



New South Wales

Police Legislation Amendment (Special Constables) Bill 2013

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to repeal the *Police (Special Provisions) Act 1901* so as to abolish the office of special constable under that Act,
- (b) to amend the *Police Act 1990* to establish non-executive administrative officer (special constable) positions in the NSW Police Force and to provide for the transfer of certain employees currently holding office as special constables and performing security duties or Police Band duties to non-executive administrative officer (special constable) positions or other non-executive administrative officer positions,
- (c) to make consequential and minor amendments to the *Police Act 1990* and other legislation.

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.

Schedule 1 Amendment of Police Act 1990 No 47

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

The office of special constable is to be abolished by the repeal of the *Police (Special Provisions) Act 1901*.

The proposed amendments make provision for employees currently holding the office of special constable who are either members of the NSW Police Force or who are not members of the NSW Police Force but subject to the day-to-day direction of the Commissioner of Police. This latter group comprises employees performing security duties or who are members of the Police Band.

Schedule 1 [1] inserts proposed section 82L. The proposed section enables the Commissioner to appoint a person to the position of non-executive administrative officer (special constable) within the Police Force. The Commissioner can confer on such an officer the functions of a police officer of the rank of constable, in which case, the officer will be subject to the same testing as police officers for integrity, gunshot residue and use of alcohol, prohibited drugs or steroids.

Schedule 1 [2] enables a special constable to wear a police uniform in the course of their duties as a special constable.

Schedule 1 [3] enables a Police Band member who is not a police officer to wear a police uniform while carrying out functions as a member of the Band.

Schedule 1 [4] is consequential on the amendment to the *Crimes Act 1900* by Schedule 3.1, confirming the status of law enforcement officers from other jurisdictions as law enforcement officers for the purposes of Division 8A of Part 3 of that Act.

Schedule 1 [5] enables savings and transitional regulations to be made as a consequence of amendments made to the *Police Act 1990* by the proposed Act.

Schedule 1 [6] inserts savings and transitional provisions consequential on the abolition of the office of special constable under the *Police (Special Provisions) Act 1901*. Existing special constables appointed under that Act cease to hold office, but the repeal of that Act will not affect the validity of past actions by special constables.

Existing special constables who are members of the Police Force will, on the repeal of the *Police (Special Provisions) Act 1901*, be taken to be appointed to certain positions. Those who are members of the Police Force solely by reason of being members of the Police Band will be taken to be appointed as non-executive administrative officers. They will not be special constables. Those who are members of the Police Force in the Security Management Unit, the Aviation Support Branch or the Advanced Technology Centre will be taken to be appointed as non-executive administrative officers (special constable).

Of those existing special constables who are not members of the Police Force but who are performing security duties subject to the day-to-day direction of the Commissioner of Police, the Minister may specify those that are transferred to the Police Force and appointed to the position of non-executive administrative officer (special constable).

Of those existing special constables who are not members of the Police Force but who are performing functions as members of the Police Band, the Minister may specify those who are transferred to the Police Force and appointed to the position of non-executive administrative officer.

Any such transfer will not give rise to any entitlements to any payments or other benefits merely by reason of the transfer and there will be no entitlement to be paid the money value of any accrued extended or annual leave or to receive dual benefits for the same period of service.

In relation to all appointments under the *Police Act 1990* that are consequent on the repeal of the *Police (Special Provisions) Act 1901*, the person concerned will be entitled to the same level of remuneration that the person was receiving immediately before the appointment and is to retain all existing leave and other employment entitlements.

Schedule 2 Repeal of Act

Schedule 2 repeals the *Police (Special Provisions) Act 1901*.

Schedule 3 Amendment of other legislation

Schedule 3.1 amends the *Crimes Act 1900* to include special constables within the meaning of proposed section 82L of the *Police Act 1990* and recognised law enforcement officers in the category of special victims of assault and other actions.

