

First print



New South Wales

Police Service Amendment (Special Risk Benefit) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Police Service Act 1990* to provide a basis for calculating the special risk benefit that may be paid in relation to a police officer who is not a contributor to the Police Superannuation Fund and who dies or who is retired as a consequence of being hurt on duty so as to take account of the police officer's life expectancy immediately before being hurt on duty. Being **hurt on duty** means being injured in such circumstances as would entitle the police officer to compensation under the *Workers Compensation Act 1987*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Police Service Act 1990* set out in Schedule 1.

Schedule 1 Amendments

Calculation of special risk benefit

The maximum amount of the special risk benefit payable under section 216 of the *Police Service Act 1990* is currently 24 months' pay at the rate of the police officer's salary at the date of retirement (in the case of a police officer who is retired as a consequence of being hurt on duty) or at the date the police officer was hurt on duty (in the case of a police officer who dies as a consequence of being hurt on duty). **Schedule 1 [1]** and **[2]** remove the references to this basis of calculation. **Schedule 1 [3]** provides the new basis of calculation. The relevant amount will, as a consequence of the amendments, be calculated having regard to the police officer's annual salary at the day on which the police officer is hurt on duty, a capitalisation factor determined by reference to the police officer's sex and age, and the extent of the police officer's permanent loss of earning capacity. Transient psychological or psychiatric injury is not to be taken into consideration in determining permanent loss of earning capacity. **Schedule 1 [4]** removes a provision that is inconsistent with the new basis of calculation.

Appeals to the Compensation Court

Schedule 1 [5] inserts proposed section 216A into the *Police Service Act 1990*. It enables a person who is dissatisfied with a determination of the Commissioner concerning the amount of a payment to apply to the Compensation Court of New South Wales for a redetermination. The proposed section enables the making of the application and specifies the powers of the Compensation Court in relation to the application, including its powers to award costs.

Police Service Amendment (Special Risk Benefit) Bill 1998

Explanatory note

Savings and transitional provisions

Schedule 1 [6] enables the making of regulations of a savings or transitional nature as a consequence of the enactment of the proposed Act. **Schedule 1 [7]** extends the application of the amendments to injuries sustained before the commencement of the amendments and that have not been compensated before that commencement.

First print



New South Wales

Police Service Amendment (Special Risk Benefit) Bill 1998

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Police Service Act 1990 No 47	2
 Schedule 1 Amendments	 3



New South Wales

Police Service Amendment (Special Risk Benefit) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Police Service Act 1990* in relation to the special risk benefit that may be paid as a consequence of the death or retirement of a police officer who is hurt on duty; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Service Amendment (Special Risk Benefit) Act 1998*.

2 Commencement

5

This Act commences on a day to be appointed by proclamation.

3 Amendment of Police Service Act 1990 No 47

The *Police Service Act 1990* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 216 Special risk benefit where certain police officers hurt on duty

Omit "not exceeding 24 months' pay at the rate of the police officer's salary at the date of retirement" from section 216 (1).
Insert instead "calculated in accordance with this section". 5

[2] Section 216 (2)

Omit ". not exceeding 24 months' pay at the rate of the police officer's salary at the date the police officer was hurt on duty.". 10
Insert instead "calculated in accordance with this section".

[3] Section 216 (2A), (2B)

Insert after section 216 (2):

(2A) The amount calculated in accordance with this section in relation to a police officer to whom subsection (1) or subsection (2) applies is the amount determined in accordance with the formula: 15

$$A = S \times CF \times I$$

where:

A is the amount, and 20

S is the annual salary of the police officer at the day on which the police officer was hurt on duty, and

CF is the capitalisation factor, prescribed for the purposes of this section by the regulations, for the sex of the police officer and for the age of the police officer on the day on which he or she was hurt on duty, and 25

I is the extent of the police officer's permanent loss of earning capacity, determined by the Commissioner and expressed as a percentage, as a consequence of being hurt on duty. 30

- (2B) Without limiting any other factor the Commissioner may take into consideration in determining a police officer's permanent loss of earning capacity as referred to in subsection (2A), a psychological or psychiatric injury sustained by a police officer as a consequence of being hurt on duty must not be taken into consideration unless it is demonstrable and permanent. 5

[4] Section 216 (4)

Omit the subsection.

[5] Section 216A 10

Insert after section 216:

216A Determination by Compensation Court

- (1) A police officer referred to in section 216 (1) or the spouse or personal representative of a police officer referred to in section 216 (2) who is dissatisfied with a decision of the Commissioner under section 216 may apply to the Compensation Court for a determination in relation to the decision within 6 months after the decision is notified in writing to the police officer, or to the spouse or personal representative of the police officer. 15 20
- (2) If the Commissioner fails or refuses to make a decision under section 216 in relation to a police officer who is hurt on duty (within the meaning of that section) within 6 months after the police officer is retired or dies, the Commissioner is taken, for the purposes of this section, to have made a decision under that section to refuse to pay any amount under that section in relation to the police officer. 25
- (3) The Commissioner is entitled to be represented at the hearing of an application under this section. 30

-
- (4) After considering the application, the Compensation Court may make a determination that the decision of the Commissioner in respect of which the application was made:
- (a) be confirmed, or 5
 - (b) be set aside and replaced by a different decision made by the Compensation Court.
- (5) The Compensation Court must not make a decision referred to in subsection (4) (b) that could not be made by the Commissioner under section 216. 10
- (6) A decision of the Compensation Court referred to in subsection (4) (b) is taken to be made by the Commissioner and is to be given effect accordingly.
- (7) After hearing the application, the Compensation Court:
- (a) may assess the costs of the successful party to the application (including costs of representation and witness expenses, if any), and 15
 - (b) may order that the costs so assessed (or any part of them) be paid to the successful party by any other party within a time specified in the order. 20
- The Compensation Court cannot order the payment of costs by the applicant unless it is satisfied that the application was frivolous or vexatious or was made fraudulently or without proper justification.
- (8) If costs assessed under subsection (7) are not paid within the time specified in the order for their payment, the person in whose favour the order was made may recover the costs from the person against whom the order was made as a debt. 25
- (9) In this section, *Compensation Court* means the Compensation Court of New South Wales constituted under the *Compensation Court Act 1984*. 30

[6] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Police Service Amendment (Special Risk Benefit) Act 1998

[7] Schedule 4 5

Insert in Schedule 4 (with appropriate Part and clause numbers):

**Part Provisions consequent on enactment of
Police Service Amendment (Special Risk
Benefit) Act 1998**

Injuries to which sections 216 and 216A apply 10

The provisions of section 216, as amended by the *Police Service Amendment (Special Risk Benefit) Act 1998*, and section 216A, as inserted by that Act, extend to:

- (a) an amount that is paid after the commencement of those provisions, or 15
- (b) a decision that is made after the commencement of those provisions to refuse to pay an amount,

in relation to an injury sustained by a police officer before the commencement of those provisions.