



Legislative Council

Police Service Amendment (NSW Police) Bill Hansard - Extract

18/06/2002

Second Reading

The Hon. MICHAEL COSTA (Minister for Police) [8.07 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Police Service Amendment (NSW Police) Bill, which has been developed in consultation with NSW Police, the Police Association and other relevant interests. The bill gives legal recognition to the Police Service of New South Wales being renamed NSW Police. These changes are made by items [1] to [5] of schedule 1 and by schedules 2.3 to 2.13 to the bill. Front-line police have repeatedly expressed their dissatisfaction with the name "Police Service" and its bureaucratic connotations. That name was introduced in 1990 when the Greiner Government passed the Police Service Act 1990 to integrate the police officers of the Police Force with the civilian administration of the Police Department. It is typical of the Coalition that it made no attempt to see how the police officers of New South Wales felt about that name change, a point made by Peter Anderson, MP, when the legislation was debated.

The feeling of police officers about the name of their organisation is of critical importance. It goes directly to their sense of identity and has an impact on morale. The Carr Government has listened to what front-line police want, and the name change reflects their wishes. The name "Police Service" was introduced by Commissioner John Avery, a visionary and reformer for whom I have the greatest respect. Commissioner Avery argued that the name was necessary to encourage community-based policing, a view he expressed in his 1980 book *Police—Force or Service*, a book that everyone with an interest in policing should take the time to read. Whilst the name "Police Service" may have been relevant twelve years ago, it no longer reflects community and police expectations.

Early last month I had the pleasure of visiting Port Macquarie and having dinner and a couple of drinks with John Avery, Rob Oakeshott and John Tingle, among others. We discussed the importance of community-based policing, and John Avery agreed that the name "Police Service" has probably outlived its usefulness. The new name, "NSW Police", is consistent with the approach taken by all other Australian jurisdictions, with the exception of Queensland, which still uses the term "Police Service". Whilst NSW Police will be the organisation's formal name, the term "police force" will be restored to popular currency. The term is one of which police are justifiably proud. It has a strong history, and reflects the community's expectations and the Government's priority of highly visible front-line policing.

Schedule 1 [8] to the bill responds to recommendations made by the Police Integrity Commission [PIC] in its Operation Bangkok report to the Commissioner of Police. Operation Bangkok investigated the fundraising activities of the NSW Police Cricket Association and found that the President of the Association, a police officer, had engaged in misleading fundraising activities. This finding led to the imprisonment of the officer for misappropriating \$72,000 and giving false evidence to the PIC. The PIC also found that the association had breached provisions of the Commissioner's Instructions and Police Service Handbook relating to sponsorship and the provision of financial statements. The PIC recommended that the Commissioner of Police consider withdrawing the approval for the continued existence of any police sporting body that did not provide NSW Police with its audited financial statements or otherwise comply with NSW Police directives.

NSW Police policy provides that a non-compliant affiliated association may be disciplined by "suspending the association's privilege or right to use the words NSW Police Service or any similar derivative within the association's name or title". However, it has received legal advice that these provisions are unenforceable. There is no effective sanction for bodies that imply some association with NSW Police and engage in corrupt or other inappropriate conduct that can bring NSW Police into disrepute. They may continue to operate under a name that implies an association with police. The Police Service Act requires amendment so that NSW Police can prevent inappropriate persons or bodies from claiming, or continuing to claim, an association with police.

Schedule 1 [8] to the bill creates a new section 204A of the Police Act, which makes it an offence for a person or body to carry on any activity under an operating name that includes the word "police" without the consent of the Commissioner of Police. Bodies that already use the term in their name will not be required to seek the commissioner's consent. There are a number of exemptions to the above scheme. Section 204A (4) (a) is of critical importance. It recognises the right to freedom of speech and freedom of protest in exempting any organisation that has, among its primary objects, the object of commenting on, objecting to or protesting against the policies or practices of public authorities such as the NSW Police. The following persons and bodies are also exempted: industrial organisations; corporations; statutory bodies; persons who have the word "police" in their own name; and other bodies and classes of bodies specified by the regulations.

Schedule 2.13 [7] provides for a new regulation that excludes Police and Community Youth Clubs, Police Legacy, Police Credit Union, and the Justice and Police Museum from the scheme. The Department of Fair Trading

will contact NSW Police when an application is made for a business or association name that includes the term "police" to see whether the commissioner consents to such a name. I will be writing to the Federal Government to see whether the Australian Securities and Investment Commission is prepared to introduce similar arrangements in respect of corporations. Section 204B enables the commissioner to consent to persons or bodies using the term "police" in their operating name, and to attach conditions to such a consent. It also enables the commissioner to revoke a consent to prevent a person or body from continuing to use the term "police" in an operating name. The commissioner will do this in circumstances where the person or body engages in improper conduct.

Section 204B requires the commissioner to give written notice that a consent is to be revoked and to allow the relevant person or body 14 days to make submissions on the proposed revocation. If the commissioner then determines to revoke the consent, the bill provides the person or body with a reasonable period in which to cease operating under the restricted name. The commissioner will advise the Director-General of the Department of Fair Trading when a consent is revoked for a body operating under a business name or incorporated association name. Schedule 2.2 amends the Business Names Act 1962 to prevent a person from using a business name that is prohibited under another Act or law.

Schedule 2.1 amends the Associations Incorporation Act 1984 to enable the Director-General of the Department of Fair Trading to direct an association to change its name where the commissioner revokes a consent, and to enable the cancellation of the association's incorporation where it does not change its name. The maximum penalty for unlawfully conducting activities under an operating name that includes the term "police" is 100 penalty units, consistent with the penalty in the related Queensland legislation. A penalty of imprisonment would be inappropriate, given the regulatory nature of the offence. Items [6], [7] and [9] of schedule 1 increase from 10 penalty units to 100 penalty units the penalties for related offences under the Act, being offences of impersonating a police officer, unauthorised use of police uniforms and police insignia, and the use of police designations by non-police in a business or employment context.

