

New South Wales



ANNO VICESIMO QUINTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 88, 1976.**

An Act to amend the Police Regulation (Appeals) Act, 1923, for the purpose of conferring on certain sergeants of police who are qualified for promotion to the rank of inspector appeal rights with respect to seniority in that rank, for the purpose of prescribing a new procedure for the hearing of promotion appeals made by members of the police force, and for certain other purposes. [Assented to, 2nd December, 1976.]

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*Police Regulation (Appeals) Amendment.*

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.      1. This Act may be cited as the "Police Regulation (Appeals) Amendment Act, 1976".

Commence-      2. (1) This section and section 1 shall commence on  
ment.            the date of assent to this Act.

(2) Section 3 shall commence on the date of assent to the Police Regulation (Amendment) Act, 1976.

Amendment      3. The Police Regulation (Appeals) Act, 1923, is  
of Act No.      amended—  
33, 1923.

Secs. 3-5.      (a) by inserting after section 2 the following sections :—

Appeals to  
Board  
against  
decision of  
Commis-  
sioner to  
promote  
certain  
members of  
the police  
force.

3. (1) Whenever—

- (a) the Commissioner decides to promote to a higher rank a member of the police force of or below the rank of sergeant second class; and
- (b) that 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 who, immediately before that decision, was—

- (c) of a rank below that higher rank but above the rank of that member; or
- (d) of the same rank as that member but senior to him in that rank,

may,

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may, if, according to the rules governing promotion in the police force, he is qualified for promotion to that higher rank, appeal to the Board against that decision.

(2) Where the Commissioner has made a decision in respect of which an appeal may be made under subsection (1), he shall, as soon as practicable thereafter, cause a notice of the decision to be served on all members of the police force who, by virtue of that subsection, are entitled to appeal against that decision.

(3) Service of a notice under subsection (2) may be effected by delivering the notice to the member of the police force in person or by sending it to him by certified mail to his address last known to the Commissioner.

(4) A decision referred to in subsection (1) may be carried into effect notwithstanding that—

- (a) the period within which appeals against that decision may be made under subsection (1) has not expired; or
- (b) where any such appeal has been made within that period and has not been withdrawn, that appeal has not yet been determined by the Board.

(5) Where a decision to promote a member of the police force is carried into effect in the circumstances specified in subsection (4), the promotion of that member shall not, except as provided in subsections (6) and (8), be affected by the fact that the appeal under subsection (1) of any appellant against that decision is successful.

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(6) Where an appeal made under subsection (1) is decided in favour of the appellant and the appellant is promoted to the rank to which the member of the police force in relation to whom the appeal was made has been promoted, the appellant shall be senior in that rank to that member.

(7) The Board may, if it thinks fit, hear two or more appeals made under subsection (1) in respect of the same decision and make a single composite decision with respect to all or any of those appeals.

(8) Where appeals made under subsection (1) in respect of the same decision are decided in favour of all or any two or more of the appellants and the successful appellants are promoted to the rank to which the member of the police force in relation to whom the appeal was made has been promoted, each appellant so promoted shall be senior in that rank to that member and shall have such seniority in that rank in relation to each of the other appellants so promoted as shall be specified by the Board in its decision.

Appeal to  
Board  
against  
recommen-  
dations for  
promotion  
to inspector.

4. (1) Whenever the Commissioner—

- (a) excludes from a priority list prepared under section 5A of the Police Regulation Act, 1899, the name of any sergeant who is senior in that rank to the most junior sergeant whose name is included in that list; or
- (b) places the name of any sergeant in that list in a lower position in the order of priority than the name of another sergeant who is junior to him in that rank,

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the sergeant first referred to in paragraph (a) or, as the case may be, paragraph (b) may, if, according to the rules governing promotion in the police force, he is qualified for promotion to the rank of inspector, appeal to the Board against that exclusion or, as the case may be, the position in which his name is placed in that list.

(2) Any sergeant whose name is included in the priority list to the exclusion of, or in a position higher in the order of priority than, the name of another sergeant who is senior in that rank to him may be recommended for promotion to the rank of inspector and, if so recommended, may be promoted to that rank notwithstanding that—

- (a) the period within which appeals may be made under subsection (1) has not yet expired; or
- (b) where any such appeal has been made within that period and has not been withdrawn, that appeal has not yet been determined by the Board.

(3) Where any sergeant has been recommended for promotion or promoted to the rank of inspector in the circumstances specified in subsection (2), that recommendation or promotion shall not, except as provided in subsection (5), be affected by the fact that the appeal under subsection (1) of any appellant who was senior to him in the rank of sergeant is successful.

(4) Where any appeal under subsection (1) is decided in favour of the appellant, the Board shall, whether any sergeant in relation to whom the

appeal

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appeal was made has been promoted to the rank of inspector or not, include in its decision a direction that the priority list be varied—

(a) in the case of—

(i) an appellant who appealed against the exclusion of his name from that list, by placing his name in such position in that list;  
**or**

(ii) an appellant who appealed against the position in which his name is placed in that list, by placing his name in such position in that list; and

(b) in the case of any sergeant in relation to whom the appeal was made, whether he has been promoted to the rank of inspector or not, by placing his name in such position in that list,

as is appropriate, having regard to the decision of the Board in respect of the appeal.

