

Passed by both Houses



New South Wales

Police Service Amendment (Promotions and Integrity) Bill 2001

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Clerk of the Parliaments

Legislative Council
2001



New South Wales

Police Service Amendment (Promotions and Integrity) Bill 2001

Act No , 2001

An Act to amend the *Police Service Act 1990* in relation to the police promotions system; to amend the *Police Integrity Commission Act 1996* and the *Government and Related Employees Appeal Tribunal Act 1980*; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Service Amendment (Promotions and Integrity) Act 2001*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Police Service Act 1990 No 47

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

4 Amendment of Police Integrity Commission Act 1996 No 28

The *Police Integrity Commission Act 1996* is amended in the manner set out in Schedule 2.

5 Amendment of Government and Related Employees Appeal Tribunal Act 1980 No 39

The *Government and Related Employees Appeal Tribunal Act 1980* is amended as set out in Schedule 3.

Schedule 1 Amendment of Police Service Act 1990

(Section 3)

[1] Section 24 Appointment of Commissioner

Insert “, and the Commander, Special Crime and Internal Affairs,” after “Police Integrity Commission” in section 24 (6) (a).

[2] Section 24 (7)

Omit the subsection. Insert instead:

- (7) The Police Integrity Commission, subject to the *Police Integrity Commission Act 1996*, and the Commander, Special Crime and Internal Affairs, are required to furnish a report to the Minister (on the basis of the information available to the Commission or the Commander and without the need for any special investigation or inquiry) on the person the subject of an inquiry referred to in subsection (6) (a).

[3] Section 24 (8)–(10)

Insert after section 24 (7):

- (8) The Minister must require an applicant for appointment to the office of Commissioner to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the applicant has not knowingly engaged in specified misconduct or any other misconduct.
- (9) An applicant 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.
- (10) The failure, refusal or inability of a person to provide the statutory declaration must not be taken into consideration for a purpose other than the assessment of the person’s eligibility to be appointed to the office of Commissioner.

[4] Section 38 Advertising of vacancies

Insert “, or appoint,” after “appointment of” in section 38 (b).

[5] Section 38A

Insert after section 38:

38A Disclosure of misconduct

- (1) The Commissioner must require an applicant for appointment to a vacant executive position to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the applicant has not knowingly engaged in specified misconduct or any other misconduct.
- (2) An applicant who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (1) is ineligible for appointment.
- (3) The failure, refusal or inability of a person to provide the statutory declaration must not be taken into consideration for a purpose other than the assessment of the person's eligibility to be appointed to the vacant executive position.

[6] Section 39 Appointment to be made on merit

Insert “, or to appoint,” after “appointment of” in section 39 (1) and (2) wherever occurring.

[7] Section 39 (3) (a)

Insert “, and the Commander, Special Crime and Internal Affairs,” after “Police Integrity Commission”.

[8] Section 39 (4)

Omit the subsection. Insert instead:

- (4) The Police Integrity Commission, subject to the *Police Integrity Commission Act 1996*, and the Commander, Special Crime and Internal Affairs, are required to furnish a report to the Commissioner (on the basis of the information available to the Commission or the Commander and without the need for any special investigation or inquiry) on the person the subject of an inquiry referred to in subsection (3) (a).

[9] Section 39 (6)

Insert after section 39 (5):

- (6) If the vacant executive position is that of the Commander, Special Crime and Internal Affairs, the functions of that Commander under this section are to be exercised by a Deputy Commissioner nominated by the Commissioner.

