

POLICE AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Police Act 1958. The principal purpose of the Bill is to bring the wage-fixing procedures for the Police into line with those prescribed for the Public Sector generally by the State Services Conditions of Employment Act 1977.

Clause 1 relates to the Short Title.

Clause 2 is an interpretative provision.

Clause 3 makes it clear that a person who has been appointed a temporary member of the Police may subsequently be appointed a permanent member.

Clause 4 relates to successful appeals against recommendations for appointments. At present, section 14 of the principal Act provides that in such a case the successful appellant is to be appointed to the "position" to which the appeal relates, and that the recommendation to which the appeal relates is deemed to be cancelled. Each of these aspects has given rise to difficulties. First, the job in question may be of a technical nature which the appellant is incapable of undertaking, for example, in telecommunications. Secondly, the person originally appointed may be worthy of the promotion, although not as worthy as the successful appellant.

The amendment provides that the appellant will be appointed to the rank to which the appeal relates, rather than to the particular position. It also provides that the Minister or Commissioner may cancel the original recommendation for promotion.

Clause 5 relates to suspension from duty where a member faces disciplinary or criminal charges. Section 32 empowers the Commissioner to suspend the member until the matter is disposed of. The amendment allows the Commissioner to modify his decision at any time during the period of suspension, or to shorten that period.

Clause 6 increases the maximum penalties that may be imposed on members found guilty of breaches of duty.

Clause 7 provides for the publication of the *Police Gazette* and other documents, and extends to all such other documents the same protection from unauthorised disclosure as section 61 of the principal Act presently confers on the *Police Gazette*.

Cluses 8 to 16 follow the appropriate provisions of the State Services Conditions of Employment Act 1977. The principal features are:

- (a) *Clause 8* provides that, in general, a wage determination is to have force for at least 12 months (section 6 of the 1977 Act refers):
- (b) *Clause 9* requires the Commissioner to consult with the Higher Salaries Commission in appropriate cases (section 21 of the 1977 Act):
- (c) *Clause 10* reduces from 10 months to 6 months the period before which an application may be made for the review of any determination (section 23):
- (d) *Cluses 11 and 12* are consequential upon the change from half-yearly to yearly general reviews of salary scales (section 31):
- (e) *Clause 13* substitutes a reference to section 20 of the 1977 Act for the corresponding provision in the previous legislation:
- (f) *Clause 14* reconstitutes the Police Staff Tribunal, consequent upon the replacement of the State Services Tribunal by the Public Sector Tribunal (section 37):
- (g) *Clause 15* makes provision for the appointment of assessors to assist the Police Staff Tribunal (section 41):
- (h) *Clause 16* provides for the Police Staff Tribunal to recommend to the Higher Salaries Commission (instead of the Minister) that any Order in Council fixing the maximum salary that may be prescribed by the Commissioner in respect of any members of the Police be amended so as to increase that maximum.



Hon. Mr McCready

POLICE AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Police Act 1958

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, 5 as follows:

1. Short Title—This Act may be cited as the Police Amendment Act 1978, and shall be read together with and deemed part of the Police Act 1958* (hereinafter referred to as the principal Act).

*Reprinted 1969, Vol. 4, p. 2747

Amendments: 1972, No. 32; 1973, No. 103; 1976, No. 154

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “Commissioner”, the following definitions:

“‘Date of settlement’, in relation to any claim made by a service organisation, means— 5

“(a) Where the service organisation accepts, in full settlement of the claim, an offer made by the Commissioner, the date on which the service organisation informs the Commissioner in writing of such acceptance: 10

“(b) Where no offer made by the Commissioner in full settlement of the claim is acceptable to the service organisation, or where the Commissioner makes no such offer, the date on which the service organisation informs the Commissioner in writing that it wishes to pursue before the Tribunal the parts of its claim that are in dispute: 15

“‘Higher Salaries Commission’ means the Higher Salaries Commission established by section 4 (1) of the Higher Salaries Commission Act 1977:” 20

(2) The said section 2 is hereby further amended by inserting, after the definition of the term “The Police”, the following definition:

“‘Police Gazette’ means the *New Zealand Police Gazette* published by the Commissioner in accordance with section 61 of this Act; and includes any supplement to the *Police Gazette*:” 25

