



NSW Legislative Council Hansard

Police Amendment (Miscellaneous) Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 14 November 2006.

Second Reading

The Hon. ERIC ROOZENDAAL (Minister for Roads, and Minister Assisting the Minister for Transport) [5.37 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 (Miscellaneous) Bill 2006*.

This Bill is evidence of this Government's commitment to ensuring the integrity of police officers and giving police the power and resources to fight crime and maintain order in this State.

The Bill aims to make a great policing organisation, which is already the best in Australia, even better.

The provisions contained in this Bill have arisen from two separate processes.

Schedule 1 of the Bill provides for the implementation of the recommendations of the Police Integrity Commission's report on Operation Abelia regarding the testing of police officers for illegal drugs and steroids.

Schedule 2 of the Bill includes legislative proposals arising from the statutory review of the Police Act 1990 which sought to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

The proposed reforms target six key areas. They will:

- Enhance NSW Police's capacity to test police officers for the illegal use of drugs and steroids;
- Emphasise the law enforcement role of police in NSW with the restoration of the title NSW Police Force;
- Bring greater consistency in the employment conditions of police officers and those of the public sector generally;
- Remove the bureaucratic and unnecessary requirement to categorise complaints against police;
- Allow a regulation to be made to place on police trainees the same responsibility for confidentiality as applies to members of NSW Police Force; and
- Increase penalties for persons impersonating a police officer.

As members may be aware, between 2003-2005 the Police Integrity Commission (PIC) conducted Operation Abelia, which was an investigation into drug use by NSW Police officers. The Abelia Report was tabled in Parliament in November 2005.

It should be noted that the Police Integrity Commission found no evidence of widespread drug use in NSW Police and that it further noted that the NSW Police Drug and Alcohol Policy has been and continues to be a model for other law enforcement agencies.

The Report made 64 recommendations proposing policy, procedural and legislative change to strengthen NSW Police's ability to minimise illegal drug use by police officers. This Bill brings forward legislative amendments to support these recommendations.

I can also report that the statutory review of the Police Act 1990 concluded that the policy objectives of the Act remain valid, and that the terms of the Act generally remain appropriate for securing those objectives. The review did recommend a number of legislative changes to improve the operation of the Act, having regard to its policy objectives, many of which are included in this Bill.

The Police Amendment (Miscellaneous) Bill 2006

I now move to the detail of the Bill.

SCHEDULE 1

Schedule 1 of the Bill includes amendments arising from the Police Integrity Commission's Operation Abelia report.

Mandatory Testing Incident

Firstly, the Bill clarifies the nature of incidents for which drug and alcohol testing will be mandatory for the officers involved.

The phrase "mandatory testing incident" is defined in the Bill and complements existing NSW Police practice. Currently the legislation covers incidents involving the discharge of a police firearm, deaths in custody and police motor vehicle pursuits.

The Bill will include those occasions where a person is killed or seriously injured as a result of the application of physical force by a police officer or where a person is killed or seriously injured in an incident involving a police vessel or aircraft.

Recall to Duty Testing

The Bill also provides for the targeted testing of police officers who are off duty, enabling them to be recalled for duty for the purpose of testing. Any officer who uses illegal drugs, whether on or off duty, is in conflict with their oath as a constable.

The current regime, however, is unable to detect illegal drug use by police when they are off duty.

There are in-built safeguards in the Bill to ensure that this power is not abused. The testing will only occur on police premises. The manner in which officers are targeted for this testing will be determined by the Commissioner.

The direction to return to duty for testing can only be made by a police officer of or above the rank of superintendent.

The Bill also provides that an off duty police officer who genuinely and reasonably cannot comply with the direction—for example, if that officer is seriously ill, is interstate or has child care responsibilities—will not have to comply with the direction. The officer will not remain on duty after the test has been carried out.

Targeted Steroid Testing

The Bill also inserts a new provision to allow NSW Police officers to be tested for steroids on a targeted basis.

