



New South Wales

# 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.

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**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.



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New South Wales

# Police Legislation Amendment (Special Constables) Bill 2001

No. , 2001

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## A Bill for

An Act to amend the *Police Service Act 1990* with respect to recognised law enforcement officers and the appointment and transfer of security officers and Police Band members; to repeal the *Police (Special Provisions) Act 1901*; to make consequential amendments to other Acts; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Police Legislation Amendment (Special Constables) Act 2001</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6 7
<b>3 Amendment of Police Service Act 1990 No 47</b>	8
The <i>Police Service Act 1990</i> is amended as set out in Schedule 1.	9
<b>4 Amendment of other Acts</b>	10
Each Act referred to in Schedule 2 is amended as set out in that Schedule.	11 12
<b>5 Repeal of Police (Special Provisions) Act 1901 No 5</b>	13
The <i>Police (Special Provisions) Act 1901</i> is repealed on 1 January 2002, or on the commencement of this section, whichever is the later.	14 15



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<b>Schedule 1</b>	<b>Amendment of Police Service Act 1990</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 81AA</b>	3
	Insert after section 81:	4
	<b>81AA Administrative officers (special constable)</b>	5
	(1) The Commissioner may appoint a person to a non-executive position in the Police Service as an administrative officer (special constable) and may specify the functions of the position.	6 7 8 9
	(2) The position of administrative officer (special constable) is to be designated as a position available to administrative officers and the provisions of this Act and the regulations apply accordingly.	10 11 12 13
	(3) An administrative officer (special constable) is to have the functions relating to the security of buildings owned or occupied by the Crown or government or public authorities that are specified for the purposes of the position by the Commissioner.	14 15 16 17 18
	(4) The regulations may make provision for or with respect to identification requirements for, and the wearing of uniform by, administrative officers (special constable).	19 20 21
	(5) Section 211A applies to and in respect of a person who is an administrative officer (special constable) in the same way that it applies to and in respect of a police officer.	22 23 24
<b>[2]</b>	<b>Section 203 Protection of police uniforms and police insignia</b>	25
	Insert “this Act,” before “the regulations” in section 203 (5) (a).	26

<b>[3] Part 10B</b>	1
Insert after Part 10A:	2
<b>Part 10B      Recognised law enforcement officers</b>	3
<b>207B    Recognition of other law enforcement officers</b>	4
(1) The Commissioner may, by instrument in writing, appoint any of the following persons as recognised law enforcement officers:	5 6 7
(a) members of the Australian Federal Police,	8
(b) members of the police force of another State or a Territory,	9 10
(c) members of the police force of any country prescribed by the regulations,	11 12
(d) administrative officers (special constable) (as referred to in section 81AA).	13 14
(2) The Commissioner must not appoint a person, or a group of persons, as recognised law enforcement officers unless the person or persons are to be, in the opinion of the Commissioner, subject to an appropriate disciplinary system in respect of the exercise of their functions as recognised law enforcement officers.	15 16 17 18 19 20
(3) An appointment as a recognised law enforcement officer may be made subject to conditions. The kinds of conditions to which an appointment may be subject include (but are not limited to) conditions as to the kinds of functions conferred and the purposes for and circumstances in which such functions may be exercised.	21 22 23 24 25 26
(4) If the Commissioner appoints an individual as a recognised law enforcement officer, the Commissioner must specify the term of the appointment.	27 28 29
(5) The Commissioner may, at any time, revoke the appointment of a person or persons as recognised law enforcement officers and may, at any time, impose, vary or revoke any conditions of an appointment.	30 31 32 33

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(6)	A person who is a recognised law enforcement officer because he or she is a member of a police force or because he or she holds the position of an administrative officer (special constable) ceases to be a recognised law enforcement officer on ceasing to be such a member or holding such a position.	1 2 3 4 5
<b>207C</b>	<b>Oath or affirmation by recognised law enforcement officers</b>	6
(1)	Before a person commences to exercise any of the functions of a recognised law enforcement officer, the person must take the oath or make the affirmation of office as a recognised law enforcement officer in accordance with the regulations.	7 8 9 10
(2)	The regulations may exempt a person or class of persons from the operation of this section.	11 12
<b>207D</b>	<b>Recognised law enforcement officers to have police functions</b>	13
(1)	A recognised law enforcement officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under this Act has and may exercise under any law of the State (including the common law and this Act).	14 15 16 17 18
(2)	Those functions extend to functions conferred after the commencement of this section.	19 20
(3)	The conferral of functions by this section on a recognised law enforcement officer is subject to any applicable conditions of the officer's appointment as a recognised law enforcement officer.	21 22 23 24
(4)	The regulations may make provision for or with respect to identification requirements for, or the wearing of uniform by, recognised law enforcement officers.	25 26 27
<b>207E</b>	<b>Revocation of appointment of unsuitable persons</b>	28
	Without limiting section 207B (5), the Commissioner may, at any time, revoke the appointment of a person 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.	29 30 31 32