(3) The said section 2 is hereby further amended by inserting, after the definition of the term “Promotion Board”, the following definition: 30

“‘Public Sector Tribunal’ means the Public Sector Tribunal established by section 37 of the State Services Conditions of Employment Act 1977:”

3. Temporary members—Section 12 of the principal Act is hereby amended by adding the following subsection: 35

“(4) Nothing in this Act shall prevent the appointment of any person who is a temporary member of the Police to be a commissioned officer or a non-commissioned officer or a constable in accordance with section 7 or section 8 or section 10 of this Act.” 40

4. Appeal against recommendations for appointments—

Section 14 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsections:

5 “(3) The Board shall hear and determine the appeal, and, if it allows an appeal, the appellant shall be appointed to the rank to which the appeal relates.

10 “(4) Where the Board allows an appeal under subsection (3) of this section, the Minister or the Commissioner, as the case may require, may in his discretion cancel the recommendation to which the appeal relates.”

5. Suspension pending hearing of charge—Section 32 of the principal Act is hereby amended by adding to subsection (1) (as substituted by section 4 of the Police Amendment Act 1973) the following proviso:

15 “Provided that the Commissioner may, at any time while the suspension remains in force, vary or rescind his decision under this section, or determine that the suspension shall cease on a date earlier than the date on which it would otherwise cease.”

20 **6. Increase in penalties for breaches of duty—**Section 33 of the principal Act (as amended by section 7 of the Decimal Currency Act 1964) is hereby amended—

- 25 (a) By omitting from subsection (1) (b) (iv) the expression “\$100”, and substituting the expression “\$300”;
 (b) By omitting from subsection (2) (b) (iv) the expression “\$50”, and substituting the expression “\$150”;
 (c) By omitting from subsection (3) (b) (iii) the expression “\$40”, and substituting the expression “\$120”.

30 **7. Two new sections (relating to *Police Gazette* and other documents) substituted—**The principal Act is hereby amended by repealing section 61, and substituting the following sections:

35 “61. **Publication of *Police Gazette***—The Commissioner shall cause to be published, at such intervals as he thinks fit, a gazette, to be known as the *Police Gazette*, in which shall be published such notices and other matters as are required by this Act, or by regulations made under this Act, to be published therein, and such other matters (if any) as the Commissioner from time to time thinks expedient.”

40 “61A. **Confidentiality of *Police Gazette* and other documents protected—**(1) The *Police Gazette*, and every Police Notice or Police Circular or other document containing

information relating to crime, criminal offenders, or suspected offenders published by any member of the Police and intended by him for circulation only to members of the Police, and every copy of any such document, are hereby declared to be confidential Police documents. 5

“(2) Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$500 who, without lawful authority or reasonable excuse (the proof whereof shall be on the person charged), has in his possession any document declared by subsection (1) of this section to be a confidential Police document. 10

“(3) Subject to section 30 (4) of this Act, no document declared by subsection (1) of this section to be a confidential Police document shall, without the written permission of the Commissioner, be produced, nor shall evidence of its contents be given, in any proceedings in any Court. 15

“(4) No civil or criminal proceedings shall be taken in respect of anything contained in any document declared by subsection (1) of this section to be a confidential Police document.” 20

8. Determinations as to salary, allowances, and expenses—

(1) The principal Act is hereby amended by repealing section 66A, and substituting the following section:

“66A. (1) Subject to the provisions of this Part of this Act, the Commissioner may from time to time, on his own motion or following an application by a service organisation, issue determinations prescribing— 25

“(a) Salaries or scales of salaries and overtime rates for ranks of police and for subdivisions of those ranks as those subdivisions are prescribed by determination or Tribunal order: 30

“(b) The terms and conditions on which relieving, travelling, lodging, meal, and other allowances and expenses, including clothing allowances and allowances payable in respect of work warranting payment, may be granted: 35

“(c) The rates of any such allowances and expenses.

“(2) No determination under this section shall be issued without the prior consent of the Minister of State Services. 40

“(3) Every determination under this section shall be published in the *Police Gazette*.

