

POLICE AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill is the first stage in the implementation of a new scheme for the Police relating to retirement, both on attaining a certain age and on the ground of medical, physical, or psychological unfitness.

In broad terms, the present legislation (the Police Act 1958) prescribes a retirement age of 60 years (section 27) and provides for the compulsory retirement of members who are substantially medically unfit (section 28). The Bill lowers the retirement age to 55, leaves unchanged the present provision for compulsory retirement of members who are substantially medically unfit, and provides for a new scheme for members to leave the Police where they are incapable of performing their duties competently because of medical, physical, or psychological unfitness or some other personal factor directly attributable to their service in the Police. The new scheme is both compulsory (in that the initiative may come from the Commissioner) and voluntary (in that the initiative may come from the member). It is applicable only to those members of the Police who are members of the Government Superannuation Fund Police Sub-Scheme.

Members who are required to retire because they are substantially medically unfit will continue to be eligible for allowances and benefits payable out of the Government Superannuation Fund.

Those who leave the Police under the new scheme will be entitled to receive different allowances and benefits out of that Fund. The allowances and benefits payable to each of those classes of case will be set out in the Government Superannuation Fund Act 1956. The full implementation of the new proposals, therefore, will require the passage of a Government Superannuation Fund Amendment Bill as a companion measure to this Bill.

Clause 1 relates to the Short Title and commencement. The commencement date is 1 May 1985.

Clause 2 repeals section 27 of the principal Act relating to retirement on attaining a certain age, and substitutes a new section. In general, every member of the Police will be required to retire on attaining the age of 55 years. However, present members of the Police who have already attained the age of 45 years before 1 May 1985 are given the option of retiring at any age up to 60 years. Intermediate retiring ages are prescribed for present members who are between 41 and 45 years at that date.

The clause also makes different provision for members who hold only specialist positions in the Police. Those present members who are not members of the Government Superannuation Fund Police Sub-Scheme, and those who are recruited on or after 1 May 1985, will be required to retire on attaining the age of 60 years.

Where the Commissioner would otherwise be required to retire on attaining the age of 55 years, the Minister is empowered to defer the retirement date from year to year until the Commissioner attains the age of 60 years. A similar discretion is given to the Commissioner in respect of other members of the Police in the same position.

Clause 3 implements the new scheme for members of the Police to leave the Police where they are incapable of performing their duties competently because of medical, physical, or psychological unfitness or some other personal factor directly attributable to their service in the Police. It inserts into the principal Act new sections 28A to 28F.

Section 28A requires the Commissioner to issue general instructions prescribing standards of medical and physical health required of members of the Police to ensure that they are fit to perform competently the duties of their rank and any other duties that may be required of them from time to time. The standards may apply to all members, or may vary according to such matters as rank, duties, or age. The Commissioner is required to consult with the service organisations and the Government Superannuation Board before prescribing standards under this section.

Section 28B is a drafting device only, designed to limit the new scheme to members of the Police who are members of the Government Superannuation Fund Police Sub-Scheme.

Section 28C empowers the Commissioner to require any member of the Police to leave the Police if the member is unable to perform his or her duties competently by reason of medical, physical, or psychological unfitness, and has not responded or is unlikely to respond to treatment, counselling, or other remedial assistance.

Section 28D provides for a member to apply to the Commissioner for permission to leave the Police on the ground that the member is incapable of performing his or her duties competently because of medical, physical, or psychological unfitness or some other personal factor directly attributable to the member's service in the Police.

Section 28E provides for appeals against compulsory disengagement under *section 28C*, or a refusal of voluntary disengagement under *section 28D*. All such appeals will be heard and determined by the Police Appeal Board, which will be assisted by a medical practitioner or psychologist as assessor.

Section 28F is a signpost provision, pointing the way to the Government Superannuation Fund Act 1956 for those who wish to know what allowances and benefits are payable to persons who cease to be members under *section 28C* or *section 28E*.

Clause 4 expressly empowers the making of regulations to require members of the Police to undergo medical, physical, and psychological examinations, tests, and assessments, either periodically or in defined circumstances.

Clause 5 is of a consequential nature only.

Hon. Ann Hercus

POLICE AMENDMENT

ANALYSIS

Title	28C. Compulsory disengagement of unfit
1. Short Title and commencement	28D. Voluntary disengagement of unfit
2. Age of retirement	28E. Appeals against compulsory disengagement or refusal of voluntary disengagement
3. New sections (relating to lack of fitness for service) inserted in principal Act	28F. Entitlement to allowances, etc.
28A. Commissioner to prescribe standards of fitness	4. Regulations
28B. Application of sections 28C to 28E	5. Repeal

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, as follows:

- 1. Short Title and commencement**—(1) This Act may be cited as the Police Amendment Act 1984, and shall be read together with and deemed part of the Police Act 1958* (hereinafter referred to as the principal Act).
- 10 (2) This Act shall come into force on the 1st day of May 1985.

