

South Australia

Police (Merit Pool) Variation Regulations 2021

under the *Police Act 1998*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Police (Merit Pool) Variation Regulations 2021*.

2—Commencement

These regulations come into operation on 1 July 2021.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Police Regulations 2014*

4—Substitution of Part 9

Delete Part 9 and substitute:

Part 9—Appointment to promotional positions in SA Police

46—Interpretation

In this Part—

merit pool means a merit pool established under regulation 48, as constituted from time to time;

prescribed officer position means a position in SA Police of or above the rank of chief inspector and of or below the rank of Assistant Commissioner.

47—Application of Part

Nothing in this Part applies in relation to a transfer under the Act or these regulations from one position in SA Police to another.

48—Commissioner may establish merit pool or pools

- (1) The Commissioner may establish a merit pool or pools in relation to the appointment of members of SA Police to prescribed promotional positions or prescribed officer positions.
- (2) The Commissioner must, if the Commissioner proposes to establish a merit pool, cause the proposed establishment of the merit pool to be advertised in either or both of the following ways:
 - (a) by publishing a notice in the Police Gazette calling for applications from eligible members of SA Police for inclusion in the merit pool;
 - (b) by calling for such applications in any other manner determined by the Commissioner.
- (3) The Commissioner may, by general order, special order or guideline—
 - (a) make provisions relating to eligibility for inclusion in a merit pool (including, to avoid doubt, provisions relating to circumstances in which members of SA Police are ineligible for inclusion);
 - (b) make provisions relating to the establishment of advisory committees for the purposes of this Part;
 - (c) make provisions relating to the size of a merit pool;
 - (d) make provisions relating to applications for inclusion in a merit pool;

- (e) make provisions relating to removal from, or reinstatement in, a merit pool;
 - (f) make provisions relating to the ranking of members of SA Police within a merit pool;
 - (g) make provisions relating to the appointment of members of SA Police from within a merit pool to fill prescribed promotional positions or prescribed officer positions;
 - (h) make any other provision the Commissioner considers appropriate in relation to merit pools.
- (4) The Commissioner must cause the members of SA Police within a merit pool to be ranked in order of merit.

49—Grievance process and right of review—merit pools

- (1) A prescribed member of SA Police may apply to the Police Review Tribunal for a review of—
- (a) a decision to refuse to include or reinstate the prescribed member in a merit pool; or
 - (b) a decision to remove the prescribed member from a merit pool,
- (being in each case a merit pool relating to a prescribed promotional position or positions).
- (2) However, a prescribed member may not make an application under this regulation unless—
- (a) the prescribed member has first applied to have their grievance dealt with in accordance with a process determined by the Commissioner; and
 - (b) that process has been completed.
- (3) The Commissioner must give written notice to the prescribed member of the Commissioner's decision on their grievance under subregulation (2) within 28 days after receipt of the application (or within such longer period as may be agreed between the applicant and the Commissioner).
- (4) An application to the Police Review Tribunal for review of a decision—
- (a) must be made to the Secretary to the Police Review Tribunal within 7 days after the applicant receives written notice of the Commissioner's decision on their grievance under subregulation (2) (or such longer period as the Secretary may allow); and
 - (b) must otherwise be made in a manner and form determined by the Secretary of the Police Review Tribunal.

- (5) An applicant to the Police Review Tribunal, or a member of SA Police summoned to appear before the Police Review Tribunal, must be granted such paid leave of absence as may be necessary to enable their appearance before the Police Review Tribunal for the purposes of the relevant proceedings.
- (6) On an application for a review under this regulation, the Police Review Tribunal may do one or more of the following:
 - (a) confirm the decision;
 - (b) quash the decision;
 - (c) remit the matter to the original decision maker for further consideration and redetermination.
- (7) The Police Review Tribunal must hear and determine an application under this regulation within 28 days after it receives the application.
- (8) To avoid doubt—
 - (a) decisions relating to the establishment or number of merit pools, the nature of a merit pool (including the size of a merit pool), the ranking of members within a merit pool or the selection or appointment of a member from within a merit pool to fill a position are not reviewable under this regulation; and
 - (b) the commencement of proceedings for review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.
- (9) In this regulation—

prescribed member of SA Police means—

 - (a) a member of SA Police who is an unsuccessful applicant for inclusion or reinstatement in a merit pool; or
 - (b) a member of SA Police who is, or who was at the relevant time, a member of a merit pool.

