



New South Wales

# Police Amendment (Appointments) Act 2002 No 105

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New South Wales

## **Police Amendment (Appointments) Act 2002 No 105**

Act No 105, 2002

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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. [Assented to 29 November 2002]

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

**1 Name of Act**

This Act is the *Police Amendment (Appointments) Act 2002*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Police Act 1990 No 47**

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

## **Schedule 1 Amendments**

(Section 3)

### **[1] Section 24 Appointment of Commissioner**

Omit section 24 (8) and (9). Insert instead:

- (8) The Minister must, before recommending the appointment of a person to the office of Commissioner:
  - (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
  - (b) have regard to the statutory declaration so provided.
- (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.

### **[2] Section 38A Disclosure of misconduct**

Omit the section.

### **[3] Section 39 Appointment to be made on merit**

Insert after section 39 (5):

- (5A) The Commissioner must, before recommending the appointment of, or appointing, a person to a vacant executive position:
  - (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
  - (b) have regard to the statutory declaration so provided.
- (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.

(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.

(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).

**[4] Section 39A Eligibility lists**

Insert “, subject to section 39 (5A) and (5B),” after “to the position and” in section 39A (2).

**[5] Section 66 Temporary appointments to non-executive positions**

Insert after section 66 (1A):

(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.

(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.

(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.

**[6] Section 66 (5), definition of “preferred applicant”**

Insert “, subject to subsections (1AA) and (1AB),” after “a person who”.

**[7] Section 67 Transfer of non-executive officers**

Insert after section 67 (1):

- (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.
- (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.
- (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.
- (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.

**[8] Section 67A Eligibility lists**

Insert “, subject to sections 71 (2A) and (2B) and 77 (2A) and (2B),” after “to the position and” in section 67A (3).

**[9] Section 70 Disclosure of misconduct**

Omit the section.

**[10] Section 71 Appointment to be made on merit**

Insert after section 71 (2):

- (2A) The Commissioner must, before appointing a person to a vacant position of a non-executive commissioned police officer:
  - (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
  - (b) have regard to the statutory declaration so provided.
- (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.
- (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.

**[11] Section 76A Disclosure of misconduct**

Omit the section.

**[12] Section 77 Appointment of sergeants to be made on merit**

Insert after section 77 (2):

- (2A) The Commissioner must, before appointing a person to a vacant position of a police officer of the rank of sergeant:
  - (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
  - (b) have regard to the statutory declaration so provided.

(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.

(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.

**[13] Section 81B Appeals to GREAT against promotions to sergeant or to higher grade of sergeant**

Insert “, subject to section 77 (2A) and (2B),” after “the vacant position and” wherever occurring in section 81B (1) and (2).

**[14] Section 81C Appeal to GREAT against promotion to inspector**

Insert “, subject to section 71 (2A) and (2B),” after “the vacant position and” in section 81C (1).

**[15] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Police Amendment (Appointments) Act 2002*

**[16] Schedule 4**

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of  
Police Amendment (Appointments) Act 2002**

**Statutory declaration relating to disclosure of misconduct**

An amendment made by Schedule 1 [1], [3], [5], [10] or [12] to the *Police Amendment (Appointments) Act 2002* extends to the appointment of a person to an office or position that was advertised but not filled before the commencement of the amendment.

**Transfer of superintendents between positions within that rank**

The amendment made by Schedule 1 [7] to the *Police Amendment (Appointments) Act 2002* does not apply to or in respect of a transfer to a position that was advertised but not filled before the commencement of the amendment.

[Second reading speech made in—  
Legislative Assembly on 14 November 2002  
Legislative Council on 21 November 2002]