Proposed section 216AA is a key provision of the bill. It extends special risk benefit arrangements to students of policing and is part of a broader benefits package to increase the level of injury and death coverage for policing students. Students of policing are not employees of NSW Police until they are appointed as probationary constables. This means that they and their families are not entitled to statutory employment-related compensation such as workers compensation or special risk benefits in the case of injury or death.

However, students of policing are exposed to risks of a kind that other tertiary students are not exposed to. The Diploma of Policing Practice, delivered through Charles Sturt University, requires students to undergo firearms and self-defence training, as well as having driver safety and physical training elements. Students are also attached to a police station for 80 hours of practical training. Whilst students undergoing this practical training do so as observers, and do not themselves exercise any police powers, their attendance whilst police perform operational duties may expose them to risks not experienced by other categories of student.

The tragic death of student of policing Robert Brotherson earlier this year during a police pursuit demonstrates that the Government can do more, and must do more, to better care for students of policing and their families. They willingly embrace risks so they can embark on a career of serving the people of New South Wales and this commitment needs to be acknowledged. NSW Police, the Police Association and Charles Sturt University have been working on increasing the university's general student insurance coverage from a maximum of \$80,000 in the case of death to a level for students of policing that the parties agree is broadly comparable to workers compensation benefits. The parties intend to have this package ratified by the Industrial Relations Commission on 7 July as part of a settlement in a matter concerning the entitlements of students of policing.

The second element of the package is the provision of a special risk benefit for students of policing. This can only be achieved through legislation. Section 216AA is modelled on section 216 of the Police Service Act, which provides special risk benefits for police officers. It enables the Commissioner of Police to pay a benefit where a student of policing dies or is totally and permanently incapacitated for work, as assessed by the Government Medical Officer, as a result of being exposed to risks that other tertiary students would not generally be exposed to.

The benefit is payable to the student in the case of the student being totally and permanently incapacitated for work. The spouse or personal representative of the student is entitled to the benefit in the case of the student's death. Section 216 links special risk benefits to a police officer's salary. Student police obviously do not receive a salary, so the benefit is indexed at 80 per cent of the benefit payable to a probationary constable of the same age and gender as the student. The average benefit payable under these arrangements would be approximately \$100,000. This payment is made in addition to other insurance or legal entitlements of students of policing.

The bill also amends section 216A of the Act to enable students of policing, their spouses or personal representatives to apply to the Compensation Court if the Commissioner of Police does not make a payment under section 216AA. The District Court will hear such applications upon the commencement of schedule 1.7 of the Compensation Court Repeal Act 2002. A special benefits package for students of policing is appropriate, given that the special risk of policing activity is already recognised in legislation and that the nexus between tertiary policing education and police employment is closer than is the case with other educational arrangements as tertiary policing qualifications are the gateway for employment with a single employer, NSW Police.

Whilst the State of New South Wales might not be legally liable for assisting the family of Robert Brotherson, the Government has recognised that it has a moral responsibility in this matter. That is why a special ex gratia payment has been made whilst other compensation-related matters are being finalised. For the moment the ex gratia payment is equivalent to the special risk benefit arrangements in this bill. I commend the actions of the Police

Association, which, through Police Legacy, has given the same support to Melissa Brotherson and her two young sons, Blake and Ewen, as it would to the family of a deceased police officer.

Schedule 1 [14] to the bill enables regulations to be made to set out the educational or other qualifications or experience required for appointment to a particular rank, grade or position within NSW Police. The making of such regulations will be confined to police officer positions. The New South Wales Court of Appeal held in the 1999 case of *Meehan and Ors v Commissioner of Police* that the Commissioner of Police may determine eligibility criteria for appointment to particular police positions, including rank, academic qualifications, length of service, particular language skills, completion of assessment centre processes, et cetera. However, the Crown Solicitor has advised that the commissioner's power extends only to individual positions, not classes of positions, such as those within a rank of grade.

This may leave the assessment centre process recommended by the Wood royal commission open to further legal challenge, as it is applied to ranks rather than individual positions. It also means that the commissioner cannot introduce time-at-rank requirements for police promotions between ranks, a requirement that has been called for by NSW Police, the Police Association and 72 per cent of officers surveyed in the 2000 Police Service Survey Report on the Selection/Promotion Process. Assessment centre processes and time-at-rank requirements may only be free from legal challenge if the commissioner considers their application to each and every individual police position. This would result in the police promotions process being further bogged down in red tape.

I intend to introduce regulations to require police officers to have served at least 12 months at a certain rank, including time acting at rank, before they are eligible for promotion to a higher rank. Both NSW Police and the Police Association have expressed concern that the current system allows officers to be promoted to positions with significant supervisory and management responsibilities without necessarily having demonstrated experience in meeting supervisory and management challenges at lower ranks. It is considered that demonstrated experience in meeting the challenges associated with positions of a certain rank is a critical factor to be considered in the merit-based promotion process.

Progression without minimum experience at rank can also negatively impact on command staff turnover. Some officers who receive a promotion will immediately focus their energies on a further promotion rather than consolidating their position and gaining necessary experience. Officers who receive a further promotion leave a vacancy that then must be refilled. The regulations will recognise that senior sergeants from western New South Wales who are duty officers have relevant management experience in applying for superintendent positions. The regulations will create a more stable promotions system that recognises proven experience at rank without unreasonably restricting the promotional opportunities of the most capable officers. I commend the bill to the House.