[10] Section 39A

Insert after section 39:

39A Eligibility lists

- (1) When a vacant executive position is advertised in accordance with this Act, the Commissioner may, in connection with a determination of the merit of the persons eligible for appointment to the position, create an eligibility list for the position.
- (2) An eligibility list for a position is a list of eligible applicants (namely, the persons who duly applied for appointment to the position and are eligible for appointment) arranged in order of merit as determined by the Commissioner.
- (3) An eligibility list for a position remains current for 6 months after the list was created.
- (4) An eligibility list need not comprise all the eligible applicants so long as the applicants on the list are those of greatest merit. An eligibility list may even comprise only one eligible applicant so long as that applicant is the applicant of greatest merit.
- (5) In deciding to make an appointment of a person to a vacant position that has not been advertised in accordance with this Act, the Commissioner may (despite section 38 (b)) select from the persons who are on an eligibility list that is current and applicable to the position (and who are available for appointment) the person with the greatest merit according to the order of merit in the eligibility list.

- (6) An eligibility list is applicable not only to the position in relation to which it was created but also to any other position that the Commissioner determines it should be applicable to on the basis that the position is substantially the same as the position in relation to which the list was created.

[11] Section 63 Definitions

Insert in alphabetical order:

vacant position, in relation to a police officer position, means:

- (a) a position that is not held by a person, or
- (b) a position to which a person is temporarily appointed, or
- (c) a position that is held by a person who is temporarily appointed to another position in accordance with section 66 (1A), or
- (d) a position that is held by a person who has ceased to be temporarily appointed to another position in accordance with section 66 (1A) if that person has no right of return to the position because of section 66 (1B).

[12] Section 64 Appointments to non-executive positions

Insert after section 64 (3):

- (3A) It is the duty of the Commissioner, before appointing a person, by way of promotion, to a vacant non-executive police officer position:
- (a) to make inquiries (from the Police Integrity Commission, and the Commander, Special Crime and Internal Affairs, and from any other person or body the Commissioner considers appropriate) as to the person's integrity, and
 - (b) to have regard to any information that comes to the Commissioner's attention (whether as a result of inquiries under paragraph (a) or otherwise) as to the person's integrity.

[13] Section 64 (4)

Insert "administrative officer" before "position".

[14] Section 64 (4A)

Insert after section 64 (4):

- (4A) The Police Integrity Commission, subject to the *Police Integrity Commission Act 1996*, and the Commander, Special Crime and Internal Affairs, are required to furnish a report to the Commissioner (on the basis of information available to the Commission or the Commander and without the need for any special investigation or inquiry) on any person the subject of an inquiry referred to in subsection (3A) (a).

[15] Section 66 Temporary appointments to non-executive positions

Insert after section 66 (1):

- (1A) The Commissioner may appoint temporarily to a police officer position that is a vacant position an officer who is selected for, or who is the preferred applicant for, the position, subject to the following:
- (a) before the appointment can be made, the Commissioner and the officer must agree, in writing, as to the command in which the officer will serve if the officer is not permanently appointed to the position, and
 - (b) if the officer is not permanently appointed to the position because another officer is selected for it, the officer may exercise any right of appeal the officer may have under Division 5A of Part 6, and
 - (c) if the officer has relocated his or her principal place of residence because of the temporary appointment, the officer is entitled to the costs and expenses of any further relocation agreed to under paragraph (a), those costs and expenses to be calculated in accordance with any relevant industrial award or enterprise agreement for transferred officers under the *Industrial Relations Act 1996*, and
 - (d) if the officer has relocated his or her principal place of residence because of the temporary appointment and has entered into an agreement, in writing, with the Commissioner to stay within the command to which the officer has been transferred if the officer is not permanently appointed to the position, the officer

cannot be involuntarily transferred under section 67 (except in accordance with action taken under section 173 (2) (d)) within a period of 3 years after the relocation.

- (1B) An officer who ceases to be temporarily appointed to a position in accordance with subsection (1A) and who is not permanently appointed to the position has no right of return to the position from which the officer was temporarily appointed, unless:
- (a) the officer has entered into an agreement under subsection (1A) (a) to return to the command from which the officer was temporarily appointed, and
 - (b) no other officer has been selected for, or is the preferred applicant for, the position from which the officer was temporarily appointed.

