



**Full Day Hansard Transcript (Legislative Council, 20 August 2013, Proof)**  
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**POLICE LEGISLATION AMENDMENT (SPECIAL CONSTABLES) BILL 2013**

**Second Reading**

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [3.56 p.m.]: The Police Legislation Amendment (Special Constables) Bill 2013 represents the final process in the reform of special constable arrangements in New South Wales. As my second reading speech is lengthy, I seek leave to incorporate the remainder in *Hansard*.

**Leave granted.**

Special constables are officers who undertake law enforcement, security and other related duties for the 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;
- officers within the NSW Police Force including officers in the Security Management Unit, Police Band and Special Services Group.

Under part 4 of the Police (Special Provisions) Act 1901 a magistrate, or any two Justices of the Peace, may appoint special constables in times of tumult or riot and on occasions where 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 in times of unrest and at a time when the NSW Police Force was in its infancy.

This is no longer the case.

Section 103 of the Police (Special Provisions) Act 1901 confers upon special constables all of 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 all such duties and responsibilities as any police officer of the rank of constable.

Yet 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 as to the powers that special constables have actually had since the Law Enforcement (Powers and Responsibilities) Act 2002, or LEPRA as it is more commonly known, was introduced in 2005.

This needs to be clarified.

Additionally, while the legislative provisions governing special constables have remained largely static overtime, the requirements for such roles have changed significantly.

Put simply, the arrangements governing the office of special constable are out of date, out of step and out of touch with contemporary society.

The bill will address this.

There are two parts to this bill—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 NSW government agencies or charitable organisations, and makes amendments to other legislation.

Schedule 1 of the bill proposes to amend 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's Security Management Unit and Police Band are employed as ministerial employees under section 47 of the Constitution Act 1902.

This compares with special constables employed within the Police Special Services Group who are appointed as administrative officers under the Police Act 1990.

Appointing special constables in the Security Management Unit and Police Band as non executive administrative officers under the Police Act 1990 will create a more consistent management framework across all of the areas in which NSW Police Force special constables are employed; formalise the Commissioner of Police as the employer of NSW Police Force special constables for industrial purposes; give this group appeal rights in the New South Wales Industrial Relations Commission; and bring all NSW Police Force special constables within the scope of the Police Integrity Commission.

The bill also 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 LEPRA that are necessary to the varying roles of special constable within the NSW Police Force.

This will clarify those powers which a NSW Police Force special constable ostensibly already has access to and may use during the course of their duties.

These powers will be aligned to the individual functions they perform, effectively streamlining the powers 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 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 the Police Force 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 LEPRA, that is, supplying police officer's details and giving warnings, will also apply to NSW Police Force special constables when exercising certain powers under LEPRA.

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 of the bill.

Schedule 3 of 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 that a person's behaviour or presence in a place is obstructing another person or persons or traffic.

An example in which 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 the section 201 LEPRSA 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 individuals' name and address where 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 Animal Welfare League's compliance and enforcement responsibilities;
- 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 to carry out their duties.

For example, extendible 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 where 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 the genuine reason of animal welfare for having a licence.

Schedule 3 also amends section 6CM 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.

The reforms that I present to you today 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 today can work more effectively and with greater certainty about the powers that they have.

I commend the bill to the House.