NSW Police is concerned that excessive long-term abuse of non-prescribed steroids can lead to heightened aggression with a corresponding loss of self control. This is a potentially significant problem for police officers who are frequently placed in situations where aggression may exacerbate or escalate a dangerous situation.

The new provision will ensure that this testing will only be undertaken on a targeted basis determined by the Commissioner of Police: for example when there is substantial evidence that the officer is abusing steroids.

This Bill, by facilitating the introduction of a vastly improved drug testing regime, confirms the Government's strong commitment to ensuring that NSW Police officers continue to have the respect and confidence of the community.

SCHEDULE 2

Schedule 2 of the Bill contains the provisions that are being introduced as a result of the Report on the Review of the Police Act.

Name of NSW Police Force

Firstly, I am pleased to advise members that the Government has decided to replace the current name of NSW Police by the more descriptive title of NSW Police Force.

Members may recall that NSW used the name Police Force until the Greiner Government officially changed the name to Police Service under the Police Service Act in 1990.

The name change was intended to reflect the social function of the organisation and encourage community based policing.

By 2001 the Labor Government had found that the name "Police Service" no longer reflected community and

police expectations.

Under this Government, community based policing had become well established.

For example, Local Area Commanders had considerable autonomy in the management of local issues. Specialist Crime Prevention Officers were working with the community in developing crime prevention and community safety strategies.

Other specialists, such as Youth Liaison Officers and Police & Community Youth Club officers were also building important links with the community.

Most importantly, the Government's focus on frontline policing meant that police were spending less time behind desks and more time working in the communities they serve.

Therefore, as the use of the name "Service" was no longer necessary the then Minister for Police, Michael Costa, announced on 16 December 2001 that the name of the Police Service would be modernised to "NSW Police". This was consistent with the approach taken by most other Australian jurisdictions.

Whilst "NSW Police" became the organisation's formal name, the Government also acted to restore the term Police Force to popular currency.

The term Police Force was recognised by this Government as one of which police were justifiably proud, with a strong history, and one that reflected the community's expectations and the Government's priority of highly visible frontline policing.

This Government has been implementing policies to satisfy the community expectations of a visible, pro-active and effective police body.

We have also been listening to the views of front-line police.

The official restoration of the name "Police Force" through this Bill will reflect the existing community desire for a strong policing presence to reduce crime and other anti-social activity.

It will be part of the process of ensuring that strong proactive policing is not only done but is seen to be done.

The Bill also makes consequential changes to the name of the executive service of the police from NSW Police Senior Executive Service to the NSW Police Force Senior Executive Service.

Mission of NSW Police Force

This Bill will amend the current legislative statement of the Police Force's 'mission'.

NSW Police has recommended that its 'mission', spelt out in section 6(1) of the Act, be rewritten to express the same intent, but in simpler and clearer terms.

This proposal has been incorporated in the Bill to say:

The mission of the NSW Police Force is to work with the community to reduce violence, crime and fear.

Removal of Reference to Protective Security Group

The Bill will remove reference to the Protective Security Group.

The Protective Security Group was created in 1998 to undertake the functions of the former Special Branch plus a number of additional counter-terrorism activities.

However, following the September 11 and Bali attacks, NSW's counter-terrorism capability was reviewed and the Counter-Terrorism Coordination Command was created to investigate suspected terrorist acts and provide dignitary protection and related services. It effectively took over the role of the Protective Security Group.

This resulted in the disbandment of the Protective Security Group in April 2003 which, in turn, made provisions of the Police Act relating to it redundant. It is therefore proposed to omit those provisions.

Determination of Police Force Senior Executive Positions

NSW Police Senior Executive Service currently comprises the persons holding the positions referred to in Schedule 2 of the *Police Act*.

Section 34 of the Act provides that the Governor may, by proclamation, amend Schedule 2 by inserting the description of any position, or by omitting or amending any such description.

The submission by the Public Employment Office of the Premier's Department to the Police Act Review observed that the Governor had been removed from the process of determining and altering the Schedule of Senior Executive Service positions under the *Public Sector Employment and Management Act (PSEM Act)*.

