

POLICE FORCE AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes miscellaneous amendments to the Police Force Act 1947.

Clause 2 provides for the appointment of one or more Assistant Commissioners of Police. At present only one Assistant Commissioner may be appointed.

Clause 3 makes new provisions in respect of all appointments involving promotion, except promotion to the offices of Commissioner or Assistant Commissioner, and in respect of appointments from outside the Force. The clause provides that all appointments to which the clause relates will be made only on the recommendation of the Police Force Promotion Board and that no such appointment from outside the Force will be made if there is a person inside the Force available and qualified for the appointment.

Clause 4 provides for members of the Force who have reached the retiring age of sixty-five years receiving leave, or pay instead of leave, after that age.

Clause 5 provides for the establishment of a Police Council. The functions of the Council will be to inquire into and report to the Minister upon such matters relating to the pay or conditions of service in the Force as may be referred to the Council by the Minister, the Commissioner, or a service organization. A service organization is the New Zealand Police Association and any other organization prescribed as representing members of the Force or any class or classes thereof.

Clause 6 provides for the establishment of a Police Force Promotion Board. The Board will consider all promotions, other than promotion to certain specified ranks, and will recommend for promotion the person it considers most suitable. The Board will be guided by the appropriate provisions of the Act and of regulations under the Act.

Clause 7 provides for the establishment of a Promotion Appeal Board. The Board will consider all appeals from the Promotion Board in respect of recommended promotions and recommended appointments from outside the Force.

Clause 8 provides that elections may be held to determine the person to be nominated by a service organization for appointment to the Police Council or the Promotion Appeal Board.

Clause 9 makes amendments to the interpretation section of the principal Act consequential on the provisions of the Bill.

Hon. Mr Fortune

POLICE FORCE AMENDMENT

ANALYSIS

Title.	4. Member of Force entitled to leave or payment instead of leave after reaching retirement age.
1. Short Title.	5. Police Council.
2. Additional Assistant Commissioners.	6. Promotion Board.
3. General provisions as to appointments.	7. Promotion Appeal Board.
	8. Nominated members of Police Council and Promotion Appeal Board may be elected.
	9. Consequential amendments.

A BILL INTITULED

AN ACT to amend the Police Force Act 1947.

Title.

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

1. This Act may be cited as the Police Force Amendment Act 1954, and shall be read together with and deemed part of the Police Force Act 1947 (hereinafter referred to as the principal Act).

Short Title.

1947, No. 13

2. (1) The principal Act is hereby amended by repealing section three A, as inserted by section two of the Police Force Amendment Act 1951, and substituting the following section:

Additional
Assistant
Commissioners.

1951, No. 31

"3A. (1) The Governor-General may from time to time appoint one or more fit and proper persons as Assistant Commissioners of Police.

“(2) Each Assistant Commissioner shall have and may exercise such of the powers, authorities, duties, and functions of the Commissioner as the Commissioner may delegate to him either generally or in any particular case.

“(3) The fact that an Assistant Commissioner exercises any power, authority, duty, or function of the Commissioner shall, in the absence of proof to the contrary, be sufficient evidence of his authority so to do.”

1951, No. 31

(2) The Police Force Amendment Act 1951 is hereby repealed.

(3) Section sixteen of the principal Act is hereby amended by omitting the words “or any Superintendent”, and substituting the words “or any Assistant Commissioner, Superintendent”.

(4) Subsection one of section eighteen of the principal Act is hereby amended by inserting, after the word “Commissioner”, the words “or an Assistant Commissioner”.

General provisions as to appointments.

3. The principal Act is hereby amended by inserting, after section eight, the following section:

“8A. (1) Every appointment under section five, section seven, or section eight of this Act involving the promotion in the Force of the person appointed, and every appointment under any of those sections of a person who is not a member of the Force, shall be made only on the recommendation of the Promotion Board and no such appointment shall be made unless and until all appeals relating to the recommendation for the appointment have been duly determined, or, if no appeals are made, until the time allowed for the giving of notice of appeals has expired:

“Provided that nothing in this subsection shall apply to the appointment of any constable.

“(2) No person other than a member of the Force shall be appointed under section five, section seven, or section eight of this Act to any rank in the Force, unless in the opinion of the Promotion Board no member then in the Force and available for appointment to that rank is fully qualified for appointment to the rank and capable of carrying out efficiently the duties thereof:

“Provided that nothing in this subsection shall apply to the appointment of any constable.”

4. Section twelve of the principal Act is hereby amended by adding the following additional proviso:

Member of Force entitled to leave or payment instead of leave after reaching retirement age.

“ Provided also that nothing in this section or in any regulations under this Act shall prevent a member of the Force from receiving leave, or from receiving any payment, salary, or allowance while on leave or instead of leave, after the age when he is required to retire in accordance with this section if any such leave accrued during his period of service with the Force.”

