

**POLICE LEGISLATION AMENDMENT (SPECIAL CONSTABLES) BILL 2013**

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**Bill introduced on motion by Mr Geoff Provest, on behalf of Mr Greg Smith, read a first time and printed.**

**Second Reading**

**Mr GEOFF PROVEST** (Tweed—Parliamentary Secretary) [10.43 a.m.], on behalf of Mr Greg Smith: I move:

That this bill be now read a second time.

The Police Legislation Amendment (Special Constables) Bill 2013 represents the final process in the reform of special constable arrangements in New South Wales. Special constables are officers who undertake law enforcement, security and other related duties for agencies in which they work. They include certain local government employees such as council law enforcement officers, RSPCA officers or individuals from animal welfare organisations registered as a charity under the Fundraising Act 1991. It also relates to officers within the NSW Police Force, including officers in the Security Management Unit, the Police Band and the Special Services Group. Under part 4 of the Police (Special Provisions) Act 1990, a magistrate or any two justices of the peace may appoint special constables at times of tumult or riot or on occasions when ordinary constables or officers are not sufficient for the preservation of peace and the protection of the community.

The office of special constable was created to enhance police strength at times of unrest and when the NSW Police Force was in its infancy. That is no longer the case. Section 103 of the Police (Special Provisions) Act 1901 confers upon special constables all the powers, authorities, advantages and immunities of a police officer of the rank of constable. According to the Act, special constables are also liable to do all such duties and responsibilities of any police officer of the rank of constable. However, in practice special constables are not subject to the discipline, control or oversight to which their sworn counterparts are subject. There is also some question about the powers that special constables have had since the enactment of the Law Enforcement (Powers and Responsibilities) Act 2002, and that issue must be clarified. Additionally, while the legislative provisions governing special constables have remained largely static over time, the requirements of such roles have change significantly. Put simply, arrangements governing the office of special constable are out of date, out of step and out of touch with contemporary society. This bill addresses that issue.

The bill contains two parts. Schedule 1 deals with special constables employed by the NSW Police Force and schedule 3 deals with officers granted special constable status but who work for other New South Wales Government agencies and charitable organisations, and makes amendments to other legislation. Schedule 1 amends the Police Act 1990 to provide for the appointment of special constables in the NSW Police Force. Under new section 82L, the Commissioner of Police will be able to appoint a person to the position of non-executive administrative officer (special constable). At present, special constables in the NSW Police

Force Security Management Unit and the Police Band are employed under section 47 of the Constitution Act 1902 whereas special constables employed within the Police Special Services Group are appointed as administrative officers under the Police Act 1990. Appointing special constables in the Security Management Unit and the Police Band as non-executive administrative officers under the Police Act 1990 will create a more consistent management framework across all the areas in which the NSW Police Force special constables are employed. The bill formalises the Commissioner of Police as the employer of NSW Police Force special constables for industrial purposes. It gives that group appeal rights in the New South Wales Industrial Relations Commission and brings all NSW Police Force special constables within the scope of the Police Integrity Commission.

The bill amends the Police Act 1990 to clarify that the Commissioner of Police may delegate to special constables any of the powers that a police officer of the rank of constable has, including those conferred under the Law Reform (Powers and Responsibilities) Act 2002, that are necessary to the varying roles of special constables within the NSW Police Force. This will clarify those powers that a NSW Police Force special constable ostensibly already has access to and may use in the course of their duties. These powers will be aligned to the individual functions they perform, effectively streamlining the powers that special constables are able to use. Only NSW Police Force special constables, excepting those within the Police Band, will retain the title of special constable. The removal of special constable status for the Police Band reflects the largely ceremonial nature of their work. Members of the Police Band will, however, be able to wear the police uniform by authorisation of the Commissioner of Police.

In accordance with section 82L (4) of schedule 1 to the bill, NSW Police Force special constables will be subject to drug and alcohol testing, gunshot residue testing and integrity testing. These requirements are being provided in recognition of the quasi police duties that special constables employed by police perform. For example, under the current NSW Police Force Drug and Alcohol Policy special constables are required to understand and comply with its requirements but are not tested. As the majority of special constables carry firearms and interact with the public and in recognition of the safety risks involved in their work, it is important that they be subject to the same drug and alcohol testing requirements as their sworn colleagues.

