



## Police Amendment (Appointments) Bill

### Second Reading

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### POLICE AMENDMENT (APPOINTMENTS) BILL

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### Second Reading

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [9.32 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.

This Bill responds to deficiencies in the current police appointment process identified in the Interim Report of the Ministerial Inquiry into Police Promotions, which is chaired by former Assistant Commissioner Geoff Schuberg.

The Inquiry is running for a year. The Police Association has called for this review period so that the new promotions system introduced at the beginning of 2002s can be properly assessed.

There is no doubt that the timeliness of appointments has been vastly improved, through officers being moved into their new jobs, pending integrity clearances and appeals action. Officers can now move into their new jobs within 3 to 4 weeks of selection, rather than up to 8 months as was previously the case. The introduction of one year eligibility lists for police promotions has also added to the speed and flexibility in filling positions.

I will now outline the provisions of the Bill.

The Ministerial Inquiry recommended that *"Appointment arrangements within the rank of superintendent need to be more flexible to promote command stability and to ensure the Commissioner can quickly fill sensitive command positions on a permanent basis"*.

Clause 7 of the Bill responds to that recommendation and I would like to thank Superintendent Bruce Lyons, Superintendent Frank Hansen and Don Freudenstein of the Police Association for working on the superintendent reforms in the Bill.

NSW Police's 120 non Police Senior Executive Service superintendents occupy critical management positions in the Force, including the 80 Local Area Command positions.

The *Police Regulation 2000* divides the rank of superintendent into two grades, superintendent and chief superintendent. There are 112 superintendent positions and 8 chief superintendent positions.

Prior to the Wood Royal Commission, NSW Police had a smaller number of superintendents with a flat salary structure. There was no legislative recognition of the chief superintendent grade.

This encouraged mobility within the rank of superintendent, with the Commissioner able to easily transfer officers within the rank.

In 1998, NSW Police followed the Wood Royal Commission recommendation to link salaries more closely to positions and job descriptions. It evaluated the responsibilities of each of NSW's 80 Local Area Commanders and introduced three levels of superintendent Local Area Command positions, each with a different salary.

Superintendents outside the LAC structure have a different salary that falls within the LAC Commanders' salary range. The grade of chief superintendent also now has a salary band within the salary range for superintendent grade positions, which makes it clear that a chief superintendent appointment is not necessarily a promotional appointment. All five levels of superintendent salary are within an \$18,000 range.

Whilst these pay arrangements are more equitable, appointment to command positions has been slowed as it is no longer as easy to transfer officers between commands as the *Police Act* only allows officers to be transferred to positions carrying the same salary.

This means that command appointments that were once dealt with quickly as transfers must now be processed through the promotions system.

The delays inherent in the promotions system mean that critical command positions may not be permanently filled for long periods of time, with officers temporarily appointed under section 66 of the *Police Act*.

These arrangements are not conducive to command stability and prevent the Commissioner from quickly appointing qualified commanders who he has assessed as having demonstrated the skills necessary to meet the challenges of a particular command. The lack of certainty in command management has a flow on effect to all officers within the command.

In the general public sector, and amongst NSW Police's non-sworn employees, appointments may be made without advertising in certain circumstances, for example where a critical position needs to be promptly filled. The *Police Act* specifically excludes the making of these "direct appointments" in police positions, a safeguard that is strongly supported by rank and file police. However, this difference means there is no middle ground between the transfer and full promotion systems.

Parliamentary Counsel is currently drafting amendments to the *Police Regulation 2000* to abolish the separate grade of chief superintendent to remove a distinction that changes to salary arrangements have rendered artificial.

Clause 7 of the Bill amends section 67 of the *Police Act* to enable the Commissioner, if he considers it in the interests of NSW Police, to transfer a non-executive superintendent to another non-executive superintendent position, irrespective of any difference in remuneration.

Transfers will generally be made up through the various levels of superintendent in response to natural attrition.

However, there may be circumstances where an officer is transferred to a position at a lower level. In such cases, the officer will receive salary maintenance for the remainder of their fixed term appointment unless they have requested the transfer or have been transferred for misconduct or unsatisfactory performance.

Any minimal costs associated with salary maintenance will be offset by the savings in not going through the promotions process.

The new process will only apply to superintendents who have already demonstrated their command abilities in being appointed to that rank through the promotions process. It is not a policy that allows direct appointment to all superintendent positions.

It will still be necessary to advertise some superintendent positions, having regard to operational needs and natural attrition within the rank. Only inspectors and superintendents are eligible to apply for advertised superintendent positions under NSW Police's rank at a time promotions policy.

The Bill provides that the new transfer provisions will apply to future vacancies, not positions that have already been advertised. The Commissioner has insisted on this arrangement, as he believes it would be unfair to all officers to change the rules for appointment in the middle of the selection process.

The remaining provisions of the Bill deal with the requirements of officers to sign statutory declarations as to their conduct before being eligible for appointment. Promotional statutory declaration arrangements were introduced under the *Police Service Amendment (Promotions) and Integrity Act 2001*.

Their purpose was to ensure that all police officers granted a promotion have sworn an oath as to their conduct. It was not intended to use statutory declarations for any purpose other than to better assess the integrity of the officer to be promoted. This is clear in the current provisions of the Act, which prevent a failure or refusal to sign a declaration being considered for any other purpose.

The legislation, as originally introduced by the Government, provided that the Commissioner may require applicants for appointment to sign statutory declarations.