<b>[4] Section 218A Police Band</b>	1
Omit section 218A (1). Insert instead:	2
(1) There is to be a Police Band consisting of members of the Police Service.	3 4
<b>[5] Section 218A (3)</b>	5
Insert at the end of section 218A:	6
(3) A member of the Police Band who is not a police officer may wear a police uniform for the following purposes:	7
(a) carrying out ceremonial functions as a member of the Band,	8 9 10
(b) carrying out, as a member of the Band, other functions approved by the Commissioner for the purposes of this subsection.	11 12 13
<b>[6] Schedule 4 Savings, transitional and other provisions</b>	14
Insert at the end of clause 2 (1):	15
<i>Police Legislation Amendment (Special Constables) Act 2001</i>	16
<b>[7] Schedule 4</b>	17
Insert in appropriate order and with appropriate part and clause numbering in Schedule 4:	18 19
<b>Part Provisions consequent on enactment of Police Legislation Amendment (Special Constables) Act 2001</b>	20 21 22
<b>Definitions</b>	23
In this Part:	24
<i>special constable</i> means a person holding office as a special constable under the <i>Police (Special Provisions) Act 1901</i> immediately before the repeal of that Act.	25 26 27

*transferred employee* means a person employed as an administrative officer (special constable) or as an administrative officer in the Police Service by virtue of this Part.

**Existing special constables** 4

- (1) A special constable ceases to hold office as a special constable on the repeal of the *Police (Special Provisions) Act 1901*. 5 6
- (2) The repeal of that Act does not affect the validity of the exercise of any function by a special constable before that repeal or any proceedings initiated by a special constable before that repeal. 7 8 9 10

**Appointment of existing security officers** 11

- (1) On the commencement of this clause, the employees specified in an order made under subclause (2): 12 13
  - (a) are transferred to the Police Service, and 14
  - (b) are taken to be appointed as administrative officers (special constable) under this Act. 15 16
- (2) The Governor may, on the recommendation of the Commissioner, by order published in the Gazette, specify the employees under the control of the Commissioner, and employed to perform security duties relating to buildings owned or occupied by the Crown or government or public authorities, to be transferred under this clause. 17 18 19 20 21 22
- (3) The order may nominate the classification of the position to which a transferred employee is transferred and may appoint any or all of the transferred employees as recognised law enforcement officers under section 207B. 23 24 25 26
- (4) Part 6 of this Act does not apply to or in respect of the appointment of a transferred employee under this clause. 27 28

**Appointment of existing Police Band officers** 29

- (1) On the commencement of this clause, the employees specified in an order made under subclause (2): 30 31
  - (a) are transferred to the Police Service, and 32
  - (b) are taken to be employed as administrative officers under this Act. 33 34

- (2) The Governor may, on the recommendation of the Commissioner, by order published in the Gazette, specify the employees who are members of the Police Band (but not members of the Police Service) to be transferred under this clause. 1  
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- (3) The order may nominate the classification of the position to which a transferred employee is transferred. 6  
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- (4) Part 6 of this Act does not apply to or in respect of the appointment of a transferred employee under this clause. 8  
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**Conditions of employment** 10

A transferred employee is to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations applicable to an administrative officer of the classification to which the employee is transferred. 11  
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**Leave** 15

A transferred employee retains any rights to annual leave, extended service leave and sick leave accrued or accruing in his or her previous employment. 16  
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**Superannuation** 19