*R.S. Vol. 4, p. 137

Amendments: 1980, No. 130; 1981, No. 86; 1983, No. 133

- 2. Age of retirement**—The principal Act is hereby amended by repealing section 27, and substituting the following section:
- 15 “27. (1) Subject to the succeeding provisions of this section, every member of the Police shall retire from the Police on attaining the age of 55 years.

“(2) Any person who, immediately before the operative date, was a member of the Police and who attained the age of 41 years before that date may retire from the Police on attaining the age of 55 years, or at any time thereafter but not later than the date on which the member attains the appropriate age specified in **subsection (3)** of this section. 5

“(3) Any person who, immediately before the operative date, was a member of the Police and of any age specified in the first column of the following table shall retire on attaining the age specified in the second column of the table: 10

<i>Age immediately before operative date</i>	<i>Age at which retirement required</i>
Over 41 years but under 42 years	56 years
Over 42 years but under 43 years	57 years
Over 43 years but under 44 years	58 years
Over 44 years but under 45 years	59 years
Over 45 years	60 years

“(4) Where the person who is for the time being the Commissioner would otherwise be required to retire on attaining the age of 55 years, the Minister may, either on that person’s application or with that person’s consent, from time to time defer the date on which that person shall retire for such period not exceeding 12 months as the Minister thinks fit; but no such person’s retirement date shall be deferred for more than 5 years in the aggregate. 15

“(5) The Commissioner may, in respect of any member of the Police who would otherwise be required to retire on attaining the age of 55 years, either on that member’s application or with that member’s consent, from time to time defer the date on which that member shall retire for such period not exceeding 12 months; but no such member’s retirement date shall be so deferred for more than 5 years in the aggregate. 20 25

“(6) Every person who, immediately before the operative date, was a specialist member of the Police and was not a member of the Government Superannuation Fund Police Sub-Scheme shall retire from the Police on attaining the age of 60 years. 30

“(7) Every person who, on or after the operative date, is appointed to the Police and is a specialist member of the Police shall retire from the Police on attaining the age of 60 years.

“(8) Nothing in this section shall prevent a member of the Police from receiving leave, or from receiving any payment, salary, or allowance while on leave or instead of leave, after 35

the date on which the member is required to retire in accordance with this section if any such leave accrued during the member's period of service in the Police.

“(9) In this section—

5 “ ‘Member of the Government Superannuation Fund Police Sub-Scheme’ means a member of the Police who is a member of the Government Superannuation Fund subject to Part II of the Government Superannuation Fund Amendment Act 1962:

10 “ ‘Operative date’ means the 1st day of May 1985:

 “ ‘Specialist member of the Police’ means a member of the Police who was or is appointed by reason of special qualifications to perform duties of a specialised nature and who, throughout the member's entire
15 Police career, holds a specially designated rank.”

3. New sections (relating to lack of fitness for service) inserted in principal Act—The principal Act is hereby amended by inserting, after section 28, the following sections:

“28A. **Commissioner to prescribe standards of fitness**—

20 (1) For the purpose of **sections 28c and 28E** of this Act, the Commissioner shall from time to time, after consultations with the service organisations, and with the Government Superannuation Board, prescribe by general instructions issued under section 30 of this Act standards of medical and physical
25 health required of members of the Police to ensure that they are fit to perform competently the duties of their rank and any other duties that may be required of them from time to time.

 “(2) Any such standards may be expressed to apply to all
30 members of the Police generally, or to any particular class of members, whether designated by reference to rank, duties, or age, or otherwise.

“28B. **Application of sections 28c to 28E**—**Sections 28c to 28E** of this Act apply to and in respect of every member of the
35 Police who is a member of the Government Superannuation Fund Police Sub-Scheme (as defined in **section 27 (9)** of this Act).