Schedule 3.2, 3.3, 3.4 [2], 3.5 [1], 3.6, 3.7, 3.8, 3.9 and 3.11 [1] remove references to special constables appointed under the *Police (Special Provisions) Act 1901* from various legislation and in most cases replace those references with references to the appropriate authorised person having existing investigative or enforcement powers.

Schedule 3.4 [1] confers on certain authorised council employees the power to give a direction (such as a direction to move on) to a person in a public place who is obstructing others or traffic.

Schedule 3.5 [2] allows an officer exercising powers under the *Prevention of Cruelty to Animals Act 1979* to require a person to give the person's name and address to request proof of that information.

Schedule 3.5 [3] confers on an inspector under the *Prevention of Cruelty to Animals Act 1979* the power to question persons whom the inspector reasonably suspects can provide information needed to exercise an inspector's powers under the Act or determine whether there has been a contravention of the Act or regulations.

Schedule 3.5 [4] allows an officer under the *Prevention of Cruelty to Animals Act 1979* to rely on a written statement previously prepared by that officer when giving evidence in chief for the prosecution in proceedings for an offence against the Act or regulations.

Schedule 3.5 [5] provides for officers under the *Prevention of Cruelty to Animals Act 1979* to retain that role when they cease to be special constables on the repeal of the *Police (Special Provisions) Act 1901*.

Schedule 3.10 exempts a person appointed as a non-executive administrative officer (special constable) from committing an offence under the *Weapons Prohibition Act 1998* only because of something that person has done in the course of the person's duties.

Schedule 3.11 [2] exempts an officer under the *Prevention of Cruelty to Animals Act 1979* from requiring a permit under the *Weapons Prohibition Regulation 2009* to possess and use handcuffs and extendable batons when acting in the course of the officer's duties.

First print



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New South Wales

Police Legislation Amendment (Special Constables) Bill 2013

No. , 2013

A Bill for

An Act to amend the *Police Act 1990* with respect to the appointment and functions of special constables; to repeal the *Police (Special Provisions) Act 1901*; to make consequential amendments to other legislation; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Police Legislation Amendment (Special Constables) Act 2013</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1	Amendment of Police Act 1990 No 47	1
[1]	Section 82L	2
	Insert after section 82K:	3
	82L Appointment of special constables	4
	(1) The Commissioner may appoint a person to the position of non-executive administrative officer (special constable). A person appointed to such a position is a <i>special constable</i> .	5 6 7
	(2) Such an appointment may be made subject to such conditions as the Commissioner determines, including (but not limited to) conditions as to the kinds of functions conferred or imposed and the purposes for and circumstances in which such functions may be exercised.	8 9 10 11 12
	(3) Without limiting the generality of subsection (2), the Commissioner may confer or impose on a special constable any of the functions of a police officer of the rank of constable, including any of the functions of a police officer that are specified in the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> .	13 14 15 16 17
	Note. Accordingly, section 13 of this Act, for example, would apply to any such special constable.	18 19
	(4) Sections 207A and 211A–211AB apply to a special constable who is authorised to exercise functions of a police officer in the same way as those sections apply to a police officer.	20 21 22
	(5) Section 201 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (Supplying police officer’s details and giving warnings) applies to a special constable who is authorised to exercise functions of a police officer in the same way as that section applies to a police officer.	23 24 25 26 27
	(6) Part 4 of the <i>Law Reform (Vicarious Liability) Act 1983</i> applies to a special constable who is authorised to exercise functions of a police officer in the same way as that Part applies to a police officer.	28 29 30 31
[2]	Section 203 Wearing or possession of police uniforms by others	32
	Insert “or a special constable appointed under section 82L” after “not being a police officer” in section 203 (1).	33 34
[3]	Section 203 (6)	35
	Insert “or in connection with the exercising of functions as a member of the Police Band” after “entertainment”.	36 37

