FIRST PRINT

# POLICE REGULATION (APPEALS) AMENDMENT BILL 1987

NEW SOUTH WALES

## EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

This Bill is cognate with the Police Regulation (Merit Appointments) Amendment Bill 1987.

The object of this Bill is to amend the Police Regulation (Appeals) Act 1923 as a consequence of the proposed enactment of the Police Regulation (Merit Appointments) Amendment Act 1987, which will introduce merit-based appointments in the police force for sergeants and senior sergeants.

The proposed amendments will enable a member of the police force who is eligible for and applies for promotion to a vacant position for a sergeant or senior sergeant to appeal to the Government and Related Employees Appeal Tribunal on the ground that the merit of the appellant is greater than that of the person whom the Commissioner of Police has decided to appoint to the position.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the amendments relating to appeals to the Government and Related Employees Appeal Tribunal against promotions to sergeant will commence on 1 April 1989. The rest of the proposed Act, including the amendments relating to appeals against promotions to senior sergeant, will commence on 1 January 1988.

Clause 3 is a formal provision giving effect to the Schedules of amendments to the Principal Act.

### SCHEDULE 1—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SENIOR SERGEANT

Schedule 1 (1) amends the long title of the Principal Act so as to remove an obsolete reference to the former Police Appeal Board.

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Schedule 1 (2) amends section 2 (Definitions) of the Principal Act so as to omit definitions which will be made redundant by the proposed Police Regulation (Merit Appointments) Amendment Act 1987.

Schedule 1 (3) amends section 2A (Membership etc. of the Tribunal) of the Principal Act so as to provide that the Commissioner of Police is to be regarded as the employer for the purpose of constituting the Tribunal to hear an appeal under proposed section 5AA (Appeals to Tribunal against promotions to senior sergeant).

Schedule 1 (4) amends section 3 (Appeals to Tribunal against promotions of certain constables of police) of the Principal Act so as to make it clear that the section deals only with appeals against promotions of constables to higher grades within that rank.

Schedule 1 (5) amends section 4 (Appeals to Tribunal against promotions to sergeant) of the Principal Act by omitting the reference to section 6B of the Police Regulation Act 1899 so as to limit the application of that section to promotions to vacant positions for sergeants who are not senior sergeants.

Schedule 1 (6) inserts proposed section 5AA (Appeals to Tribunal against promotions to senior sergeant) into the Principal Act. The new section will provide for appeals to the Tribunal against decisions of the Commissioner regarding appointments to vacant positions for senior sergeants. A right of appeal will lie to the Tribunal only where appointment to the vacant position in question would be a promotion for the appellant. An appeal will be able to be brought only on the ground that the merit of the appellant is greater than that of the proposed appointee.

The new section will apply (with certain specified modifications) the provisions of the Government and Related Employees Appeal Tribunal Act 1980. However, as with present appeals under section 5A (Appeal against decision to recommend appointment of inspector) of the Principal Act, all appeals to the Tribunal under the new section will be informal (there is provision in the 1980 Act for promotion appeals to be formal in certain circumstances).

## SCHEDULE 2—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SERGEANT

Schedule 2 (1) amends section 2A (Membership etc. of the Tribunal) of the Principal Act as a consequence of the amendment to be made to proposed section 5AA referred to below.

Schedule 2 (2) repeals section 4 (Appeals to Tribunal against promotions to sergeant) of the Principal Act as a consequence of the amendment to be made to proposed section 5AA referred to below.

Schedule 2 (3) amends section 5 (Procedure for the hearing and determination of appeals under s. 3) of the Principal Act by omitting references to the repealed section 4.

Schedule 2 (4) extends the operation of proposed section 5AA (Appeals to Tribunal against promotions to senior sergeant or sergeant) of the Principal Act so that it will provide not only for appeals against promotions to vacant positions for senior sergeants, but also for appeals against promotions to vacant positions for other sergeants.