10 5. (1) The principal Act is hereby amended by inserting, after section twenty-five, the following section: Police Council.

“ 25A. (1) There is hereby established a Council to be known as the Police Council.

15 “(2) The Council shall consist of three members, who shall be appointed by the Governor-General on the recommendation of the Minister, and of whom—

“(a) One, to be the Chairman, shall be a Magistrate:

“(b) One shall be appointed on the nomination of the Minister:

20 “(c) One shall be appointed on the nomination of the service organization if there is only one, or, if there are two or more, on the joint nomination of the service organizations or, in default of a joint nomination, after consultation by the Minister with each of the service organizations.

25 “(3) Except as provided in subsection *four* of this section, every member of the Police Council shall be appointed for a term of three years, but may from time to time be reappointed, or may be at any time removed from office by the Governor-General for disability, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister.

35 “(4) If any member of the Police Council dies, is removed from office, or resigns, the vacancy created shall be filled in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall be appointed for the residue of the term for which his predecessor was appointed.

40 “(5) Unless he sooner vacates his office, every member of the Police Council shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

“(6) The Council shall meet at such times and places as may be determined by the Chairman.

“(7) In the event of the incapacity of the Chairman or any other member of the Police Council by reason of illness or absence or other cause, the Governor-General shall, in the manner in which the original appointment was made, appoint some other qualified person to act in the place of the Chairman or other member. Every person so appointed shall, while the incapacity continues, be deemed for all purposes to be the Chairman or other member of the Council, as the case may be. 5 10

“(8) In the event of the incapacity of the member appointed under paragraph (c) of subsection *two* of this section, the service organization or organizations concerned shall, within three days of being required to do so by the Minister, nominate a person to act in place of the incapacitated member, and, if no such nomination is made within that period, the Governor-General shall appoint a member of the Force nominated by the Minister to act in place of the incapacitated member while the incapacity continues. 15 20

“(9) The functions of the Police Council shall be to inquire into and report to the Minister upon such matters relating to promotion, pay, or conditions of service in the Force, or relating to the claim of any group of members of the Force with respect to their promotion, pay, or conditions of service, as may from time to time be referred to it by the Minister, or by a service organization, or by the Commissioner, being— 25

“(a) Matters upon which complete agreement has not been reached between a service organization on the one hand and the Commissioner on the other hand; or 30

“(b) Matters which a service organization or, as the case may be, a group of members of the Force has requested the Minister to refer to the Police Council and which the Commissioner has considered or had a reasonable opportunity of considering; or 35

“(c) Matters which the Commissioner has requested the Minister to refer to the Council and which any service organization concerned has considered or had an opportunity of considering. 40

Any report made to the Minister under this subsection may contain such recommendations as the Police Council thinks fit.

“(10) At the hearing of any matter by the Police Council the Minister, the Commissioner, any service organization, and, with the approval of the Council, any member of the Force may appear in person or may be represented by an advocate or advocates. Any advocate need not be a member of the Force and may be a barrister or solicitor.

“(11) The provisions of subsections one, two, three, four, eight, and nine of section thirty-five A of this Act shall apply to the Police Council in all respects as if the Council were a Board of Appeal appointed under section twenty-four of this Act.

“(12) At the hearing of any matter by the Police Council the Council may make such order as to costs as it thinks just and any costs awarded shall be payable out of moneys appropriated by Parliament for the purpose.

“(13) Subject to the provisions of this section and of any regulations under this Act, the Police Council may regulate its procedure in such manner as it thinks fit.

“(14) The Police Council is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951. 1951, No. 79

“(15) There shall be paid out of moneys appropriated by Parliament for the purpose to the members of the Council remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.”

(2) Section thirty-five of the principal Act is hereby repealed. 35

(3) Section thirty-five A of the principal Act, as inserted by section four of the Police Force Amendment Act 1952, is hereby amended as follows: 1952, No. 14

(a) By omitting from subsection one the words “every Board of Appeal constituted under section twenty-four hereof, and every Committee of Inquiry appointed under section thirty-five hereof”, and substituting the words “and every Board of Appeal constituted under section twenty-four hereof”:

Promotion Board.

(b) By omitting from subsection four the words "or a Committee of Inquiry".

6. The principal Act is hereby amended by inserting after section twenty-five A, as inserted by section *five* of this Act, the following section:

"25B. (1) For the purposes of this Act there is hereby established a Board to be called the Police Force Promotion Board.

"(2) The Promotion Board shall consist of three members, of whom—

"(a) One, to be the Chairman, shall be the Commissioner:

"(b) One shall be an Assistant Commissioner appointed in that behalf by the Minister:

"(c) One shall be a commissioned officer appointed in that behalf by the Minister.