Section 65 of that *Act* now provides for the Minister, instead of the Governor, to designate positions in the NSW Senior Executive Service. A list of SES positions has been placed on the Premier's Department website.

The Public Employment Office suggested that the Police Act be amended to enable Police Senior Executive Service positions to be designated by the Minister for Police.

The Police Act Review endorsed this recommendation.

It is therefore proposed to amend section 34 of the Police Act to give the Minister authority to determine NSW Police SES positions on the recommendation of the Commissioner of Police.

It is intended that the list of NSW Police Force Senior Executive Service positions will be included on the NSW Police Website, because the Premier's Department website only lists SES positions under the PSEM Act.

As Schedule 2 to the Police Act, which currently contains the list of Police Senior Executive Service positions, will no longer be used, it is proposed to omit it from the Act.

Recognition of Commissioned Officers

It is proposed to reintroduce the granting of commissions by the Governor.

Prior to 1996 commissioned officers (i.e. police officers of the rank of Inspector and above) were appointed by the Governor of New South Wales on the recommendation of the Police Board.

Reforms resulting from the Royal Commission into the NSW Police Service sought to ensure that the Commissioner would be responsible for the day-to-day management of NSW Police.

Consequently, the *Police Legislation Further Amendment Act 1996* made the Commissioner responsible for the appointment of all police officers and the practice of the Governor issuing commissions ceased.

The granting of commissions by the Governor was, and remains, highly valued by commissioned officers. The granting of the commission is viewed as a meaningful symbol of having attained the status of a senior officer and provides an opportunity for officers to reaffirm their commitment to the responsibilities of the office.

The reintroduction of the granting of commissions by the Governor would be a welcome return to a proud police tradition and its ceremonial nature will further enhance the respect afforded to commissioned police officers.

Removal of Category 1 and Category 2 distinction for complaints

This Bill proposes to remove the requirement for NSW Police to classify complaints against police officers as either 'Category 1' or 'Category 2' complaints. This process of categorisation has become redundant.

A Category 1 complaint is defined in section 121 of the Police Act as a complaint:

- that is of a class or kind that the Commissioner for the Police Integrity Commission and the Ombudsman have agreed should be referred to the Commission, or
- that the Commissioner for the Police Integrity Commission has requested should be referred to the Commission.

A Category 2 complaint is defined as a complaint that is not a Category 1 complaint.

Category 1 complaints generally contain more serious accusations than Category 2 complaints. Hence they are referred to the Police Integrity Commission.

The Police Integrity Commission already has access to the NSW Police complaints data base, which enables it to look at every complaint against NSW Police and take over the investigation of any complaint it chooses, irrespective of whether it is classified as Category 1 or Category 2. The proposed amendment will merely formalise this more efficient process.

The removal of the categories will also mean that police officers will no longer need to categorise complaints in the field. This amendment removes an unnecessary bureaucratic hurdle for police dealing with complaints.

A cognate amendment will be made to the *Police Integrity Commission Act* to require the Police Integrity Commission to advise NSW Police of the complaints that it decides to investigate. NSW Police will immediately cease its investigations of the complaints which the Police Integrity Commission advises it is investigating.

Removal of the statute of limitations for bribery offences

This Bill proposes to remove the current two year statute of limitations on bribery offences under section 200 of the Police Act 1990.

Section 200 states that a member of NSW Police who receives or solicits any bribe is guilty of an offence. Further, a person (including a police officer) is guilty of an offence if that person gives or offers a bribe to a police officer, or for an improper purpose makes any collusive agreement with a police officer.

The section also provides that proceedings for an offence against the section may be taken within 2 years after the act or omission alleged to constitute the offence.

Prior to 1996 the offences were summary offences with a maximum penalty of 50 penalty units or imprisonment for 12 months, or both.

However, in 1996 the Act was amended to provide a new maximum penalty of 200 penalty points or imprisonment for 7 years, or both, for offences under section 200. Offences under section 200 were also made indictable

Normally an indictable offence does not have a restriction or limitation of time in which prosecution of that offence must be commenced. Such time limitations normally only apply to summary offences.

