

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

Overview of Bill

The objects of this Bill are to amend the Police Act 1990 (the Police Act) and other Acts as follows:

- (a) to provide for a range of incidents involving the death of or injury to a person where police officers must undergo drug and alcohol testing,
- (b) to provide for off duty police officers to be recalled to duty, on a targeted basis, for drug testing,
- (c) to provide for the testing of police officers, on a targeted basis, for steroid use,
- (d) to amend the Police Act to rename NSW Police the NSW Police Force,
- (e) to remove the distinction between categories of police complaints,
- (f) to make other miscellaneous amendments to that Act and other Acts arising out of a statutory review of the Police Act.

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 specified in Schedules 1 and 2.

Clause 4 is a formal provision that gives effect to the amendments to the Acts specified in Schedule 3.

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 Amendments to Police Act 1990 relating to testing for alcohol, drugs and steroids

Schedule 1 [2] and [6] amend section 211A of the Police Act to extend the circumstances in which drug and alcohol testing of police officers after incidents involving the death of or serious injury to a person may be required and to make it mandatory for the officers concerned to undergo both drug and alcohol testing.

Currently, testing may occur when there is a police motor vehicle pursuit, the discharge of a firearm by a police officer or a death in police custody. The amendments now require mandatory drug and alcohol testing in those circumstances and where the death or injury occurs as a result of the application of physical force by a police officer, as a result of detention by a police officer or after an incident involving a police aircraft, motor vehicle or vessel. Schedule 1 [3] makes a consequential amendment.

Schedule 1 [4] amends section 211A of the Police Act to enable a police officer of or above the rank of superintendent to direct an off duty police officer to accompany another officer to police premises to provide a urine or hair sample (or both) for drug testing purposes. Such testing is to be conducted on a targeted basis, as determined by the Commissioner of Police.

Schedule 1 [5] extends the regulation-making power in section 211A of the Police Act to enable regulations under that Act to be made in relation to the issue of a reasonable excuse offered by a police officer for failing to return to duty for the purpose of submitting to testing for the presence of prohibited drugs.

Schedule 1 [7] inserts proposed section 211AA into the Police Act. The proposed section enables a person authorised to conduct tests to require a police officer who is on duty to provide a sample of urine for the purposes of testing for steroids. The proposed section also enables regulations to be made in relation to authorisation of testers and equipment, testing procedures, the handling and analysis of samples,

offences, production of relevant medical prescriptions and other matters. Schedule 1 [1] makes a consequential amendment to section 211A of the Police Act to ensure consistency with section 211AA.

Schedule 1 [8] and [9] amend section 211B of the Police Act to enable a code of behaviour to be established by the regulations under that Act relating to the use of steroids by police officers. Such a code may deal with the consequences of a positive test for steroids, follow-up testing and other matters.

Schedule 2 Miscellaneous amendments to Police Act 1990

Change of name to NSW Police Force

Currently, NSW Police consists of police officers and the administrative officers who provide support and other services to NSW Police. The proposed Act changes the name of NSW Police to the NSW Police Force and, consequentially, changes the name of the executive service of that body from NSW Police Senior Executive Service to the NSW Police Force Senior Executive Service.

Schedule 2 [1] changes references in the Police Act to NSW Police to reflect that change of name.

Schedule 2 [2] changes references in the Police Act to the executive service to reflect the change of name of that service.

Schedule 2 [3] amends the long title of the Police Act to reflect the change of name to the NSW Police Force.

Schedule 2 [5] amends section 3 of the Police Act to insert definitions of NSW Police Force and NSW Police Force Senior Executive Service.

Schedule 2 [7]–[9], [12], [17], [18], [32], [33] and [35] amend various provisions of the Police Act to reflect the changes of name.

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 2 [14] substitutes Division 2 of Part 5 of the Police Act to provide that police executive service positions are to be as determined for the time being by the Minister, rather than being listed in Schedule 2 to the Act. The requirement for such positions to be recommended by the Commissioner is retained. Schedule 2 [4], [13] and [16] make consequential amendments.