"(3) The appointed members of the Promotion Board shall hold office during the pleasure of the Minister.

"(4) In the event of the incapacity of any member of the Promotion Board by reason of sickness, absence, or other cause the Minister may appoint a commissioned officer to act in the place of that member during his incapacity:

"Provided that the Minister shall appoint a member of the Board to act as Chairman during such time as an officer is appointed under this subsection in place of the Commissioner.

"(5) The powers of the Promotion Board shall not be affected by any vacancy in the membership thereof.

"(6) The Promotion Board shall meet at such times and places as may be determined by the Chairman, and at any meeting of the Board two members, including the Chairman, shall constitute a quorum.

"(7) Subject to the provisions of this section and of any regulations under this Act, the Promotion Board may regulate its procedure in such manner as it thinks fit.

"(8) The Promotion Board shall consider all matters relating to the promotion of any member of the Force to any rank or grade of rank in the Force and, subject to the provisions of this Act and of any regulations under this Act, shall recommend for promotion the member of the Force who in the opinion of the Board is the most efficient and suitable for appointment to the rank or grade of rank:

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“ Provided that nothing in this subsection shall apply to any promotion to the rank of Commissioner or Assistant Commissioner.

5 “(9) The Promotion Board shall also consider all matters relating to the appointment to any rank or grade of rank in the Force of a person other than a member of the Force, and, subject to the provisions of this Act and of any regulations under this Act, shall recommend for appointment the person who in the opinion of the Board
10 is the most efficient and suitable for appointment:

“ Provided that nothing in this subsection shall apply to any appointment to the rank of Commissioner, the rank of Assistant Commissioner, or the rank of constable.

15 “(10) Any recommendation for appointment under this section shall be communicated by the Promotion Board to the Commissioner and shall be notified by the Commissioner in the *Police Gazette*.”

7. (1) The principal Act is hereby amended by inserting after section twenty-five B, as inserted by section
20 *six* of this Act, the following section:

Promotion
Appeal Board.

“ 25c. (1) For the purposes of this Act there is hereby established a Board to be known as the Police Force Promotion Appeal Board.

25 “(2) The Promotion Appeal Board shall consist of three members, who shall be appointed by the Minister, and of whom—

“(a) One, to be the Chairman, shall be a Magistrate:

“(b) One shall be a commissioned officer:

30 “(c) One shall be appointed on the nomination of the service organization if there is only one, or, if there are two or more, on the joint nomination of the service organizations or, in default of a joint nomination, after consultation by the Minister with each of the
35 service organizations.

“(3) No member of the Promotion Appeal Board shall sit on any appeal affecting himself and no member of the Board shall sit on an appeal if he was a member of the Promotion Board which made the determination
40 being appealed against.

“(4) Except as provided by subsection *five* of this section, the members of the Promotion Appeal Board shall be appointed for a term of three years, but may from time to time be reappointed, or may be at any time removed from office by the Governor-General for disability, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the Minister. 5

“(5) If any member of the Promotion Appeal Board dies, is removed from office, or resigns, the vacancy created shall be filled in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall be appointed for the residue of the term for which his predecessor was appointed. 10

“(6) Unless he sooner vacates his office, every member of the Promotion Appeal Board shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired. 15

“(7) In the event of the incapacity of the Chairman or any other member of the Promotion Appeal Board by reason of illness, absence, ineligibility, or other cause, the Minister, in the manner in which the original appointment was made, shall appoint any other qualified person to act in the place of the Chairman or other member during his incapacity. Every person so appointed shall, while the incapacity continues, be deemed for all purposes to be the Chairman or other member of the Board, as the case may be. 20 25

“(8) In the event of the incapacity of the member appointed under paragraph (c) of subsection *two* of this section, the service organization or organizations concerned shall, within three days of being required to do so by the Minister, nominate a person to act in place of the incapacitated member, and, if no such nomination is made within that period, the Governor-General shall appoint a member of the Force nominated by the Minister to act in place of the incapacitated member while the incapacity continues. 30 35

“(9) The Promotion Appeal Board shall meet at such times and places as may be determined by the Chairman. 40

“(10) The decision of two members of the Promotion Appeal Board shall be the decision of the Board.

“(11) Subject to the provisions of this section and of any regulations under this Act, the Promotion Appeal Board may regulate its procedure in such manner as it thinks fit.

5 “(12) Any member of the Force shall have a right of appeal to the Promotion Appeal Board against any determination of the Promotion Board—

10 “(a) Not to recommend the appellant for promotion to a higher rank or grade of rank if he is eligible for that promotion:

“ (b) To recommend another member of the Force for promotion to a higher rank or grade of rank if the appellant is eligible for that promotion:

15 “(c) To recommend a person who is not a member of the Force for appointment to a rank in the Force, if the appointment of the appellant to the rank would involve his promotion and if the appellant is eligible for promotion to that rank.