[16] Section 66 (5)–(7)

Insert after section 66 (4):

- (5) In this section:
- preferred applicant*, in relation to a vacant police officer position, means a person who is eligible for appointment to the position and who, in the opinion of the Commissioner formed prior to the Commissioner considering all information as to the person's integrity, has the greatest merit, subject to subsections (6) and (7).
 - (6) A person cannot be the preferred applicant for a vacant police officer position if the person is the preferred applicant for, or the person selected for, another police officer position the maximum salary for which is the same as or greater than the maximum salary for the vacant police officer position.
 - (7) A person ceases to be the preferred applicant for a vacant police officer position when the person, or another person, is selected for the position.

[17] Section 67A Eligibility lists

Insert "a non-executive police officer position or" before "a base grade" in section 67A (4) (a).

[18] Section 70

Insert after section 69:

70 Disclosure of misconduct

- (1) The Commissioner must require an applicant for appointment by way of promotion to a vacant position of non-executive commissioned police officer to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the applicant has not knowingly engaged in specified misconduct or any other misconduct.
- (2) An applicant who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (1) is ineligible for appointment.
- (3) The failure, refusal or inability of a person to provide the statutory declaration must not be taken into consideration for a purpose other than the assessment of the person's eligibility to be appointed to the vacant position.

[19] Sections 71 and 77

Omit "A person ceases to be selected for appointment to a position when the person is appointed to the position (other than by way of temporary appointment)." wherever occurring from sections 71 (3) and 77 (3).

[20] Sections 71A and 71B

Insert after section 71:

71A Circumstances in which a person ceases to be selected for appointment to a position

A person ceases to be selected for appointment to a position of a non-executive commissioned police officer if:

- (a) the person is appointed to the position (otherwise than by way of temporary appointment), or
- (b) GREAT upholds a promotional appeal of another person with respect to the position, or
- (c) the person's selection is withdrawn on integrity grounds, or

- (d) the person indicates that he or she no longer wishes to be considered for appointment to the position.

71B Withdrawal of selection on integrity grounds

- (1) The Commissioner may change a decision to appoint a person to a non-executive commissioned police officer position:
 - (a) before the person is appointed, or
 - (b) where an appeal is made under Division 5A against the Commissioner's decision, before the appeal is commenced to be heard,

if the Commissioner receives information as to the person's integrity (being information that was not considered when the decision to appoint the person was made) which causes the Commissioner to form the opinion that the person does not have the greatest merit.

- (2) If the Commissioner changes such a decision, the Commissioner may decide, in accordance with this Part, to select (from the applicants who are eligible for appointment to the vacant position, whether or not an eligibility list has been created for the position) the person who the Commissioner is of the opinion at that time has the greatest merit.

Note. The provisions of Division 5A of Part 6 of this Act apply to a decision under subsection (2) and extend to a person whose selection is withdrawn on integrity grounds.

[21] Section 74 Promotion of constables

Omit "and Division 5A".

[22] Section 76A

Insert after section 76:

76A Disclosure of misconduct

- (1) The Commissioner must require an applicant for appointment by way of promotion to a vacant position of a police officer of the rank of sergeant to provide a statutory declaration, in such form (if any) as may be prescribed by the regulations, that the applicant has not knowingly engaged in specified misconduct or any other misconduct.

- (2) An applicant who fails or refuses, or who is unable, to provide a statutory declaration in accordance with a requirement made under subsection (1) is ineligible for appointment.
- (3) The failure, refusal or inability of a person to provide the statutory declaration must not be taken into consideration for a purpose other than the assessment of the person's eligibility to be appointed to the vacant position.

