

Explanatory Statement

POLICE LEGISLATION AMENDMENT (POWERS, APPOINTMENTS AND OTHER MATTERS) BILL 2023

SERIAL NO. 113
LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR POLICE

GENERAL OUTLINE

This Bill amends the *Police Administration Act 1978* (PAA) and the *Police Administration Regulations 1994* (PAR).

The purpose of this Bill is to remove and streamline the stringent requirements attached to outside appointments; increase the mandatory age of retirement; update and introduce new identification powers; and remove gazettal requirements associated with the sale and disposal of unclaimed goods.

NOTES ON CLAUSES

PART 1 – PRELIMINARY MATTERS

Clause 1. Short Title

This is a formal clause which provides for the citation of the Police Legislation Amendment (Age of Retirement, Appointments and Other Matters) Bill 2023 (the Bill). The Bill, when passed, will be cited as the *Police Legislation Amendment (Powers, Appointments and Other Matters) Act 2023* (amendment Act).

Clause 2. Commencement

This clause sets out how the amendment Act will be commenced. In this case, the amendment Act will commence on the day after the Administrator declares assent.

PART 2 – AMENDMENT OF POLICE ADMINISTRATION ACT 1978

Clause 3. Act amended

This is a formal clause which provides that Part 2 amends the PAA.

Clause 4. Section 4A amended (Application of Criminal Code)

This clause amends section 4A to reference section 134, 134A and 134B inserted by clause 13 of the Bill.

Clause 5. Section 15A amended (Merit for appointment or promotion)

This clause amends section 15A to give the Commissioner of Police (the Commissioner) the ability to consider any other matters the Commissioner considers relevant to a person's merit for appointment to a position, or promotion to a rank in the Northern Territory Police Force (NTPF).

Clause 6. Section 16 amended (Commissioner may appoint or promote members)

This clause amends section 16(1) by replacing current subsection (1)(aa) with new subsections (1)(ab) and (1)(ac).

New subsection (1)(ab) will allow the Commissioner to appoint an eligible retired member to any rank in the NTPF, but that rank must not be above the rank last held by the member before they retired from the NTPF.

New subsection (1)(ac) will allow the Commissioner to appoint an eligible former member to a rank above the rank of Constable where the circumstances under new section 17 are met, as amended by clause 8 of the Bill.

Appointments under the new subsection (1)(ac) are limited to the ranks prescribed in regulation 11 of the PAR, as amended by clause 18 of the Bill.

Clause 7. Section 16A amended (Members on probation)

This clause amends sections 16A(2), (3) and (4) by clarifying that a person is still on probation until the Commissioner confirms, terminates or extends that person's appointment.

This clause also inserts new subsection (5A) to provide that the Commissioner can extend a person's probation more than once.

This clause also amends subsection 16A(1) to provide that the probation period for a person appointed under new section 16(1)(ab) and (1)(ac), as amended by clause 6 of this Bill, will be 6 months.

Clause 8. Section 17 replaced

This clause replaces section 17 with a new process for appointing a person to a rank higher than the rank of Constable. The new section 17 creates a specific pathway for former NTPF members to return at their former rank. Any appointment under new sections 16(1)(ac) and 17 are limited to ranks prescribed by regulation 11, as amended by clause 18 of the Bill.

The new section 17 provides that a former member can only be appointed under new section 16(1)(ac) if the Commissioner has sought applications from members:

- (a) at substantive rank, and either no applications are received, or no applicants are found suitable for transfer to the position by the Commissioner; and
- (b) for promotion, and either no applications are received, or no applicants are found to have merit for promotion to the position by the Commissioner. Applications for promotion to a position are determined on merit per sections 15A and 16(3) of the PAA.

New section 17 no longer requires the Commissioner to publish notices in the *Police Gazette*. Per new subsection (c)(ii), a former member cannot be appointed to a rank higher than the rank held by the former member when they last served as a member in the NTPF.

Clause 9. Section 21 amended (Reappointment of person who resigned to contest elections)

This clause amends section 21(6) to increase the age from 65 years to 67 years, as amended by clause 10 of the Bill.

Clause 10. Section 22 amended (Retirement)

This clause amends section 22(2) to increase the mandatory age of retirement from 65 years to 67 years.