# POLICE REGULATION (APPEALS) AMENDMENT BILL 1987

NEW SOUTH WALES

## TABLE OF PROVISIONS



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71020-23398[803] 493—

# POLICE REGULATION (APPEALS) AMENDMENT BILL 1987

NEW SOUTH WALES

No. , 1987

## A BILL FOR

An Act to amend the Police Regulation (Appeals) Act 1923 with respect to appeals to the Government and Related Employees Appeal Tribunal against promotions in the police force to senior sergeant and sergeant.

**The Legislature of New South Wales enacts:**

**Short title**

**1.** This Act may be cited as the Police Regulation (Appeals) Amendment Act 1987.

5 **Commencement**

**2. (1)** Except as provided by subsection (2), this Act shall commence on 1 January 1988.

**(2)** Schedule 2, and section 3 in its application to that Schedule, shall commence on 1 April 1989.

10 **Amendment of Act No. 33, 1923**

**3.** The Police Regulation (Appeals) Act 1923 is amended as set out in Schedules 1 and 2.

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## SCHEDULE 1—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SENIOR SERGEANT

15 (Sec. 3)

(1) Long title—

Omit "to constitute a Police Appeal Board and to make provision for the reference to such board of appeals", insert instead "to provide for appeals to the Government and Related Employees
20 Appeal Tribunal".

(2) Section 2 (**Definitions**)—

Section 2, definitions of "Sergeant first class", "Sergeant third class"—

Omit the definitions.

25 (3) Section 2A (**Membership etc. of the Tribunal**)—

Section 2A (a)—

Omit "or 4 (1)", insert instead ", 4 (1) or 5AA (1)".

(4) Section 3 (**Appeals to Tribunal against promotions of certain constables of police**)—

30 (a) Section 3 (1)—

Omit the subsection, insert instead:

(1) Where—

(a) the Commissioner decides to promote a member of the police force of the rank of constable to a higher grade in
35 that rank; and

SCHEDULE 1—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SENIOR SERGEANT—*continued*

(b) the member is not the member of the police force who, according to the rules governing promotion in the police force, is next in seniority for promotion,

any other member of the police force of the rank of constable who, immediately before that decision, was—

(c) of a grade below that higher grade but above the grade of the member; or

(d) of the same grade as that member but senior to him or her in that grade,

may, if (according to the rules governing promotion in the police force) the member is qualified for promotion to that higher grade, appeal to the Tribunal against that decision.

(b) Section 3 (6), (8)—

Omit "rank" wherever occurring, insert instead "grade".

(5) Section 4 (**Appeals to Tribunal against promotions to sergeant**)—

Section 4 (1)—

Omit "6B or".

(6) Section 5AA—

After section 5, insert:

**Appeals to Tribunal against promotions to senior sergeant**

5AA. (1) Where, under the Police Regulation Act 1899, the Commissioner decides to appoint a member of the police force who is a senior constable or a sergeant (but is not a senior sergeant) to a vacant position in the rank of sergeant, being a position for a sergeant of the grade of senior sergeant, any other member of the police force who—

(a) was an applicant for appointment to the vacant position; and

(b) is a senior constable or a sergeant (but is not a senior sergeant),

may appeal to the Tribunal against the decision of the Commissioner.

(2) The only ground upon which an appeal may be made under this section is that the merit of the appellant, within the meaning of section 6B of the Police Regulation Act 1899, is greater than that of the member of the police force to whom the decision appealed against relates.

(3) Subject to subsection (4), the provisions of—

SCHEDULE 1—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SENIOR SERGEANT—*continued*

(a) Division 3 of Part III of the Government and Related Employees Appeal Tribunal Act 1980, section 30 (1) (a) and (2) (a) excepted;

(b) Part IV of that Act, sections 35, 36 and 38 excepted; and

(c) Parts V and VI of that Act,

apply to and in respect of an appeal under this section in the same way as they apply to and in respect of an appeal under section 20 of that Act.

