



New South Wales

Police Amendment (Appointments) Bill 2002

Explanatory note

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

Overview of Bill

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

- (a) to allow the Commissioner of Police (*the Commissioner*) to transfer police superintendents from a non-executive position to which the officer is permanently appointed within that rank to another non-executive position within that rank regardless of whether the remuneration payable with respect to the position to which the officer is to be transferred is the same as or different from the officer's former remuneration,
- (b) to replace the requirement that applicants for appointment to the office of Commissioner, or to a vacant executive position, position of non-executive commissioned police officer or position of a police officer of the rank of sergeant, provide a statutory declaration relating to disclosure of misconduct, with a requirement that, before recommending the appointment of, or appointing (as the case may be), a person to such an office or position, the Minister or Commissioner (as the case may be) must require the person to

provide a statutory declaration relating to disclosure of misconduct, and must have regard to the statutory declaration so provided,

- (c) to provide that the proposed statutory declaration requirements relating to vacant executive positions do not apply in relation to a person who has applied for such a position and who is not, and has never been, a police officer (whether in New South Wales or elsewhere),
- (d) to provide that before appointing temporarily to a vacant police officer position an officer who is selected for, or who is the preferred applicant for, the position, the Commissioner must require the officer to provide a statutory declaration relating to disclosure of misconduct,
- (e) to provide that a person who fails or refuses or who is unable to provide a statutory declaration in accordance with a requirement made under the proposed provisions is ineligible for appointment to the office or position concerned.

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 giving effect to the amendments to the *Police Act 1990* set out in Schedule 1.

Schedule 1 Amendments

Statutory declaration requirements relating to appointments

Schedule 1 [1] amends section 24 of the Act to remove the requirement that applicants for appointment to the office of Commissioner provide a statutory declaration that the applicant has not knowingly engaged in specified misconduct or any other misconduct (referred to in this explanatory note as a *statutory declaration relating to disclosure of misconduct*). Instead, before recommending the appointment of a person to the office of Commissioner, the Minister must require the person to provide such a statutory declaration. A person who fails or refuses or who is unable to provide a statutory declaration is ineligible for appointment.

Schedule 1 [2] repeals section 38A of the Act which requires applicants for appointment to a vacant executive position to provide a statutory declaration relating to disclosure of misconduct. **Schedule 1 [9] and [11]** repeal sections 70 and 76A of the Act which contain the same requirement for a statutory declaration but in relation to applicants for appointment by way of promotion to a vacant position of non-executive commissioned police officer or to a vacant position of a police officer of the rank of sergeant.

Schedule 1 [3] amends section 39 of the Act to provide that before recommending the appointment of, or appointing, a person to a vacant executive position, the Commissioner must require the person to provide a statutory declaration relating to disclosure of misconduct, and must have regard to the statutory declaration so provided. A person who fails or refuses or who is unable to provide a statutory declaration is ineligible for appointment. A person who has applied for a vacant executive position who is not, and has never been, a police officer (whether in New South Wales or elsewhere) is not subject to the proposed statutory declaration requirements.

Schedule 1 [5] amends section 66 of the Act to provide that before appointing temporarily to a vacant police officer position an officer who is selected for, or who is the preferred applicant for, the position, the Commissioner must require the officer to provide a statutory declaration relating to disclosure of misconduct. An officer who fails or refuses or who is unable to provide a statutory declaration is ineligible for appointment to the position concerned. **Schedule 1 [10] and [12]** amend sections 71 and 77 of the Act to make the same provision in relation to the appointment of a person to a vacant position of non-executive commissioned police officer or to a vacant position of a police officer of the rank of sergeant.

Schedule 1 [4], [6], [8], [13] and [14] make consequential amendments.