“(4) Except as otherwise provided in this Act, the remuneration and conditions of employment of members of the Police shall be prescribed by the Commissioner by determination under this Part of this Act, and not otherwise:

5 “Provided that any determination of the State Services Commission issued under the State Services Conditions of Employment Act 1977 may, with the consent of the Chairman of the Commission, be applied by the Commissioner to any members of the Police in prescribing the remuneration and
10 conditions of employment of those members.

“(5) Every determination issued by the Commissioner under this Part of this Act, and every provision of such a determination, shall come into force on the date on which the determination is issued, unless some other date is specified
15 in the determination as the date on which the determination or provision comes into force.

“(6) Subject to the provisions of subsections (7) to (9) of this section, the Commissioner may, in any determination issued by him under this Part of this Act, specify the date on
20 which the determination or any provision of it is to come into force, whether that date is before, or after the date on which the determination is issued:

“Provided that—

25 “(a) No determination resulting from a claim made by a service organisation shall take effect on a date earlier than 12 months before the date of settlement; and

“(b) No other determination shall take effect on a date
30 earlier than 12 months before the day on which it is issued.

“(7) Subject to subsection (8) of this section, no determination issued under this Part of this Act shall be expressed to continue in force for less than 12 months.

35 “(8) A determination issued under this Part of this Act may be expressed to continue in force for less than 12 months if the Tribunal, before the determination is issued,—

“(a) Is satisfied that there are particular and special reasons that justify a lesser period; and

40 “(b) Consents to the determination being expressed to continue in force for that lesser period.

“(9) Except as provided in section 66D of this Act, no determination issued under this Act (other than an amending determination) shall be revoked or amended before the
45 expiration of 12 months from the earliest date on which any of the provisions of that determination take effect.

“(10) Notwithstanding the provisions of subsection (9) of this section, where a determination issued under this Part of this Act provides for the payment to members of the Police of amounts by way of—

“(a) Expenses; or

“(b) Refunds; or

“(c) Allowances to meet expenditure incurred by those members,—

any such amounts or the rates at which any such amounts are payable may be adjusted from time to time in accordance with the criteria determined for that purpose; but the criteria themselves shall not be adjusted more often than once in any 12 month period.”

(2) The following enactments are hereby consequentially repealed:

(a) Section 66H of the principal Act (as inserted by section 9 of the Police Amendment Act 1972):

(b) Sections 7 and 9 of the Police Amendment Act 1972.

(3) Section 84 of the principal Act (as added by section 3 of the Police Amendment Act 1965) is hereby consequentially amended by omitting from subsection (2) the word “Every”, and substituting the words “Subject to subsections (7) to (10) of section 66A of this Act, every”.

9. Steps to be taken before issue of a determination—

Section 66B of the principal Act (as inserted by section 2 (2) of the Police Amendment Act 1969) is hereby amended by adding the following subsection:

“(6) Where the Commissioner considers that the possible outcome of any negotiations under this Act on pay scales will or may tend to lead to unreasonable disparities or inappropriate relativities with salaries that are within the jurisdiction of the Higher Salaries Commission, he shall, before making a final decision in those negotiations, consult with that Commission and have regard to any opinions expressed by that Commission and to any relevant salaries determined by that Commission.”

10. Application for review of remuneration or conditions of employment—Section 66c of the principal Act (as inserted by section 2 (2) of the Police Amendment Act 1969) is hereby amended—

(a) By omitting from subsection (1) the expression “10 months”, and substituting the expression “6 months”:

(b) By omitting from that subsection the words “comes into force”, and substituting the words “takes effect”.

5 **11. Amending determinations**—(1) Section 66D of the principal Act (as inserted by section 2 (2) of the Police Amendment Act 1969) is hereby amended by repealing paragraphs (d) and (e) of subsection (1), and substituting the following paragraph:

10 “(d) To amend any determination or Tribunal order for the purpose of prescribing adjustments of salary rates resulting from a general review of remuneration conducted under section 31 of the State Services Conditions of Employment Act 1977.”

15 (2) The said section 66D is hereby further amended by omitting from subsection (2) the words “paragraph (a), paragraph (b), paragraph (c), or paragraph (e) of”.

12. Criteria—Section 66F of the principal Act (as inserted by section 2 (2) of the Police Amendment Act 1969) is hereby amended—

20 (a) By omitting from subsection (2) the words “State Services Remuneration and Conditions of Employment Act 1969”, and substituting the words “State Services Conditions of Employment Act 1977”:

25 (b) By omitting from subsection (3) the words “half-yearly survey conducted by the Department of Labour”, and substituting the words “general review of remuneration conducted under section 31 of the State Services Conditions of Employment Act 1977”.