As the offences under section 200 are now indictable offences, there is no justification for retaining the 2 year limitation on the commencement of prosecutions in relation to those offences. This Bill rectifies this situation.

Increased penalties for impersonating a police officer

The impersonation of a police officer has the potential to have very serious consequences.

Many people when faced with a person who is wearing a police uniform, or claiming to be a police officer, would feel obliged to comply with any requests or instructions given by that person provided that they seemed reasonable. This could have serious consequences.

I am deeply concerned that persons impersonating police officers for criminal purposes can do considerable harm, both as a direct consequence of their criminal activity, and as a result of the loss of trust and the decline in co-operation by members of the community with the police if they are uncertain that they are dealing with authentic police officers.

The impersonation of a police officer also has the potential to have very serious consequences in the current climate of increased security risk.

The proposed amendment will retain the existing level of fine, which is a 100 penalty units, but increase the maximum custodial penalty for the existing offences from 6 months to 2 years in circumstances where the person has worn a police uniform, or impersonated a police officer without authorisation but has not attempted to exercise any powers of police.

However, the Bill will also introduce a new, aggravated, form of these offences which will be a indictable offence with a maximum penalty of 7 years imprisonment. This offence will be charged where a person has impersonated a police officer and purported to exercise some power, or powers, of a police officer. The offence will apply whether or not the person wears a police uniform or insignia.

The aggravated offence for the impersonation of a police officer will be included in the *Crimes Act 1900* because it is an indictable offence but will be able to be dealt with summarily. This will be in accord with the Government's general legislative drafting policy of incorporating all indictable offences in the *Crimes Act*.

Use of Confidential Information by Police Trainees

Concerns have been expressed by NSW Police about the possible risk of police trainees leaking confidential police information.

Police trainees may become aware of confidential information during their training. However, clause 46 of the *Police Regulation*, which outlines police treatment and use of confidential information, does not apply to Police trainees because they are not members of the NSW Police.

The current legislation provides little scope for action against a trainee who divulges confidential police information.

This deficiency would be fixed by amending clause 46 of the *Regulation* to include police trainees. However, the *Police Act* does not currently allow regulations to be made in respect of police trainees.

The Bill proposes to address this legislative gap by providing the power to make regulations in relation to students of policing, including the use of confidential information.

The application of clause 46 of the *Regulation* to police trainees would allow the Commissioner to reject an application by a trainee to become a police officer if that trainee has divulged confidential information.

Knowledge of this sanction would also serve as a deterrent to trainees seeking employment within NSW Police from inappropriately dealing with confidential information.

Review of Act

The Bill introduces a further requirement for the Minister for Police to review the *Police Act* as soon as possible after the period of 5 years from the date of assent to this amendment Act.

SCHEDULE 3

Schedule 3 of the Bill contains amendments to other Acts. They include the previously mentioned amendment to the *Crimes Act* relating to the offence of impersonating a police officer.

Amendments relating to the police complaints system will be made to the *Police Integrity Commission Act 1996*.

These amendments are primarily concerned with the removal of the categorisation of police complaints. They dovetail with the cognate amendments to the *Police Act*.

The other amendments will be made to 34 Acts, consequential to the change in name from NSW Police to NSW Police Force.

Further reforms forthcoming

Finally, I would advise members that the Government is currently developing further reforms to the *Police Act 1990*.

The statutory review of the Act foreshadowed a range of other possible reforms, many aimed at promoting further consistency with the Public Sector Management and Employment Act. These proposals are currently the subject of further consultation between NSW Police, the Police Association, and other relevant agencies.

Members would also be aware that the Government is currently undertaking a review of the police complaints system. Recommendations for reforms to the complaints system that were included in the statutory review of the *Police Act 1990* have been held over until this further review is completed.

I am pleased to assure members that this Government will continue to work to ensure that Police are equipped with the most modern and effective legislation to help them fight crime and protect our community.

I commend the Bill to the House.