20 “(13) Notice of every appeal under this section shall be forwarded by or on behalf of the appellant to the Commissioner within twenty-one days after the date of the publication in the *Police Gazette* of the recom-
25 mendation of the Promotion Board to which the appeal relates and the Commissioner shall forthwith take such steps as may be necessary to bring the appeal before the Promotion Appeal Board.

30 “(14) The Promotion Appeal Board shall hear and determine any appeal under this section, and for that purpose the provisions of section thirty-five A of this Act shall apply in all respects as if the Promotion Appeal Board were a Board of Appeal constituted under section twenty-four of this Act.

35 “(15) At the hearing of any appeal the appellant and the Commissioner may appear in person or may be represented by an advocate or advocates and shall be entitled to call and examine witnesses and address the Appeal Board. Any advocate need not be a member of
40 the Force and may be a barrister or solicitor.

“(16) The Promotion Appeal Board shall confirm or reverse the determination appealed against.

“(17) The determination of the Promotion Appeal Board on any appeal under this section shall be communicated by the Board to the appellant and to the Commissioner, and the Commissioner, in accordance with the provisions of this Act, shall take such steps as may be necessary to give effect to the determination. 5

“(18) If an appeal is allowed, the determination of the Promotion Appeal Board shall, for the purposes of this Act, be deemed to be a recommendation of the Promotion Board for the appointment of the appellant to the rank to which the appeal relates and the determination of the Promotion Board against which the appeal was made shall be deemed to be cancelled. 10 15

“(19) In any proceedings under this section the decision of the Promotion Appeal Board shall be final, and, except on the grounds of lack of jurisdiction, no writ of mandamus, prohibition, or certiorari shall lie in respect thereof to any Court.” 20

(2) Section thirty-five A of the principal Act, as amended by subsection *three* of section *five* of this Act, is hereby further amended by repealing subsections five, six, and seven, and substituting the following subsections:

“(5) With respect to costs in a hearing before a Board of Appeal, the following provisions shall apply: 25

“(a) In disposing of an appeal the Board may, subject to the provisions of this subsection, fix the costs thereof and direct by whom and in what proportion they shall be payable, and they shall be payable accordingly: 30

“Provided that costs shall not be given against the appellant unless the Board is of opinion that the appeal is frivolous and should not have been brought, or that witnesses who were not essential to the case have been nominated by and attended at the request of the appellant: 35

“Provided also that in no case shall the Board award any costs other than in respect of the expenses of witnesses or of advocates appearing on the appeal: 40

5 “(b) In the case of witnesses who are not members of the Force, witnesses expenses shall be regulated according to the scale for the time being in force relating to witnesses expenses in civil proceedings in the Magistrate’s Court; and in the case of witnesses who are members of the Force reasonable expenses will be allowed.

10 “(c) Any advocate appearing at the hearing of an appeal shall be entitled to such expenses as may be determined by the Board, and, unless the Board otherwise directs, these may be paid out of moneys appropriated by Parliament for the purpose.

15 “(d) Costs awarded to the appellant shall be payable out of moneys appropriated by Parliament for the purpose and costs awarded against the appellant shall be recoverable as a debt due to the Crown.

20 “(6) Any person summoned to attend an inquiry under section twenty-one hereof shall be entitled to witnesses expenses in accordance with paragraph (b) of subsection *five* of this section.”

25 8. The principal Act is hereby amended by inserting after section twenty-five c, as inserted by section *seven* of this Act, the following section:

30 “25d. (1) Where a service organization is required to nominate a member for appointment to the Police Council or the Promotion Appeal Board, the service organization may, if it thinks fit, decide that an election shall be held to determine the person to be nominated.

“(2) At every such election every member of the Force shall be entitled to vote, and any member who is not a commissioned officer of the Force may be elected for nomination.

35 “(3) Every such election shall be conducted by the Police Department and shall be held from time to time as occasion may require in accordance with regulations made for the purpose under this Act.”

Nominated
members of
Police Council
and Promotion
Appeal Board
may be elected.

Consequential
amendments.

9. (1) Section two of the principal Act is hereby amended by inserting, after the definition of the term "Minister", the following definitions:

" 'Promotion Appeal Board' means the Police Force Promotion Appeal Board established by this Act: " 5

" 'Promotion Board' means the Police Force Promotion Board established by this Act: ".

(2) Section two of the principal Act is hereby further amended by adding the following definition: 10

" 'Service organization' means the New Zealand Police Association Incorporated; and includes such other organization or organizations as may from time to time be prescribed as representing members of the Force or any class or classes thereof." 15