30 **13. Jurisdiction to prescribe salaries**—(1) The principal Act is hereby amended by repealing section 66G, and substituting the following section:

35 “66G. (1) The maximum salary that the Commissioner may prescribe under this Part of this Act shall be that for the time being fixed by Order in Council under subsection (1) of section 20 of the State Services Conditions of Employment Act 1977.

40 “(2) Salaries in excess of that maximum may be paid in respect of such positions and at such rates and under such conditions as may be prescribed from time to time by the Higher Salaries Commission.”

(2) Section 8 of the Police Amendment Act 1972 is hereby consequentially repealed.

14. Police Staff Tribunal—(1) Section 67 of the principal Act (as added by section 3 of the Police Amendment Act 1965) is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) The Tribunal shall consist of— 5

“(a) The person who is for the time being the Chairman of the Public Sector Tribunal, who shall be the Chairman of the Police Staff Tribunal:

“(b) The 2 official members for the time being of the Public Sector Tribunal: 10

“(c) One person appointed on the nomination of the service organisation if there is only one service organisation or, if there are two or more, on the joint nomination of the service organisations, or, in default of a joint nomination, after consultation by the Minister with each service organisation. 15

“(2A) The 2 official members referred to in subsection (1) (b) of this section shall not be entitled to sit as members of the Tribunal at the same time, and shall mutually agree on the one to act as a member of the Tribunal during any particular application or applications. In default of agreement in any case, the Chairman shall determine by lot which official member shall so act.” 20

(2) The said section 67 is hereby further amended by omitting from subsection (3) the words “every member of the Tribunal”, and substituting the words “the person to be appointed as a member of the Tribunal pursuant to subsection (2) (c) of this section”. 25

(3) The said section 67 is hereby further amended by omitting from subsection (4) the words “any member of the Tribunal”, and substituting the words “the member of the Tribunal appointed pursuant to subsection (2) (c) of this section”. 30

(4) The said section 67 is hereby further amended by omitting from subsection (5) the words “every member of the Tribunal”, and substituting the words “the member of the Tribunal appointed pursuant to subsection (2) (c) of this section”. 35

(5) Section 3 (1) (a) of the Police Amendment Act 1969 is hereby consequentially repealed. 40

15. Assessors—The principal Act is hereby amended by inserting, after section 68 (as added by section 3 of the Police Amendment Act 1965), the following section:

“68A. (1) For the purpose of assisting in the determination of any matter before the Tribunal, the applicant (or the applicants jointly if there are more than one) may appoint one assessor, and the respondent (or the respondents jointly if there are more than one) may appoint one assessor.

“(2) No person shall be qualified to be an assessor unless he is employed in or has retired from the Police or is a servant or member, or a former servant or member, of a service organisation.

10 “(3) The assessors appointed in respect of any application shall be deemed to be members of the Tribunal for the purposes of the hearing and determination of that application.

“(4) The Tribunal’s powers in relation to any application shall not be affected by any failure to appoint an assessor or
15 by the absence of any assessor.”

16. Powers of Tribunal—(1) Section 71 of the principal Act (as added by section 3 of the Police Amendment Act 1965) is hereby amended by omitting from subsection (2A) (as inserted by section 10 of the Police Amendment Act 1972)
20 the words “a rate of remuneration for any employees in the Police be amended to increase the prescribed rate received by those employees”, and substitute the words “the maximum salary that the Commissioner may by determination prescribe be amended to increase that maximum”.

25 (2) The said section 71 is hereby further amended by inserting, after the said subsection (2A) (as so amended), the following subsection:

“(2B) The Tribunal shall also have power to make recommendations to the Higher Salaries Commission, on any matter
30 arising out of any application mentioned in subsection (1) of this section where the Tribunal has no power to make an order by virtue of an Order in Council made under section 20 (1) of the State Services Conditions of Employment Act 1977, that salaries exceeding the amount prescribed by that order be
35 authorised in respect of such positions and at such rates and under such conditions as the Tribunal may recommend.”