(5) Where an appeal made under subsection (1) is decided in favour of the appellant and the appellant is promoted to the rank of inspector, his seniority in that rank shall be determined by reference to the position in which his name is placed in the priority list as varied in accordance with the direction referred to in subsection (4), and where the sergeant in relation to whom the appeal was made is promoted to that rank, whether before or after the appeal was decided, his seniority in that rank shall likewise be determined by reference to the position in which his name is placed in that list as so varied.

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(6) The Board may, if it thinks fit, hear two or more appeals made under subsection (1) in respect of the same priority list and make a single composite decision with respect to all or any of those appeals.

5. (1) In this section, "appeal" means an appeal made under section 3 (1) or 4 (1).

Procedure for the hearing and determination of appeals under sections 3 and 4.

(2) Section 11 of the Crown Employees Appeal Board Act, 1944, shall apply to and in respect of an appeal in the same way as it applies to and in respect of an appeal made under section 10 of that Act, and for the purpose of that application a reference in that section to a decision shall be construed as including the excluding of the name of a sergeant from, or the placing of the name of a sergeant in, a priority list as referred to in section 4 (1).

(3) Sections 6, 8, 9, 10 and 11 of the Royal Commissions Act, 1923, Part III of that Act and the definition of "Reasonable excuse" in section 4 of that Act shall apply to and in respect of the hearing by the Board of an appeal in the same way as they apply to and in respect of an inquiry held by a Royal Commission under that Act, and for the purpose of that application—

- (a) a reference in those provisions to the commission shall be construed as a reference to the Board;
- (b) a reference in those provisions to a commissioner shall be construed as a reference to a member of the Board; and
- (c) a reference in those provisions to the chairman of a Royal Commission shall be construed as a reference to the chairman of the Board.

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(4) On application being made in writing by or on behalf of an appellant, the chairman of the Board may—

- (a) direct the Commissioner to produce to him or to the Board for inspection, either before or at the hearing of the appeal, such official papers, reports and correspondence or copies thereof as may be relevant to the determination of the appeal; and
- (b) if after the inspection he or the Board considers that it would be appropriate to do so, direct the Commissioner to make those papers and reports and that correspondence or, as the case may be, those copies available for inspection by the appellant and his adviser (if any),

and the Commissioner shall, subject to subsection (5), forthwith take all necessary steps to comply with any such direction.

(5) The identity of any person who completed an assessment report which relates to the performance of the duties or the conduct of any member of the police force (including an appellant) shall not, unless the chairman of the Board specifically so directs, be disclosed in complying with a direction given under subsection (4).

(6) Where, after the making of an appeal, the Commissioner applies in writing to the chairman of the Board for further particulars of the grounds of the appeal, the chairman may, if he thinks fit, give a direction to the appellant to provide the Commissioner with those further particulars within such period as may be specified in

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the direction, and if the appellant fails to comply with any such direction within the period specified therein, the appeal shall be deemed to have been withdrawn.

(7) The hearing of an appeal shall not, unless the chairman of the Board, pursuant to an application made by or on behalf of the appellant or the Commissioner, so directs, be open to members of the public and shall be conducted without undue formality.

(8) Subject to this section, the hearing of an appeal shall be in accordance with the rules of natural justice.

(9) At the hearing of an appeal—

- (a) the appellant may be present in person and may, with the leave of the Board, be accompanied by an adviser who shall not, except as provided in subsection (10), be a barrister or solicitor;
- (b) the Commissioner may be present in person or be represented by a member of the police force appointed by him for the purpose;
- (c) the appellant, the appellant's adviser (if any) and the Commissioner or the Commissioner's representative may, with the leave of the chairman of the Board, address the Board on any matter to which the appeal relates; and

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(d) the Board may receive, and may require the appellant and the Commissioner or his representative to adduce, such evidence as it considers relevant to deciding the appeal, whether that evidence would be legally admissible in civil proceedings before a court or not.

(10) A barrister or a solicitor may, with the leave of the chairman of the Board, represent either the appellant or the Commissioner but only for the purpose of arguing a question certified by the chairman to be a question of law or mixed law and fact.

(11) The chairman of the Board may adjourn an appeal from time to time and from place to place.

(12) No action shall lie against any person in respect of anything said or reported by him in good faith in the course of the hearing of an appeal.

(13) The decision of the Board in respect of an appeal shall be determined on the merits and justice of the appeal and the Board shall not be bound to follow strict legal precedent.

(14) The decision of the majority of the members of the Board in respect of an appeal shall be the decision of the Board and shall be final.

(15) The decision of the Board in respect of an appeal shall—

(a) be in writing;

(b) include a statement of the reasons therefor; and

(c)

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(c) on being notified to the appellant or appellants concerned and to the Commissioner, be binding on them,

and, where the decision is in favour of the appellant or appellants, the Commissioner shall take such steps to give effect to the decision as may be necessary.

- (b) (i) by omitting section 6 (1) (a);  
(ii) by omitting section 6 (1A);  
(iii) by omitting section 6 (1B);  
(iv) by omitting from section 6 (2) the words “, as amended by subsequent Acts”.

Sec. 6.  
(Appeals to Board with respect to punishment of members of police force, etc.)