[23] Sections 77A and 77B

Insert after section 77:

77A Circumstances in which a person ceases to be selected for appointment to a position

A person ceases to be selected for appointment to a position of police officer of the rank of sergeant if:

- (a) the person is appointed to the position (otherwise than by way of temporary appointment), or
- (b) GREAT upholds a promotional appeal of another person with respect to the position, or
- (c) the person's selection is withdrawn on integrity grounds, or
- (d) the person indicates that he or she no longer wishes to be considered for appointment to the position.

77B Withdrawal of selection on integrity grounds

- (1) The Commissioner may change a decision to appoint a person to a position of a police officer of the rank of sergeant:
 - (a) before the person is appointed, or
 - (b) where an appeal is made under Division 5A against the Commissioner's decision, before the appeal is commenced to be heard,

if the Commissioner receives information as to the person's integrity (being information that was not considered when the decision to appoint the person was made) which causes the Commissioner to form the opinion that the person does not have the greatest merit.

- (2) If the Commissioner changes such a decision, the Commissioner may decide, in accordance with this Part, to select (from the applicants who are eligible for appointment to the vacant position, whether or not an eligibility list has been created for the position) the person who the Commissioner is of the opinion at that time has the greatest merit.

Note. The provisions of Division 5A of Part 6 of this Act apply to a decision under subsection (2) and extend to a person whose selection is withdrawn on integrity grounds.

[24] Section 81A Appeals to GREAT against promotion of constables to higher grade within that rank

Omit the section.

[25] Section 81D Procedure for appeals

Omit section 81D (b). Insert instead:

- (b) a notice of appeal lodged under section 28 of that Act must contain a summary, in or to the effect of the form approved by the Senior Chairperson, of the grounds of the appeal and the particulars alleged to support those grounds,
- (c) the Senior Chairperson or a Chairperson may require an appellant to provide such further written particulars concerning the appeal as are specified by the Senior Chairperson or Chairperson,
- (d) GREAT, for the purpose of an appeal under this Division, is to be constituted by the Senior Chairperson sitting alone or a Chairperson selected by the Senior Chairperson sitting alone,
- (e) GREAT may strike out an appeal if it considers, by such means as are determined by it:
 - (i) that the appeal is frivolous or vexatious, or
 - (ii) that the appellant is not able to put forward an arguable case in favour of his or her appointment,
- (f) evidence is to be given on oath,
- (g) any other modifications prescribed by the regulations.

[26] Section 81E

Omit the section. Insert instead:

81E Action following conclusion of successful appeal

- (1) If an appeal to GREAT is upheld, the Commissioner must, at the Commissioner's discretion, and despite any other provision of this Act or any provision of the *Government and Related Employees Appeal Tribunal Act 1980*:
 - (a) appoint the successful appellant to the vacant position, or
 - (b) decline to appoint the successful appellant to the vacant position and recommence the selection process for the vacant position.
- (2) Despite section 54 of the *Government and Related Employees Appeal Tribunal Act 1980*, no right of appeal lies under that section for any person if the Commissioner recommences the selection process for a vacant position.

[27] Part 9, Division 2A

Insert after Division 2 of Part 9:

Division 2A Revocation of promotional appointment because of misconduct in obtaining promotion

183A Revocation of promotional appointment by Commissioner

The Commissioner may, by order (in this Division called a *revocation order*), revoke an appointment by way of promotion of an officer who, in the Commissioner's opinion, is found to have engaged in misconduct that has assisted the officer in obtaining the promotion and return the officer to the rank or grade held by the officer before his or her promotion.

