

Police Legislation Amendment (Special Constables) Bill 2001

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to repeal the *Police (Special Provisions) Act 1901* so as to abolish the office of special constable, and
- (b) to amend the *Police Service Act 1990* to establish administrative officer (special constable) positions and to provide for the transfer of certain employees currently holding office as special constables and performing security duties or band duties to administrative officer (special constable) positions or administrative officer positions, and
- (c) to amend the *Police Service Act 1990* to provide for the appointment of members of the police forces of other States, Territories or countries, and administrative officers (special constable), as recognised law enforcement officers having police powers, immunities, liabilities and responsibilities, and
- (d) to confine membership of the Police Band to members of the Police Service, and
- (e) to make consequential amendments to the *Police Service Act 1990* and other Acts, and
- (f) to enact savings and transitional provisions.

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 or days 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.

Clause 4 is a formal provision giving effect to the amendments to other Acts set out in Schedule 2.

Clause 5 repeals the *Police (Special Provisions) Act 1901* on 1 January 2002, or on commencement of the proposed section, whichever is the later.

Schedule 1 Amendment of Police Service Act 1990

Amendments relating to abolition of special constables and creation of new positions

Currently, certain employees performing security duties relating to buildings owned or occupied by the Crown or government or public authorities are employees under the control of the Commissioner of Police (the **Commissioner**) but are not members of the Police Service. These employees also have the powers of a police constable because they also hold office as special constables. Some members of the Police Band are employees under the control of the Commissioner who also hold office as special constables. The office of special constable is to be abolished by the repeal of the *Police (Special Provisions) Act 1901*.

Schedule 1 [1] inserts proposed section 81AA. The proposed section enables the Commissioner to appoint persons to positions as administrative officers (special constable) in the Police Service. The officers are to have the functions relating to the security of buildings owned or occupied by the Crown or government or public authorities that are specified by the Commissioner. The officers are to be subject to the same testing as police officers for use of alcohol or prohibited drugs and may be appointed as recognised law enforcement officers under proposed section 207B (see Schedule 1 [3]).

Schedule 1 [4] makes an amendment consequential on the transfer of existing special constables who are members of the Police Band to the Police Service as administrative officers. The effect of this is that there will be no members of the Police Band who are not also members of the Police Service. Schedule 1 [4] removes the reference to other kinds of members.

Schedule 1 [5] enables a person who is a member of the Police Band and who is not a police officer to wear a police uniform while carrying out ceremonial functions, or other functions approved by the Commissioner, as a member of the Band. Schedule 1 [2] makes a consequential amendment.

Schedule 1 [6] enables savings and transitional regulations to be made as a consequence of amendments made to the *Police Service Act 1990* by the proposed Act.

Schedule 1 [7] inserts savings and transitional provisions consequential on the abolition of the office of special constable. Existing special constables cease to hold office but the repeal of the *Police (Special Provisions) Act 1901* will not affect the validity of past actions by special constables.

Provision is made for the transfer to the Police Service of existing employees under the control of the Commissioner who perform security duties relating to buildings owned or occupied by the Crown or government or public authorities. The transferred employees are to be appointed as administrative officers (special constable). Provision is also made for the transfer to the Police Service, as administrative officers, of existing Police Band members who are not already members of the Police Service. Both kinds of transferred employees are to retain existing leave and long service entitlements as well as the right to continue contributing to the superannuation funds to which they contributed before their transfer. Employment is to be on the conditions applicable to administrative officers in the Police Service.

Recognised law enforcement officers

Schedule 1 [3] inserts proposed Part 10B (proposed sections 207B, 207C, 207D and 207E). Proposed section 207B enables the Commissioner to appoint persons who are members of the Australian Federal Police or members of a police force of another State, Territory or country as recognised law enforcement officers. The Commissioner may also appoint administrative officers (special constable) as recognised law enforcement officers. The Commissioner must not appoint a person or group of persons unless the Commissioner is of the opinion that they are to be subject to an appropriate disciplinary system in respect of the exercise of functions as recognised law enforcement officers. Appointment may be subject to conditions and (in the case of an individual) is to specify a term of appointment. An appointment may be revoked at any time.

Proposed section 207C requires recognised law enforcement officers to swear an oath of office or make an affirmation before they commence to exercise the powers of such an officer.

Proposed section 207D confers on a recognised law enforcement officer the functions of a police officer of the rank of constable (including the powers, immunities, liabilities and responsibilities). The provision extends to functions conferred after the commencement of the proposed section. The functions are subject to any conditions of appointment and regulations may be made for or with respect to identification requirements and the wearing of uniform.

Proposed section 207E makes it clear that the Commissioner may revoke a person's appointment as a recognised law enforcement officer if of the opinion that the person is not a suitable person to be a recognised law enforcement officer.

Schedule 2 Amendment of other Acts

Schedule 2.1 [2], 2.2, 2.3, 2.4, 2.5, 2.6 and 2.7 remove references to special constables from the *Firearms Act 1996*, the *Law Reform (Vicarious Liability) Act 1983*, the *Local Government Act 1993*, the *Mining Act 1992*, the *Prevention of Cruelty to Animals Act 1979*, the *Roads Act 1993* and the *Security Industry Act 1997*.

Schedule 2.1 [1] exempts persons who are recognised law enforcement officers under the *Police Service Act 1990* and administrative officers (special constable) in the Police Service from being liable for offences under the *Firearms Act 1996* while acting in the ordinary course of their duties.

Schedule 2.7 exempts recognised law enforcement officers under the *Police Service Act 1990* and administrative officers (special constable) in the Police Service from the operation of the *Security Industry Act 1997* while performing official duties.

Schedule 2.8 exempts persons who are recognised law enforcement officers under the *Police*

Service Act 1990 and administrative officers (special constable) in the Police Service from being liable for offences under the *Weapons Prohibition Act 1998* while acting in the ordinary course of their duties.