Transfer of non-executive officers

Schedule 1 [7] amends section 67 of the Act to allow the Commissioner to transfer a police superintendent from a non-executive position to which the officer is permanently appointed within that rank to another non-executive position within that rank regardless of whether the remuneration payable with respect to the position to which the officer is to be transferred is the same as or different from the officer's former remuneration. If the transfer is to a position that would ordinarily entitle its holder to a level of remuneration that is lower than the officer's former remuneration, the officer is entitled to the same level of remuneration in respect of that position as the officer's former remuneration (unless the transfer was requested by the officer or ordered because of misconduct or unsatisfactory performance on the part of the officer). This entitlement applies only in respect of the balance of the officer's term of office.

Savings and transitional provisions

Schedule 1 [15] allows regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [16] makes provision of a savings and transitional nature, namely:

- (a) an amendment made by Schedule 1 [1], [3], [5], [10] or [12] is to extend to the appointment of a person to an office or position that was advertised but not filled before the commencement of the amendment, and
- (b) the amendment made by Schedule 1 [7] is not to apply to or in respect of a transfer to a position that was advertised but not filled before the commencement of that amendment.

First print



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New South Wales

Police Amendment (Appointments) Bill 2002

No. , 2002

A Bill for

An Act to amend the *Police Act 1990* in relation to the transfer of certain police officers, and in relation to statutory declaration requirements for appointment to certain positions within NSW Police; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Police Amendment (Appointments) Act 2002</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Police Act 1990 No 47	7
The <i>Police Act 1990</i> is amended as set out in Schedule 1.	8

Schedule 1 Amendments	1
(Section 3)	2
[1] Section 24 Appointment of Commissioner	3
Omit section 24 (8) and (9). Insert instead:	4
(8) The Minister must, before recommending the appointment of a person to the office of Commissioner:	5
(a) require the person to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the person has not knowingly engaged in specified misconduct or any other misconduct, and	7
(b) have regard to the statutory declaration so provided.	11
(9) A person who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (8) is ineligible for appointment to the office of Commissioner.	12
[2] Section 38A Disclosure of misconduct	16
Omit the section.	17
[3] Section 39 Appointment to be made on merit	18
Insert after section 39 (5):	19
(5A) The Commissioner must, before recommending the appointment of, or appointing, a person to a vacant executive position:	20
(a) require the person to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the person has not knowingly engaged in specified misconduct or any other misconduct, and	23
(b) have regard to the statutory declaration so provided.	27
(5B) A person who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (5A) is ineligible for appointment to the position concerned.	28

(5C)	The failure, refusal or inability of a person to provide a statutory declaration in accordance with a requirement made under subsection (5A) must not be taken into consideration for a purpose other than the assessment of the person’s eligibility to be appointed to the position concerned.	1 2 3 4 5
(5D)	Subsections (5A)–(5C) do not apply in relation to a person who has applied for appointment to a vacant executive position who is not, and has never been, a police officer (whether a member of NSW Police, or the Police Force, by whatever name described, of another State or Territory, or of another country).	6 7 8 9 10
[4]	Section 39A Eligibility lists	11
	Insert “, subject to section 39 (5A) and (5B),” after “to the position and” in section 39A (2).	12 13
[5]	Section 66 Temporary appointments to non-executive positions	14
	Insert after section 66 (1A):	15
(1AA)	The Commissioner must, before appointing an officer temporarily to a police officer position under subsection (1A), require the officer to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the officer has not knowingly engaged in specified misconduct or any other misconduct.	16 17 18 19 20 21
(1AB)	An officer who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (1AA) is ineligible for appointment to the position concerned.	22 23 24 25
(1AC)	The failure, refusal or inability of an officer to provide a statutory declaration in accordance with a requirement made under subsection (1AA) must not be taken into consideration for a purpose other than the assessment of the officer’s eligibility to be appointed to the position concerned.	26 27 28 29 30
[6]	Section 66 (5), definition of “preferred applicant”	31
	Insert “, subject to subsections (1AA) and (1AB),” after “a person who”.	32