- (1) A transferred employee: 20
- (a) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before becoming a transferred employee, and 21  
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23  
24
- (b) is entitled to receive any payment, pension or gratuity accrued or accruing under the scheme, 25  
26
- as if he or she had continued to be such a contributor during service with the Police Service. 27  
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- (2) Service by the transferred employee with the Police Service is taken to be service as an officer in his or her previous employment for the purposes of any law under which the officer continues to contribute to the scheme or by which an entitlement under the scheme is conferred. 29  
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- (3) The transferred employee is to be regarded as an officer or employee, and the Police Service is to be regarded as the employer, for the purposes of the scheme. 1  
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- (4) This clause ceases to apply to the transferred employee if he or she becomes a contributor to another superannuation scheme, but the transferred employee is not prevented from receiving a resignation benefit from the first superannuation scheme. 4  
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- No dual benefits** 8
- A transferred employee is not entitled to claim, both under this Act and any other Act, dual benefits of the same kind for the same period of service. 9  
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<b>Schedule 2</b>	<b>Amendment of other Acts</b>	1
	(Section 4)	2
<b>2.1</b>	<b>Firearms Act 1996 No 46</b>	3
<b>[1]</b>	<b>Section 6 Application of Act</b>	4
	Insert after section 6 (2) (d):	5
	(e) as a member of the police force of another country, but only if the person is a recognised law enforcement officer under Part 10B of the <i>Police Service Act 1990</i> and is acting in accordance with any conditions of the appointment as a recognised law enforcement officer, or	6 7 8 9 10
	(e1) as a person seconded to the Police Service, but only if the person is a recognised law enforcement officer under Part 10B of the <i>Police Service Act 1990</i> and is acting in accordance with any conditions of the appointment as a recognised law enforcement officer, or	11 12 13 14 15
	(e2) as an administrative officer (special constable) employed under the <i>Police Service Act 1990</i> , or	16 17
<b>[2]</b>	<b>Section 12 Genuine reasons for having a licence</b>	18
	Omit “who is a special constable” from the Table to the section.	19
	Insert instead “who is appointed by the Minister administering the <i>Prevention of Cruelty to Animals Act 1979</i> as an officer for the purposes of that Act”.	20 21 22
<b>2.2</b>	<b>Law Reform (Vicarious Liability) Act 1983 No 38</b>	23
	<b>Section 5 Definitions</b>	24
	Omit the definition of <i>office</i> from section 5 (1).	25



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<b>2.3 Local Government Act 1993 No 30</b>	1
<b>Dictionary</b>	2
Omit the definition of <i>police officer</i> .	3
<b>2.4 Mining Act 1992 No 29</b>	4
<b>Section 320 Warden may authorise person or officer to perform any prescribed act</b>	5 6
Omit “or special constable” from section 320 (b).	7
<b>2.5 Prevention of Cruelty to Animals Act 1979 No 200</b>	8
<b>Section 4 Definitions</b>	9
Omit paragraph (b) of the definition of <i>officer</i> in section 4 (1).	10
Insert instead:	11
(b) an officer of an approved charitable organisation who is appointed by the Minister as an officer for the purposes of this Act, or	12 13 14

<b>2.6</b>	<b>Roads Act 1993 No 33</b>	1
	<b>Dictionary</b>	2
	Omit from the definition of <i>authorised officer</i> :	3
	(d) a police officer,	4
	and, in relation to the provisions of sections 232 and 233,	5
	includes a special constable authorised by the RTA to exercise	6
	the functions of an authorised officer under those provisions.	7
	Insert instead:	8
	(d) a police officer.	9
<b>2.7</b>	<b>Security Industry Act 1997 No 157</b>	10
	<b>Section 6 Application of Act</b>	11
	Omit the section 6 (2) (d). Insert instead:	12
	(d) a recognised law enforcement officer, or an	13
	administrative officer (special constable), appointed	14
	under the <i>Police Service Act 1990</i> ,	15
<b>2.8</b>	<b>Weapons Prohibition Act 1998 No 127</b>	16
	<b>Section 6 Application of Act</b>	17
	Insert at the end of section 6 (2) (d):	18
	, or	19
	(e) as a member of the police force of another country, but	20
	only if the person is a recognised law enforcement	21
	officer under Part 10B of the <i>Police Service Act 1990</i>	22
	and is acting in accordance with any conditions of the	23
	appointment as a recognised law enforcement officer, or	24

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- (f) as a person seconded to the Police Service, but only if the person is a recognised law enforcement officer under Part 10B of the *Police Service Act 1990* and is acting in accordance with any conditions of the appointment as a recognised law enforcement officer, or 1  
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  - (g) as an administrative officer (special constable) employed under the *Police Service Act 1990*. 6  
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