(4) For the purposes of subsection (3), the provisions of the Government and Related Employees Appeal Tribunal Act 1980 applied by that subsection shall be construed as if—

(a) references to an employee were references to a member of the police force;

(b) references to an employer were references to the Commissioner;

(c) the reference in section 29 of that Act to section 19 (1) were a reference to section 6B (1) (e) of the Police Regulation Act 1899;

(d) section 34 of that Act had been amended by omitting the words "may be formal or" and by inserting instead the words "shall be"; and

(e) section 48 (3) of that Act had been amended by omitting the words "and shall be given effect to by the employer against whose decision the appeal was brought".

## SCHEDULE 2—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SERGEANT

(Sec. 3)

(1) Section 2A (**Membership etc. of the Tribunal**)—

Section 2A (a)—

After "5AA (1)", insert "or (1A)".

(2) Section 4 (**Appeals to Tribunal against promotions to sergeant**)—

Omit the section.

(3) Section 5 (**Procedure for the hearing and determination of appeals under s. 3**)—

(a) Section 5 (1)—

Omit "or 4 (1)".

SCHEDULE 2—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SERGEANT—*continued*

(b) Section 5 (2)—

Omit ", and for the purpose of that application a reference in that Division to a decision shall be construed so as to include a reference to the excluding of the name of a person from, or the placing of the name of a person in, a priority list as referred to in section 4 (1)".

(4) Section 5AA **(Appeals to Tribunal against promotions to senior sergeant or sergeant)—**

(a) Section 5AA (1A)—

After section 5AA (1), insert:

(1A) Where, under the Police Regulation Act 1899, the Commissioner decides to appoint a member of the police force who is a senior constable to a vacant position in the rank of sergeant, not being a position for a sergeant of the grade of senior sergeant, any other member of the police force who—

(a) was an applicant for appointment to the vacant position; and

(b) is a senior constable,

may appeal to the Tribunal against the decision of the Commissioner.

(b) Section 5AA (4) (c)—

After "section 6B (1) (e)", insert "or 6C (1) (e), as the case may require,".

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1987

# POLICE REGULATION (APPEALS) AMENDMENT ACT 1987 No. 292

NEW SOUTH WALES

## TABLE OF PROVISIONS



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# POLICE REGULATION (APPEALS) AMENDMENT ACT 1987
No. 292

NEW SOUTH WALES


## Act No. 292, 1987

An Act to amend the Police Regulation (Appeals) Act 1923 with respect to appeals to the Government and Related Employees Appeal Tribunal against promotions in the police force to senior sergeant and sergeant. [Assented to 16 December 1987]

**The Legislature of New South Wales enacts:**

**Short title**

**1.** This Act may be cited as the Police Regulation (Appeals) Amendment Act 1987.

**Commencement**

**2. (1)** Except as provided by subsection (2), this Act shall commence on 1 January 1988.

**(2)** Schedule 2, and section 3 in its application to that Schedule, shall commence on 1 April 1989.

**Amendment of Act No. 33, 1923**

**3.** The Police Regulation (Appeals) Act 1923 is amended as set out in Schedules 1 and 2.

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## SCHEDULE 1—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SENIOR SERGEANT

(Sec. 3)

(1) Long title—

Omit "to constitute a Police Appeal Board and to make provision for the reference to such board of appeals", insert instead "to provide for appeals to the Government and Related Employees Appeal Tribunal".

(2) Section 2 (**Definitions**)—

Section 2, definitions of "Sergeant first class", "Sergeant third class"—

Omit the definitions.

(3) Section 2A (**Membership etc. of the Tribunal**)—

Section 2A (a)—

Omit "or 4 (1)", insert instead ", 4 (1) or 5AA (1)".

(4) Section 3 (**Appeals to Tribunal against promotions of certain constables of police**)—

(a) Section 3 (1)—

Omit the subsection, insert instead:

(1) Where—

(a) the Commissioner decides to promote a member of the police force of the rank of constable to a higher grade in that rank; and

SCHEDULE 1—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SENIOR SERGEANT—*continued*

(b) the member is not the member of the police force who, according to the rules governing promotion in the police force, is next in seniority for promotion,

any other member of the police force of the rank of constable who, immediately before that decision, was—

(c) of a grade below that higher grade but above the grade of the member; or

(d) of the same grade as that member but senior to him or her in that grade,

may, if (according to the rules governing promotion in the police force) the member is qualified for promotion to that higher grade, appeal to the Tribunal against that decision.