[7] Section 67 Transfer of non-executive officers	1
Insert after section 67 (1):	2
(1A) Despite subsection (1), the Commissioner may transfer a police officer from a non-executive position of the rank of superintendent to which the officer is permanently appointed to another non-executive position within that rank regardless of whether the position to which the officer is transferred entitles its holder to a remuneration that is the same as or different from the officer’s former remuneration.	3 4 5 6 7 8 9
(1B) A police officer who, pursuant to subsection (1A), is transferred to a position that would ordinarily entitle its holder to a level of remuneration that is lower than the officer’s former remuneration, is entitled to the same level of remuneration in respect of that position as the officer’s former remuneration.	10 11 12 13 14 15
(1C) The entitlement to remuneration conferred on a police officer under subsection (1B) applies only in respect of the balance of the term for which the officer holds office pursuant to section 72A.	16 17 18 19
(1D) Subsection (1B) does not apply in relation to a police officer whose transfer to a position entitling its holder to a lower level of remuneration than the officer’s former remuneration was made pursuant to a request by the officer or an order under section 173.	20 21 22 23 24
[8] Section 67A Eligibility lists	25
Insert “, subject to sections 71 (2A) and (2B) and 77 (2A) and (2B),” after “to the position and” in section 67A (3).	26 27
[9] Section 70 Disclosure of misconduct	28
Omit the section.	29

[10] Section 71 Appointment to be made on merit	1
Insert after section 71 (2):	2
(2A) The Commissioner must, before appointing a person to a vacant position of a non-executive commissioned police officer:	3
(a) require the person to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the person has not knowingly engaged in specified misconduct or any other misconduct, and	4
(b) have regard to the statutory declaration so provided.	5
(2B) A person who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (2A) is ineligible for appointment to the position concerned.	6
(2C) The failure, refusal or inability of a person to provide a statutory declaration in accordance with a requirement made under subsection (2A) must not be taken into consideration for a purpose other than the assessment of the person's eligibility to be appointed to the position concerned.	7
[11] Section 76A Disclosure of misconduct	8
Omit the section.	9
[12] Section 77 Appointment of sergeants to be made on merit	10
Insert after section 77 (2):	11
(2A) The Commissioner must, before appointing a person to a vacant position of a police officer of the rank of sergeant:	12
(a) require the person to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the person has not knowingly engaged in specified misconduct or any other misconduct, and	13
(b) have regard to the statutory declaration so provided.	14

(2B)	A person who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (2A) is ineligible for appointment to the position concerned.	1 2 3 4
(2C)	The failure, refusal or inability of a person to provide a statutory declaration in accordance with a requirement made under subsection (2A) must not be taken into consideration for a purpose other than the assessment of the person’s eligibility to be appointed to the position concerned.	5 6 7 8 9
[13]	Section 81B Appeals to GREAT against promotions to sergeant or to higher grade of sergeant	10 11
	Insert “, subject to section 77 (2A) and (2B),” after “the vacant position and” wherever occurring in section 81B (1) and (2).	12 13
[14]	Section 81C Appeal to GREAT against promotion to inspector	14
	Insert “, subject to section 71 (2A) and (2B),” after “the vacant position and” in section 81C (1).	15 16
[15]	Schedule 4 Savings, transitional and other provisions	17
	Insert at the end of clause 2 (1):	18
	<i>Police Amendment (Appointments) Act 2002</i>	19
[16]	Schedule 4	20
	Insert at the end of the Schedule, with appropriate Part and clause numbers:	21
	Part Provisions consequent on enactment of Police Amendment (Appointments) Act 2002	22 23
	Statutory declaration relating to disclosure of misconduct	24
	An amendment made by Schedule 1 [1], [3], [5], [10] or [12] to the <i>Police Amendment (Appointments) Act 2002</i> extends to the appointment of a person to an office or position that was advertised but not filled before the commencement of the amendment.	25 26 27 28 29

Transfer of superintendents between positions within that rank	1
The amendment made by Schedule 1 [7] to the <i>Police Amendment (Appointments) Act 2002</i> does not apply to or in	2
respect of a transfer to a position that was advertised but not	3
filled before the commencement of the amendment.	4
	5