lower level of remuneration.

[3] Section 60

Omit the section. Insert instead:

60 Executive officer mobility

- (1) Division 3 does not apply to the transfer of an executive officer to a vacant executive position under Part 3.2 of the *Public Sector Employment and Management Act 2002*.
- (2) For the purposes of the application of Division 1 of Part 3.2 of the *Public Sector Employment and Management Act 2002* to an executive officer, a reference in section 89 (Variations in remuneration on transfer) of that Act:
- (a) to an officer is to be read as a reference to an executive officer, and
- (b) to a remuneration package is to be read as a reference to a remuneration package within the meaning of this Part.

Note. Section 87 of the *Public Sector Employment and Management Act 2002* enables the Commissioner of Police to transfer an executive officer to another position or other employment in NSW Police or to the service of another public sector agency with the approval of the head of the other agency and of the Public Employment Office and following consultation with the officer. A transfer is to be made at the executive

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Schedule 1 Amendments

officer's existing level of remuneration unless the executive officer consents to the transfer at a lower level of remuneration. Section 89 of that Act defines existing level of remuneration and what is meant by transfer to a level of remuneration that is lower than an officer's existing level of remuneration.

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[4] Schedule 4 Savings, transitional and other provisions

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Insert at the end of clause 2 (1):

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8

[5] Schedule 4

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Insert after Part 20:

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**Part 21 Provisions consequent on enactment of
Police Amendment (Senior Executive
Transfers) Act 2004**

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67 Transfers to vacant positions

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The amendments made by the *Police Amendment (Senior Executive Transfers) Act 2004* extend to a position that is vacant at the commencement of the amendments.

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