183B Making of revocation orders

- (1) The Commissioner may make a revocation order whether or not the misconduct has been the subject of a complaint under Part 8A and whether or not the police officer has been prosecuted or convicted for an offence in relation to the misconduct.
- (2) Before making a revocation order, the Commissioner:
 - (a) must cause to be served on the police officer a notice that identifies the misconduct (including all relevant facts and circumstances) on the basis of which the Commissioner intends to make the proposed order, and
 - (b) must give the police officer 7 days from the date of service of the notice within which to serve notice on the Commissioner that he or she intends to make written submissions to the Commissioner in relation to the proposed order, and
 - (c) must take into consideration any written submissions received from the police officer:
 - (i) during the period of 7 days referred to in paragraph (b), or
 - (ii) if during that period the police officer serves notice on the Commissioner as referred to in paragraph (b), during the period of 21 days following the date on which that notice is served.
- (3) As soon as practicable after making a revocation order, the Commissioner must cause written notice that the order has been made to be served on the police officer concerned. The notice must be served personally or (if personal service is impracticable) by post.
- (4) The written notice must contain the terms of the order and must indicate:
 - (a) the misconduct (including all relevant facts and circumstances) on the basis of which the order has been made, and
 - (b) whether the order results from a complaint that has been investigated, or is being investigated, under Division 5 of Part 8A, and

- (c) the Commissioner's reasons for making the order.

183C Effect of revocation order

- (1) A revocation order:
 - (a) has effect from the date on which it is made, and
 - (b) is not stayed by the lodging of an appeal against it.
- (2) The making of a revocation order does not prevent the Commissioner from taking action under section 173 or 181D.

183D Review of revocation orders

- (1) Division 1A applies to and in respect of a revocation order in the same way as it applies to and in respect of a reviewable action (within the meaning of section 173).
- (2) Except as provided by Division 1A:
 - (a) no tribunal has jurisdiction or power to review or consider any decision or order of the Commissioner under this Division, and
 - (b) no appeal lies to any tribunal in connection with any decision or order of the Commissioner under this Division.
- (3) Nothing in this Division limits or otherwise affects the jurisdiction of the Supreme Court to review administrative action.
- (4) Nothing in Division 1A limits or otherwise affects the Commissioner's power to revoke a revocation order.
- (5) In this section, *tribunal* means a court, tribunal or administrative review body, and (without limitation) includes GREAT and the Industrial Relations Commission.

183E Restriction on delegation of Commissioner's functions

Despite section 31, the Commissioner's functions under this Division may only be delegated to a member of the Police Service who is senior to the police officer in respect of whom those functions are being exercised.

[28] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Police Service Amendment (Promotions and Integrity) Act 2001

[29] Schedule 4

Insert in appropriate order and with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Police Service Amendment (Promotions and Integrity) Act 2001

Statutory declaration relating to disclosure of misconduct

The amendments made by Schedule 1 [3], [5], [18] and [22] to the *Police Service Amendment (Promotions and Integrity) Act 2001* extend to a person who is eligible for appointment to a vacant position on the commencement of the amendments.

Application of this Part to making of temporary appointments

The amendments made by Schedule 1 [11] and [12] to the *Police Service Amendment (Promotions and Integrity) Act 2001* extend to a position that is a vacant position within the meaning of section 63 (1), as amended by that Act, as at the commencement of those amendments.

Inquiries to be made before promotional appointment to vacant position

The amendments made by Schedule 1 [8] and [9] and [12]–[14] to the *Police Service Amendment (Promotions and Integrity) Act 2001* extend to a person who is eligible for appointment to a vacant position on the commencement of the amendments.

Withdrawal of selection on integrity grounds

- (1) Section 71B extends to a decision made before the commencement of that section to appoint a person to a non-executive commissioned police officer position.
- (2) Section 77B extends to a decision made before the commencement of that section to appoint a person to a position of police officer of the rank of sergeant.

Appeals to GREAT

The provisions of section 81D (c)–(f) as inserted by Schedule 1 [25] to the *Police Service Amendment (Promotions and Integrity) Act 2001* extend to an appeal made to GREAT before the commencement of those provisions and that has not commenced to be heard before that commencement.

Action following conclusion of successful appeal

Section 81E, as inserted by Schedule 1 [26] to the *Police Service Amendment (Promotions and Integrity) Act 2001*, extends to an appeal made to GREAT before the commencement of that section and that has not been finally determined by GREAT before that commencement.