Similarly, the need to subject special constables to integrity testing is an acknowledgement of their positions as being ones of high trust and authority. Section 201 of the Law Reform (Powers and Responsibilities) Act 2002—that is, supplying police officers' details and giving warnings—will also apply to NSW Police Force special constables when exercising certain powers under the Law Reform (Powers and Responsibilities) Act 2002. Some scenarios in which NSW Police Force special constables would be required to use section 201 include seizing property, such as seizing items during routine screening at Parliament House, and giving directions to a person.

The bill will also insert a new part 29 into the Police Act 1990 to provide for the revocation

of appointment of all special constables under the Police (Special Provisions) Act 1901 and appoint existing NSW Police Force special constables as non-executive administrative officers, special constable, or administrative officers in the case of the Police Band under the Police Act 1990. To enable the holistic introduction of these reforms, the Police (Special Provisions) Act 1901 will be repealed under schedule 2 to the bill. Schedule 3 to the bill concerns those officers who perform law enforcement duties for agencies other than police, principally council law enforcement officers and RSPCA and Animal Welfare League inspectors.

The bill proposes to amend the Local Government Act 1993 to give council law enforcement officers the power to give directions relating to public places—that is, if a council law enforcement officer has reasonable grounds to believe a person's behaviour or presence in a place is obstructing another person or persons or traffic. An example of how this power would be used by council law enforcement officers is when enforcing alcohol-free and alcohol-prohibited zones. This power will be subject to section 201 of the Law Reform (Powers and Responsibilities) Act 2002 safeguard—supplying officers' details and giving warnings—and will apply to council law enforcement officers in the same way as it applies to NSW Police Force special constables and sworn police officers.

RSPCA and Animal Welfare League inspectors will be given the power to demand an individual's name and address when an offence is committed, suspected of having been committed, or attempted to be committed; require a person to answer questions and provide information in connection with the RSPCA and Animal Welfare League compliance and enforcement responsibilities; and present cases and provide evidence in court by being able to read, or be led through, a written statement previously made by the inspector subject to the same conditions as set out in section 33 (2) of the Evidence Act 1995. An exemption from the requirement to hold a permit under the Weapons Prohibition Regulation 2009 will also apply to inspectors appointed under the Prevention of Cruelty to Animals Act 1979. At present, inspectors do not have to obtain a permit under the Weapons Prohibition Regulation 2009 because they are special constables.

This exemption will ensure that inspectors can continue to carry handcuffs and extendable batons when undertaking their enforcement activities. These items can be needed in order to carry out their duties. For example, extendable batons are used to provide protection when dealing with aggressive animals as a safety mechanism rather than to subdue the animal. Handcuffs are sometimes used to effect an arrest in incidents when the owner of the premises becomes hostile towards inspectors. The bill also amends the Firearms Act 1996 to enable RSPCA and Animal Welfare League inspectors to continue to hold category A and category B firearms licences. These firearms licences are held in accordance with Section 12 of the Firearms Act 1996 and a genuine animal welfare reason for having a licence. Schedule 3 to the bill amends section 60AA of the Crimes Act 1900 to include NSW Police Force special constables and recognised law enforcement officers within the meaning of "law enforcement officer" under that Act. Section 60AA carries penalties for assaults and other offences committed against a law enforcement officer.

**ACTING-SPEAKER (Mr Gareth Ward):** Order! I welcome to the public gallery students from Narwee Public School.

**Mr GEOFF PROVEST:** It is pleasing to see the bright young faces of students from a very good school. These reforms will modernise arrangements for special constables in New South Wales, and I thank all those who have been involved in bringing this bill to fruition for their input and their commitment to the reform process. They will ensure that the law enforcement officers from each of the agencies I have referred to can work more effectively and with greater certainty about the powers they have. I would be remiss of me not to acknowledge the fine work that is being done by the special constables at Parliament House. I have no doubt that all members would join me in applauding them. I commend the bill to the House.

**Debate adjourned on motion by Ms Noreen Hay and set down as an order of the day for a future day.**