



New South Wales

Police Amendment (Promotions) Bill 2020

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows—

- (a) to amend the *Police Act 1990* and the *Police Regulation 2015* to modernise the promotions process for non-executive police officers to the ranks of sergeant, inspector and superintendent by replacing the promotion lists process with a merit-based process,
- (b) to make amendments consequential on the establishment of the new process and other savings and transitional provisions.

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.

Schedule 1 Amendment of Police Act 1990 No 47

Modernising the promotions process for positions of sergeant, inspector and superintendent

The *Police Act 1990* (*the Act*) currently requires appointments by way of promotion to non-executive police officer positions of the rank of sergeant, inspector or superintendent (the *promotion rank*) to be made by selection of the highest ranked available officer from a promotion list for the promotion rank, and not by individual application and selection for individual

positions. The *Police Regulation 2015 (the Regulation)* contains additional provisions specifying eligibility requirements for placement on a promotion list.

The amendments made to the Act and the Regulation modernise the promotions process by replacing the promotion lists process with a merit-based process in line with the government sector employment framework.

Schedule 1[5] updates the heading of section 66 of the Act.

Schedule 1[7] requires the Commissioner to appoint, by way of promotion to a vacant position of a non-executive police officer, a person who has, in the Commissioner's opinion, the greatest merit as determined in accordance with the regulations.

Schedule 1[9] requires the Commissioner to appoint, by way of promotion to a vacant specialist position, a police officer who has, in the Commissioner's opinion, the greatest merit as determined in accordance with the regulations. The Commissioner may not appoint an officer who refuses to undergo or fails to satisfy a psychological assessment of the officer's suitability for the position the Commissioner has required the officer to undergo. In relation to a vacant specialist position that requires a specific qualification and where none of the applicants for the position holds the qualification, the Commissioner may appoint by way of promotion a police officer who does not hold the qualification. The appointment must be on a provisional basis. The Commissioner must permanently appoint the officer to the position if the officer obtains the qualification and has demonstrated satisfactory performance in the position within the provisional period. If the officer is not permanently appointed, the officer is to return to the rank and grade the officer would have held had the officer not been provisionally appointed. **Schedule 1[2], [4], [6] and [8]** make consequential amendments.

Schedule 1[10] updates the heading of section 66AC of the Act.

Schedule 1[11] allows the Commissioner to appoint a police officer to act in a non-executive police officer position that is vacant or where the holder of the position is suspended, sick or absent for a period of up to 12 months. **Schedule 1[2], [3] and [8]** make consequential amendments.

Schedule 1[12] requires the Commissioner, before appointing a police officer to act in a non-executive police officer position, to require the officer to provide a declaration as to misconduct. An officer who fails, refuses or is unable to provide the declaration is ineligible for appointment to the position.

Schedule 1[13] omits section 70 of the Act. **Schedule 1[1], [16] and [18]** make consequential amendments.

Schedule 1[14] provides it is the Commissioner's duty to make inquiries as to the integrity of a non-executive police officer or a person before the officer participates in a process for promotion to the promotion rank and before appointing the person by way of promotion as a non-executive police officer, respectively.

Schedule 1[15] updates a reference to a provision.

Schedule 1[17] enables regulations to be made with respect to the promotion of non-executive police officers to the promotion rank, including the requirements and processes for promotion.

Schedule 1[19] enables regulations to be made with respect to a review of the promotions process established by amendments made by the proposed Act.

Schedule 2 Amendment of Police Regulation 2015

Schedule 2[3] omits Divisions 3–7 of Part 2 of the Act and inserts proposed Division 3, which contains provisions that give effect to the new promotions process for the promotion of non-executive police officers to the promotion rank. **Schedule 2[1], [2] and [6]–[8]** make consequential amendments. Proposed Division 3—

- (a) applies to the promotion of non-executive police officers to the promotion rank (proposed clause 19), and

- (b) inserts definitions of *appointed person*, *eligible non-executive police officer*, *position-based assessment*, *pre-established standards*, *promotion rank*, *rank-based assessment* and *required time at rank* into proposed Division 3 (proposed clause 20), and
- (c) provides for a new promotions process that has the following elements—
 - (i) an eligibility criteria for participation in the process, being the completion of the required time at rank for the rank below the promotion rank, and the Commissioner being satisfied of the officer's suitability to participate in the process having made inquiries as to the officer's integrity (proposed clause 21),
 - (ii) Stage A of the promotions process, being the successful completion of the rank-based assessment for the promotion rank to the Commissioner's satisfaction (proposed clause 22),
 - (iii) Stage B of the promotions process, being the making of an application for a promotion and the undertaking of the position-based assessment for a position for the promotion rank—a decision about promotion must be based on the outcome of the assessment to determine the officer best suited to the requirements of the position where only an officer who meets the pre-established standards for the position may be appointed to the position (proposed clause 23), and
- (d) provides for the review of promotion decisions and processes, as follows—
 - (i) enables non-executive police officers to apply to the Commissioner for a review of the Commissioner's determination of the officer's completion of the rank-based assessment on the following limited grounds—irregularity in the process relating to the assessment, unreasonableness of the outcome of the assessment relating to the officer's individual capabilities and the outcome of the assessment relating to the officer's technical skills and operational knowledge being incorrect (proposed clause 24),
 - (ii) enables non-executive police officers to apply to the Commissioner for a review of the outcome of the officer's position-based assessment on the limited ground of irregularity in the process relating to the assessment, not being a merits review of the outcome (proposed clause 25),
 - (iii) requires the Commissioner to assess the grounds supporting the application for review and decide if the application discloses grounds on which the application may be made and, if so, convene a Review Panel for the purposes of determining the application and refer the application to the Panel for determination (proposed clause 26),
 - (iv) the composition of the Review Panel and the procedure for conducting reviews (proposed clauses 27 and 28),
 - (v) the Review Panel's powers in determining review applications (proposed clause 29)—
 - (A) for the review of a determination of an officer's completion of the rank-based assessment—to affirm, vary or set aside and substitute the determination, or allow the officer to reattempt the assessment, and
 - (B) for the review of an outcome of an officer's completion of the position-based assessment—to affirm the outcome or recommend the outcome be revoked and another assessment process be carried out, and
- (e) re-enacts, with consequential amendments, provisions enabling the review of decisions made on integrity grounds by a person appointed by the Minister (proposed clauses 30–32).

Schedule 2[4] updates references to job responsibilities. **Schedule 2[5]** makes a consequential amendment.

Schedule 2[9] provides for the following savings and transitional provisions—

- (a) for non-executive police officers who are on, or eligible for placement on, a promotion list that was, or would have been, prepared under the Act immediately before the

commencement of the proposed Act to be deemed eligible to apply for a promotion under the proposed Act for a position of the rank to which the promotion list relates,

- (b) for non-executive police officers provisionally appointed to vacant specialist positions from outside of a promotion list immediately before the commencement of the proposed Act to be deemed provisionally appointed to the position for a period ending 12 months after the commencement of the proposed Act.