The word "may" was used, rather than the word "must", to give the Commissioner flexibility to require the signing of statutory declarations at a later stage of the appointment process, rather than at application, and to not seek declarations from civilian Police Senior Executive Service appointees (PSES), as declarations are not sought from any other civilians.

The Honourable Michael Gallagher moved an amendment that replaced "may" with "must", on the grounds that the Bill would allow the Commissioner to apply the statutory declaration requirements in an inconsistent manner.

The Ministry for Police provided Mr Gallagher with a briefing on the administrative burden this would place on the promotions system, rather than allowing for statutory declarations to be signed at interview or before selection.

The Government acknowledged there should be no discretion in promoted officers having to sign a statutory declaration and indicated its preference for making a solid commitment that all promotional appointees would be asked to sign a statutory declaration, with amended statutory declaration provisions being introduced at a later time.

Notwithstanding this, the amendment was moved and the Government understood the reasons for this.

However, the Ministerial Inquiry had found that the amended provisions have placed a significant and unnecessary strain on the promotions system.

It has taken 3 people hundreds of hours to manage the requirement to get statutory declarations for each application, which delayed the interviews for the last round of sergeant positions for weeks.

The delays were caused by officers who applied for multiple positions only supplying one declaration, when the amended legislation required a declaration for each application.

Other officers faxed a copy of a declaration, whilst the *Oaths Act* requires original statutory declarations to be provided.

Other officers wanted to discuss their complaints histories to determine what information needed to be declared.

The interviews could not be held before each applicant had been given the opportunity to fully complete a statutory declaration, as a failure to complete at that stage would prevent their being eligible for appointment.

All of these issues, when there are thousands of applications for hundreds of simultaneously advertised positions, mean the current process is unreasonably burdensome.

In line with the Inquiry's recommendations, and with discussions with the Police Integrity Commission, the Bill prevents an officer from being appointed before a statutory declaration is signed. It does not require each and every unsuccessful applicant to sign a separate declaration for each and every application.

Linking statutory declarations with the appointment process, rather than with the application process, is consistent with other integrity provisions of the Act that require integrity reports to be sought prior to appointment.

Clause 5 of the Bill also makes it clear that the preferred applicant, or selected officer, cannot be appointed on probation pending integrity check and appeal action until a statutory declaration is signed. This means statutory declarations will need to be signed at interview or as part of the formal selection.

Targeting this smaller pool will allow officers to discuss their individual concerns and taking applications at interview will ensure that properly completed original declarations are provided at the first instance.

Clauses 10 and 12 contain provisions that will also ensure persons who are appointed through the appeals or eligibility list processes are required to complete statutory declarations. The Bill contains other provisions that ensure a person can be identified as a preferred applicant, placed on an eligibility list or appeal a promotional appointment without having signed a statutory declaration at that stage, although they must obviously sign one if they are to be appointed.

The Bill also explicitly requires the Commissioner to consider statutory declarations, which was a minor omission in the original statutory declaration legislation.

The new section 39(5D) in clause 3 of the Bill makes it clear that statutory declarations need not be sought from PSES appointees who have never been a police officer in NSW or anywhere else.

Statutory declarations were always intended to be police specific. Whilst police are familiar with what constitutes appropriate conduct for a police officer, there are no clear guidelines for civilians. This means applicants for civilian PSES jobs have not known which things they need to declare.

Whilst this Bill builds on other recent improvements to the police promotions process, it is clear that more needs to be done to promote a fair and efficient promotions system that has the confidence of police. The Government will continue to make the necessary changes that are identified by Geoff Schuberg and his Inquiry team.

The Bill will make a real difference in getting the right commander into the right job at the right time and cut the useless red-tape that is strangling the promotional statutory declaration system.

I commend the Bill to the House.

**The Hon. MICHAEL GALLACHER** (Leader of the Opposition) [9.32 p.m.]: The Opposition is pleased to support this bill. The contribution by the shadow Minister for Police in the other House is quite detailed; it sets out the position of the Opposition very clearly. It deals with the transfer of superintendents and related salary issues as well as statutory declarations for position applications within NSW Police. During debate in the Legislative Assembly the honourable member for Cabramatta and Parliamentary Secretary, Ms Meagher, took great delight in trying to blame me for quite significant administrative difficulties the police service experienced following a Legislative

Council amendment to similar earlier legislation. If the honourable member reads the debate she will see that the Hon. Michael Costa supported the amendments I moved. He believed they were worthwhile at the time. Ms Meagher should pull her head in.

**Reverend the Hon. FRED NILE** [9.34 p.m.]: The Christian Democratic Party supports this bill. It will give the Commissioner of Police flexibility to appoint superintendents to any superintendent position where he believes their commander skills can be best utilised. It cuts unnecessary red tape in the promotion system. There are 120 superintendents occupying critical management positions in this State. Prior to the royal commission there was only one superintendent's salary structure, so the commissioner could move superintendents easily from various commands. Because a new five-tiered superintendents salary structure was introduced it became far more complicated. This legislation will streamline the structure and allow the commissioner to transfer any superintendent to another superintendent position, irrespective of any salary difference, if that is in the interests of NSW Police and the New South Wales community. We support the bill.

**Ms LEE RHIANNON** [9.35 p.m.]: The Greens do not oppose the bill. Advice from the Police Integrity Commission is that the bill has no probity implications. On that basis we will not oppose it.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [9.35 p.m.], in reply: I thank honourable members for their contributions to this debate. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

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