“28c. **Compulsory disengagement of unfit**—(1) If, in respect of any member of the Police to whom this section applies, the Commissioner is satisfied that the member is
40 incapable of performing competently the duties of the member's rank and any other duties that may be required of the member from time to time, and—

“(a) Two medical practitioners nominated by the Commissioner and approved by the Government Superannuation Board certify—

“(i) That the member’s incapacity is referable to the member’s inability to meet any standards of medical or physical health prescribed by the Commissioner under **section 28A (1)** of this Act; and 5

“(iii) That the member has failed to respond, or is unlikely to respond, within a reasonable time to treatment, counselling, or other remedial assistance; 10
or

“(b) Two psychologists nominated by the Commissioner and approved by the Government Superannuation Board certify—

“(i) That the member’s incapacity is referable to the member’s psychological unfitness; and 15

“(ii) That the member has failed to respond, or is unlikely to respond, within a reasonable time to treatment, counselling, or other remedial assistance,— 20

the Commissioner may require the member, by notice in writing, to leave the Police within such time, being not less than 1 month, as may be specified in the notice.

“(2) In any case to which **subsection (1)** of this section applies, the member may, with the consent of the Commissioner, waive the right to notice and leave the Police immediately. 25

“(3) Subject to **subsection (4)** of this section, a member who is required under this section to leave the Police shall cease to be a member of the Police on the expiration of the time specified in that behalf in the notice or (where the member waives the right to notice with the consent of the Commissioner under **subsection (2)** of this section) on the date on which the Commissioner gives to the member written notice of consent to the waiver. 30

“(4) Where the member appeals under **section 28E** of this section against the requirement to leave the Police, the appellant shall remain a member of the Police until the appeal is disposed of; but if the appeal is dismissed, the appellant shall cease to be a member of the Police on the date on which the Commissioner gives to the appellant written notice of the Appeal Board’s decision. 35
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“28D. **Voluntary disengagement of unfit**—(1) On the application of any member of the Police to whom this section applies, the Commissioner may permit the member to leave the Police under this section if the Commissioner is satisfied 45

that the member is incapable of performing competently the duties of the member's rank and any other duties that may be required of the member from time to time, and—

5 “(a) Two medical practitioners nominated by the Commissioner and approved by the Government Superannuation Board certify—

“(i) That the member's incapacity is referable to the member's inability to meet any standards of mental or physical health prescribed by the Commissioner under **section 28 (1)** of this Act; and

10 “(ii) That the member has failed to respond or is unlikely to respond, within a reasonable time to treatment, counselling, or other remedial assistance; or

15 “(b) Two psychologists nominated by the Commissioner and approved by the Government Superannuation Board certify—

“(i) That the member's incapacity is referable to the member's psychological unfitness; and

20 “(ii) That the member has failed to respond, or is unlikely to respond, within a reasonable time to treatment, counselling, or other remedial assistance; or

25 “(c) The Commissioner is satisfied that the member's incapacity is referable to any personal factor relating to the special circumstances of the member and directly attributable to the member's service with the Police.

30 “(2) Where the Commissioner decides to permit any member to leave the Police under this section, the Commissioner shall give to the member written notice of the decision, and the member shall cease to be a member of the Police on the date specified in that behalf in the notice.

35 “(3) Where the Commissioner refuses to permit any member to leave the Police under this section, the Commissioner shall give to the member written notice of the decision.

40 “28E. **Appeals against compulsory disengagement or refusal of voluntary disengagement**—(1) Any member of the Police who is required under **section 28c** of this Act to leave the Police, or who is refused permission to leave the Police under **section 28d** of this Act, may appeal against that requirement or refusal in accordance with this section.

“(2) Every such appeal shall be commenced by notice of appeal delivered to the Commissioner within 7 days after the receipt of the notice given to the member under **section 28c (1)** or **section 28d (3)** of this Act, as the case may require.

“(3) Every such appeal shall be heard and determined by the Appeal Board. 5

“(4) For the purposes of any appeal under this section, the Commissioner shall appoint a medical practitioner or (as the case may require) a psychologist, approved by the Government Superannuation Board, to be an assessor to advise the Board on the appeal; but no such assessor shall take part in the deliberations of the Board. 10

“28F. **Entitlement to allowances, etc.**—Every person who ceases to be a member of the Police under **section 28c** or **section 28d** of this Act shall be entitled to receive such allowances and other benefits as may be prescribed in that behalf by or under the Government Superannuation Fund Act 1956.” 15

4. Regulations—Section 64 (2) of the principal Act is hereby amended by inserting, after paragraph (f), the following paragraph: 20

“(fa) Requiring members of the Police to undergo medical, physical, and psychological examinations, tests, and assessments, whether periodically or in any particular circumstances, designed to determine whether or not they are able to perform competently the duties of their rank, and any other duties that they may be called upon to perform from time to time.”. 25

5. Repeal—Section 2 of the Police Amendment Act 1964 is hereby consequentially repealed. 30