Schedule 2 [15] amends section 39 of the Police Act to insert criteria for determining merit for appointment to a vacant executive position, including a person's relevant abilities, qualifications, experience, standard of work performance and personal qualities.

Schedule 2 [47] omits Schedule 2 to the Police Act, which contains the list of executive positions (it is now to be determined by the Minister).

Complaints against police

The Schedule abolishes the current distinction between Category 1 complaints about police officers (which are investigated by the Police Integrity Commission) and Category 2 complaints about police officers (which are investigated by the Ombudsman or the Commissioner).

Schedule 2 [21] amends section 121 of the Police Act to omit the definitions of Category 1 complaint and Category 2 complaint. Schedule 2 [22], [23], [27], [28] and [30] make consequential amendments.

Schedule 2 [24] amends section 129 of the Police Act to enable the PIC to direct that information about any complaint not be entered into the complaints information system (this power was formerly limited to Category 1 complaints).

Schedule 2 [25] amends section 130 of the Police Act to remove the requirement for

the Commissioner to refer complaints received by the Commissioner to the PIC, as information about these complaints will be available on the complaints information system. However, notifiable complaints must still be notified to the Ombudsman. Schedule 2 [26] substitutes sections 131 and 132 of the Police Act, as a result of the abolition of categories of complaints. Proposed section 131 also empowers the PIC not to refer a complaint received by it to the Commissioner on the ground that it is not in the public interest to do so, though such a complaint may be referred to the Ombudsman. Proposed section 132 also re-enacts the power of the Ombudsman to refer a summary of a complaint received by the Ombudsman or appropriate details on the ground that there are reasonable grounds for doing so.

Other amendments

Schedule 2 [10] amends section 6 of the Police Act in relation to the mission of the NSW Police Force.

Schedule 2 [11] omits Part 3, which relates to the disbanded Protective Security Group. Schedule 3.25 [6] makes a consequential amendment to the Police Integrity Commission Act 1996.

Schedule 2 [19] repeals a redundant provision.

Schedule 2 [20] inserts proposed section 98 into the Police Act. The proposed section enables the Governor to issue a document recognising the appointment of an officer as a commissioned police officer, but makes it clear that any such recognition does not affect the person's appointment or any other provision of the Police Act relating to employment.

Schedule 2 [31] amends section 172 of the Police Act to update a reference to a repealed provision.

Schedule 2 [34] amends section 200 of the Police Act, which relates to bribery and corruption offences, to remove the 2-year limitation on taking proceedings for an indictable offence under that section.

Schedule 2 [36] amends section 203 of the Police Act to update a reference to a repealed Act.

Schedule 2 [37] amends section 203 of the Police Act, which contains offences relating to the wearing of police uniforms by persons who are not police officers, to increase the maximum period of imprisonment that may be imposed for such an offence from 6 months to 2 years.

Schedule 2 [38] omits section 204 of the Police Act, which contains the offence of impersonating a police officer, as a consequence of the insertion by the proposed Act of new impersonation offences into the Crimes Act 1900.

Schedule 2 [39] amends section 204A of the Police Act to update a reference to a repealed Act.

Schedule 2 [40] amends section 204B of the Police Act to update a reference to a repealed Act.

Schedule 2 [41] amends section 204B of the Police Act to update a reference to the Director-General of the Department of Fair Trading.

Schedule 2 [42] and [43] amend section 204B of the Police Act to update other references to that Director-General.

Schedule 2 [45] amends section 219 of the Police Act to enable regulations to be made about matters relating to the management or control of students of policing.

Schedule 2 [6] and [44] make consequential amendments.

Schedule 2 [46] inserts proposed section 222 into the Police Act. The proposed section requires the Minister to review the Police Act as soon as possible after the period of 5 years from the date of assent to the proposed Act.