Clause 11. Section 92 amended (Promotion appeals)

This clause amends appeal rights under section 92. Currently, subsection (3) limits all appeals under section 92 by prescribing the only ground on which an appeal can be made to be that the applicant has superior merit to the member promoted or appointed. This ground of appeal is only relevant to promotional appeals under section 16(1)(b) or (3) in circumstances where another member is promoted. Section 92(3) is therefore amended so that it only applies to appeals made under new section 92(1)(a).

Appeals will no longer apply to decisions under section 17, as section 17 is only enlivened in circumstances where no member is eligible for promotion.

This clause also amends the appeals timeframe by reducing it from 21 days to 14 days to be consistent with other appeal timeframes under the PAA, namely inability or disciplinary appeals.

Clause 12. Section 133A amended (Definition)

This clause amends the definition of an “infringement notice offence” to include offences under the PAA.

Clause 13. Section 134 replaced

This clause amends the power in section 134 for police to require a person to provide their name and address to also include a power to require the person to provide evidence of their identification. New subsections (1) and (2) maintains that this power applies where police believe on reasonable grounds that the person, whose name is unknown to the member, may be able to assist police with their enquiries into an offence that has been.

This clause also inserts new section 134A which is an equivalent power that applies when police suspect on reasonable grounds that a person has contravened, is contravening, or is about to contravene section 171(1) of the *Liquor Act 2019*.

When exercising a power under new section 134 or 134A, the member must inform the person that failure to comply is an offence unless the person has a reasonable excuse. Per new sections 134(6) and 134A(6), it is a defence to the offence of failure to comply with a requirement if the person has a reasonable excuse.

This clause further inserts new section 134B which requires the member to identify themselves if requested by the person. This section redrafts the current requirements for a member exercising a power under section 134 or 134A to provide their name, rank and place of duty, if requested to do so by the person. The information must be provided in writing if requested as such by the person.

A person or member who does not comply with the requirements in sections 134, 134A and 134B, or provides false details as to their identity, commits an offence punishable by a maximum penalty of 4 penalty units.

Part IIAA of the *Criminal Code 1983* applies to offences committed under sections 134, 134A and 134B, per clause 4 of the Bill.

Section 12(d) of the *Interpretation Act 1978* (NT) applies to offences committed before the repealed section 134.

Clause 14. Section 147FA amended (Interpretation)

This clause amends the definition for “qualified person” in section 147FA to reflect an update to the Commonwealth legislation.

Clause 15. Section 166 replaced

This clause replaces section 166 in line with modern drafting styles. New section 166 no longer requires the Commissioner to publish their intention to sell or otherwise dispose of unclaimed goods in the *Government Gazette*. Instead, the manner of publishing the Commissioner’s intention to sell, or dispose of items, will be on the Agency’s website, or at the discretion of the Commissioner.

Clause 16. Part X, Division 7 inserted (Transitional)

This clause inserts new Division 7 in Part X to provide for transitional arrangements for the commencement of the amendment Act.

New section 174 provides that section 166 applies to items in possession of police before the commencement of the amendment Act.

PART 3 – AMENDMENT OF POLICE ADMINISTRATION REGULATIONS 1994

Clause 17. Regulations amended

This is a formal clause which provides that Part 3 amends the PAR.

Clause 18. Regulation 11 replaced

This clause amends regulation 11 to list the prescribed ranks for appointment under new section 17, as amended by clause 8 of the Bill. Prescribed ranks no longer includes Superintendent and Commander.

Clause 19. Regulation 13 amended (Promotions appeals)

This clause amends regulation 13 to reference new section 92(1B), inserted by clause 11 of the Bill.

Clause 20. Regulation 19A amended (Infringement notice offence)

This clause amends regulation 19A so that new section 134A, inserted by clause 13 of the Bill, is an ‘infringement notice offence’ for the purposes of section 133AA of the PAA.

Clause 21. Regulation 22A amended (Infringement offence and prescribed amount payable)

This clause amends regulation 22A so that section 134A of the PAA is an ‘infringement offence’.

Clause 22. Schedule 1 replaced (Prescribed positions)

This clause deletes Schedule 1. Prescribed ranks are now prescribed in new regulation 11.

Clause 23. Schedule 2 amended (Forms)

This clause amends Schedule 2 ‘Form 1’ to delete references to decisions made under section 17(b) of the PAA.

PART 4 – REPEAL

Clause 24. Repeal of Act

This is a formal clause which provides that the Act is repealed on the day after it commences.