Reduction in rank or grade through misconduct in promotion

Division 2A of Part 9 extends to a promotion made before the commencement of that Division.

**Schedule 2 Amendment of Police Integrity
Commission Act 1996**

(Section 4)

Section 40 Privilege as regards answers, documents etc

Insert “, an order under section 183A of that Act or any proceedings for the purposes of Division 2A of Part 9 of that Act with respect to an order under section 183A of that Act” after “that Act” in section 40 (3).

Schedule 3 Amendment of Government and Related Employees Appeal Tribunal Act 1980

(Section 5)

**[1] Section 12 Provisions relating to the offices of Senior Chairperson and
Chairperson**

Insert “, Acting Senior Chairperson” after “Senior Chairperson”.

[2] Schedule 1, heading

Insert “, Acting Senior Chairperson” after “Senior Chairperson”.

[3] Schedule 1, clause 1A

Omit the clause. Insert instead:

**1A Application of Schedule to Senior Chairperson and Acting
Senior Chairperson**

The following clauses of this Schedule apply, unless otherwise specified, to the Senior Chairperson and Acting Senior Chairperson in the same way as they apply to a Chairperson and, accordingly, references in those clauses to a Chairperson include a reference to the Senior Chairperson and Acting Senior Chairperson.

[4] Schedule 1, clauses 4–6

Omit clauses 4 and 5. Insert instead:

4 Full-time and part-time appointments

A Chairperson may be appointed on a full-time basis or a part-time basis, except for a Senior Chairperson who is not a holder of judicial office who must be appointed on a full-time basis.

5 Full-time appointee may serve on part-time basis

- (1) The Governor may, at the request of a person appointed on a full-time basis, determine that the person may work on a part-time basis for a specified period or periods.
- (2) A person appointed on a full-time basis who was not, at the time of appointment, the holder of a judicial office must devote the whole of his or her time to the duties of the office to which he or she is appointed, except during any period referred to in subclause (1).
- (3) Despite subclause (2), a person may:
 - (a) hold, and exercise the functions of, a judicial office or another statutory or other public office, or
 - (b) engage in any other employment,with the consent of the Minister.

6 Remuneration

- (1) A Chairperson (not including an Acting Senior Chairperson) is entitled to be paid:
 - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the Chairperson.
- (2) A Chairperson who is the holder of a judicial office is not, while receiving remuneration as such an officer, entitled to remuneration under this Act.

[5] Schedule 1, clause 8

Insert “(including a term or condition modified by a determination under clause 5 (1) or a term or condition of a consent granted under clause 5 (3))” after “appointment”.

[6] Schedule 1, clause 9

Insert “(not being a person who is appointed on a part-time basis or who is working on a part-time basis)” after “person” in clause 9 (b).

[7] Schedule 1, clause 9

Insert after clause 9 (c):

- (c1) if the person is unavailable for duty as a Chairperson (in accordance with the terms and conditions of his or her appointment, including a term or condition modified by a determination under clause 5 (1) or a term or condition of a consent granted under clause 5 (3)) for a period of 28 consecutive days, except on leave granted, in the case of the Senior Chairperson or Acting Senior Chairperson, by the Minister, or in the case of a Chairperson, by the Senior Chairperson,

[8] Schedule 1, clause 9A

Insert after clause 9:

9A Leave

- (1) The entitlement of a Chairperson to annual or other leave is to be as stated in the instrument of the person's appointment.
- (2) A Chairperson may be granted leave:
 - (a) in the case of the Senior Chairperson or Acting Senior Chairperson—by the Minister, and
 - (b) in the case of a Chairperson—by the Senior Chairperson.
- (3) A Chairperson holding office at the date of assent to the *Police Service Amendment (Promotions and Integrity) Act 2001* is taken to have the leave entitlements of an officer within the meaning of the *Public Sector Management Act 1988*.