Schedule 2 [48] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.

Schedule 2 [49] inserts savings and transitional provisions into Schedule 4 to the Police Act.

Schedule 3 Amendment of other Acts

Schedule 3.1–3.6, 3.8 and 3.10–3.24 amend the following Acts as a consequence of the change of name to the NSW Police Force:

- (a) the Australian Crime Commission (New South Wales) Act 2003,
- (b) the Bail Act 1978,
- (c) the Child Protection (Offenders Prohibition Orders) Act 2004,
- (d) the Child Protection (Offenders Registration) Act 2000,
- (e) the Commission for Children and Young People Act 1998,
- (f) the Conveyancers Licensing Act 2003,
- (g) the Criminal Assets Recovery Act 1990,
- (h) the Drug Misuse and Trafficking Act 1985,
- (i) the Fair Trading Act 1987,
- (j) the Firearms Act 1996,
- (k) the First State Superannuation Act 1992,
- (l) the Freedom of Information Act 1989,
- (m) the Health Records and Information Privacy Act 2002,
- (n) the Health Services Act 1997,
- (o) the Industrial Relations Act 1996,
- (p) the Interpretation Act 1987,
- (q) the Law Enforcement and National Security (Assumed Identities) Act 1998,
- (r) the Law Enforcement (Controlled Operations) Act 1997,
- (s) the Law Enforcement (Powers and Responsibilities) Act 2002,
- (t) the Pawnbrokers and Second-hand Dealers Act 1996,
- (u) the Photo Card Act 2005,
- (v) the Police Association Employees (Superannuation) Act 1969,
- (w) the Police Regulation (Superannuation) Act 1906,
- (x) the Prevention of Cruelty to Animals Act 1979,
- (y) the Privacy and Personal Information Protection Act 1998,
- (z) the Public Finance and Audit Act 1983,
- (aa) the Public Sector Employment and Management Act 2002,
- (ab) the Road Transport (General) Act 2005,
- (ac) the Security Industry Act 1997,
- (ad) the State Emergency and Rescue Management Act 1989,
- (ae) the State Emergency Service Act 1989,
- (af) the Terrorism (Police Powers) Act 2002,
- (ag) the Valuers Act 2003,
- (ah) the Workplace Surveillance Act 2005.

Schedule 3.7 amends the Crimes Act 1900 to update references to police officers (Schedule 3.7 [1], [2] and [4]) and to insert offences relating to impersonating police officers (proposed section 546D, inserted by Schedule 3.7 [3]). The proposed section re-enacts the impersonation offence currently contained in section 204 of the Police Act and inserts a new aggravated offence of a person impersonating a police officer, with the intention to deceive, and purporting to exercise a power, authority, function or duty as an officer (maximum penalty imprisonment for 7 years).

Schedule 3.9 amends the Criminal Procedure Act 1986 to enable the new indictable offence under proposed section 546D (2) of the Crimes Act 1900 to be dealt with summarily.

Schedule 3.25 makes the following amendments to the Police Integrity Commission Act 1996:

- (a) amendments as a consequence of the change of name to the NSW Police Force and the NSW Police Force Senior Executive Service (Schedule 3.25 [1] and [13]),
- (b) amendments removing references to Category 1 and Category 2 police complaints (Schedule 3.25 [4], [8]–[10] and [12]) and providing for the Police

Integrity Commission to take over the investigation of any complaint (previously this was limited to Category 1 complaints) (Schedule 3.25 [11]),
(c) amendments removing references to serious police misconduct (which was based on Category 1 complaints) (Schedule 3.25 [2]–[7] and [14]),
(d) an amendment enabling the making of regulations containing savings and transitional provisions consequential on the enactment of the proposed Act (Schedule 3.25 [15]),
(e) an amendment inserting savings and transitional provisions consequent on the enactment of the proposed Act (Schedule 3.25 [16]).