49A—Selection processes—prescribed promotional and prescribed officer positions

- (1) For the purposes of section 54 of the Act, the selection process for an appointment to a prescribed promotional position is to consist of—
 - (a) in the case of prescribed promotional position to be filled by appointment from within a merit pool—the selection, in accordance with any relevant general order, special order or guideline made or given by the Commissioner, of a suitable member of SA Police from within the merit pool to fill the position; or
 - (b) in any other case—the selection process set out in regulation 49B.

- (2) The selection process for an appointment to a prescribed officer position is to consist of—
 - (a) in the case of prescribed officer position to be filled by appointment from within a merit pool—the selection, in accordance with any relevant general order, special order or guideline made or given by the Commissioner, of a suitable member of SA Police from within the merit pool to fill the position; or
 - (b) in any other case—the selection process set out in regulation 49B.
- (3) The Commissioner may, in the Commissioner's absolute discretion, determine whether a particular prescribed promotional position or prescribed officer position is to be filled by appointment from within a merit pool or on individual application and the selection process set out in regulation 49B.
- (4) However, in the case where a merit pool has been established to fill prescribed promotional positions or prescribed officer positions of a particular kind, the Commissioner must, unless it is not reasonably practicable to do so, fill a particular prescribed promotional position or prescribed officer position of that kind by appointment from within the merit pool.
- (5) To avoid doubt, the right of review set out in section 55 of the Act does not apply in relation to a decision to appoint a particular member of SA Police from within a merit pool to fill a position.

Note—

A decision to appoint a particular member from within a merit pool to fill a position is not a selection process as contemplated by section 55 of the Act—see the definition of *selection processes* in section 3 of the Act.

Rights of review in relation to merit pools are instead set out in regulation 49.

49B—Selection process for certain positions not filled from within merit pools

- (1) This regulation applies to—
 - (a) a prescribed promotional position; and
 - (b) a prescribed officer position,(not being a position that is to be filled by appointment from within a merit pool in accordance with regulation 49A(1)(a) or (2)(a)).
- (2) The Commissioner must cause a position to which this regulation applies to be advertised in either or both of the following ways:
 - (a) by publishing a notice in the Police Gazette calling for applicants (except in the case of an appointment under section 23 of the Act);

- (b) by advertising the position in such other manner as may be determined by the Commissioner.
- (3) The Commissioner may appoint an advisory committee of at least 3 persons, 1 of whom may be the Commissioner, to assist in determining the suitability of applicants to fill the position.
- (4) If the Commissioner is a member of the committee, the Commissioner will determine, with the advice and assistance of the other members of the committee, which applicant is the most suitable on merit (or, if appropriate, that there is no suitable applicant).
- (5) If the Commissioner is not a member of the committee, the committee must determine which applicant is, in the opinion of the committee, the most suitable on merit (or that there is no suitable applicant) and advise the Commissioner in writing accordingly.
- (6) An applicant may be required to take part in or submit to an interview, test, medical or psychological assessment, training course or other assessment procedure.
- (7) A member of SA Police must, at the request of an advisory committee, appear before or produce to the committee any record, document or other information to which the member has access and that the committee needs in connection with its determination.

49C—Period of appointment

- (1) The Commissioner may, in relation to a prescribed promotional position or prescribed officer position, specify that any or all of the following periods of appointment apply to the position:
 - (a) a specified period of appointment;
 - (b) a minimum period of appointment;
 - (c) a maximum period of appointment.
- (2) A specified period may be varied at the discretion of the Commissioner.
- (3) A specified minimum period may be reduced, and a specified maximum period may be increased, at the discretion of the Commissioner.
- (4) If a minimum period of appointment is specified in respect of a position, a person appointed to the position is not, except at the discretion of the Commissioner, eligible for appointment to another position in SA Police of the same or a lower rank until the minimum period has expired.

49D—Notice of requirement or qualifications for appointment

The Commissioner must cause notice of any general order, special order or guideline made by the Commissioner that concerns the requirements or qualifications for appointment to a position of or above the rank of senior constable to be given in the Police Gazette, or in such other manner as may be approved by the Commissioner, as soon as is reasonably practicable after it is made.

49E—Review of Part

- (1) The Minister must cause a review of the operation of this Part to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and the report must be completed before the fourth anniversary of the commencement of this Part.
- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 20 May 2021

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