(b) Section 3 (6), (8)—

Omit "rank" wherever occurring, insert instead "grade".

(5) Section 4 (**Appeals to Tribunal against promotions to sergeant**)—

Section 4 (1)—

Omit "6B or".

(6) Section 5AA—

After section 5, insert:

**Appeals to Tribunal against promotions to senior sergeant**

5AA. (1) Where, under the Police Regulation Act 1899, the Commissioner decides to appoint a member of the police force who is a senior constable or a sergeant (but is not a senior sergeant) to a vacant position in the rank of sergeant, being a position for a sergeant of the grade of senior sergeant, any other member of the police force who—

(a) was an applicant for appointment to the vacant position; and

(b) is a senior constable or a sergeant (but is not a senior sergeant),

may appeal to the Tribunal against the decision of the Commissioner.

(2) The only ground upon which an appeal may be made under this section is that the merit of the appellant, within the meaning of section 6B of the Police Regulation Act 1899, is greater than that of the member of the police force to whom the decision appealed against relates.

(3) Subject to subsection (4), the provisions of—

SCHEDULE 1—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SENIOR SERGEANT—*continued*

(a) Division 3 of Part III of the Government and Related Employees Appeal Tribunal Act 1980, section 30 (1) (a) and (2) (a) excepted;

(b) Part IV of that Act, sections 35, 36 and 38 excepted; and

(c) Parts V and VI of that Act,

apply to and in respect of an appeal under this section in the same way as they apply to and in respect of an appeal under section 20 of that Act.

(4) For the purposes of subsection (3), the provisions of the Government and Related Employees Appeal Tribunal Act 1980 applied by that subsection shall be construed as if—

(a) references to an employee were references to a member of the police force;

(b) references to an employer were references to the Commissioner;

(c) the reference in section 29 of that Act to section 19 (1) were a reference to section 6B (1) (e) of the Police Regulation Act 1899;

(d) section 34 of that Act had been amended by omitting the words "may be formal or" and by inserting instead the words "shall be"; and

(e) section 48 (3) of that Act had been amended by omitting the words "and shall be given effect to by the employer against whose decision the appeal was brought".

## SCHEDULE 2—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SERGEANT

(Sec. 3)

(1) Section 2A (**Membership etc. of the Tribunal**)—

Section 2A (a)—

After "5AA (1)", insert "or (1A)".

(2) Section 4 (**Appeals to Tribunal against promotions to sergeant**)—

Omit the section.

(3) Section 5 (**Procedure for the hearing and determination of appeals under s. 3**)—

(a) Section 5 (1)—

Omit "or 4 (1)".

SCHEDULE 2—AMENDMENTS RELATING TO APPEALS AGAINST PROMOTIONS TO SERGEANT—*continued*

(b) Section 5 (2)—

Omit ", and for the purpose of that application a reference in that Division to a decision shall be construed so as to include a reference to the excluding of the name of a person from, or the placing of the name of a person in, a priority list as referred to in section 4 (1)".

(4) Section 5AA **(Appeals to Tribunal against promotions to senior sergeant or sergeant)**—

(a) Section 5AA (1A)—

After section 5AA (1), insert:

(1A) Where, under the Police Regulation Act 1899, the Commissioner decides to appoint a member of the police force who is a senior constable to a vacant position in the rank of sergeant, not being a position for a sergeant of the grade of senior sergeant, any other member of the police force who—

(a) was an applicant for appointment to the vacant position; and

(b) is a senior constable,

may appeal to the Tribunal against the decision of the Commissioner.

(b) Section 5AA (4) (c)—

After "section 6B (1) (e)", insert "or 6C (1) (e), as the case may require,".

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1988