[4] Section 207E Recognised law enforcement officers to have police functions	1 2
Omit section 207E (3) (b).	3
[5] Schedule 4 Savings, transitional and other provisions	4
Insert at the end of clause 2 (1):	5
any other Act that amends this Act	6
[6] Schedule 4, Part 30	7
Insert after Part 29 of Schedule 4:	8
Part 30 Provisions consequent on enactment of Police Legislation Amendment (Special Constables) Act 2013	9 10 11
82 Revocation of appointment of all special constables under repealed Act	12 13
(1) A person holding office as a special constable under the <i>Police (Special Provisions) Act 1901</i> ceases to hold that office on the repeal of that Act by the <i>Police Legislation Amendment (Special Constables) Act 2013</i> .	14 15 16 17
(2) The repeal of the <i>Police (Special Provisions) Act 1901</i> does not affect the validity of the exercise of any function, or any proceeding initiated, by a special constable before that repeal.	18 19 20
83 Existing members of the NSW Police Force	21
(1) In this clause and clause 86: <i>existing NSW Police Force special constable</i> means a member of the NSW Police Force holding office as a special constable under the <i>Police (Special Provisions) Act 1901</i> immediately before the repeal of that Act.	22 23 24 25 26
(2) An existing NSW Police Force special constable is, on the commencement of this clause:	27 28
(a) taken to have been appointed by the Commissioner under section 82L as a non-executive administrative officer (special constable), or	29 30 31
(b) in the case of an existing NSW Police Force special constable who is a member of the NSW Police Force solely by reason of being a member of the Police Band— taken	32 33 34

	to have been appointed by the Commissioner as a non-executive administrative officer under section 82A.	1 2
84	Appointments of existing security officers	3
(1)	In this clause and clause 86: <i>existing security officer</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 who:	4 5 6 7
	(a) is employed in the service of the Crown, other than in the NSW Police Force, to perform security duties, and	8 9
	(b) is subject to the day-to-day direction of the Commissioner.	10
(2)	On the commencement of this clause, an existing security officer specified in an order made under subclause (3):	11 12
	(a) is transferred to the NSW Police Force, and	13
	(b) is taken to have been appointed by the Commissioner under section 82L as a non-executive administrative officer (special constable).	14 15 16
(3)	The Minister may, on the recommendation of the Commissioner, by order in writing specify the existing security officers to be transferred and appointed under subclause (2).	17 18 19
85	Appointments of existing Police Band members	20
(1)	In this clause and clause 86: <i>existing Police Band member</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 and who is employed in the service of the Crown, other than in the NSW Police Force, as a member of the Police Band.	21 22 23 24 25 26
(2)	On the commencement of this clause, an existing Police Band member specified in an order made under subclause (3):	27 28
	(a) is transferred to the NSW Police Force, and	29
	(b) is taken to have been appointed by the Commissioner as a non-executive administrative officer under section 82A.	30 31
(3)	The Minister may, on the recommendation of the Commissioner, by order in writing specify the existing Police Band members to be transferred and appointed under subclause (2).	32 33 34

86	Effect of appointments	1
(1)	A person taken to have been appointed to a position of non-executive administrative officer by virtue of clause 83, 84 or 85:	2
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		4
(a)	is appointed at the same level of remuneration to which the person was entitled as an existing NSW Police Force special constable, existing security officer or existing Police Band member, and	5
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		7
		8
(b)	retains all leave and other employment entitlements accrued by or accruing to the person as an existing NSW Police Force special constable, existing security officer or existing Police Band member.	9
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		11
		12
(2)	A person who is transferred to the NSW Police Force under clause 84 or 85:	13
		14
(a)	is not entitled to receive any payment or other benefit merely by reason of that transfer, and	15
		16
(b)	is not entitled to elect, because of the transfer, to be paid the money value of any extended or annual leave that the person had accrued as an existing security officer or existing Police Band member immediately prior to the transfer, and	17
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(c)	is not entitled to claim, both under this or any other Act, dual benefits of the same kind for the same period of service.	22
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Police Legislation Amendment (Special Constables) Bill 2013

Repeal of Act

Schedule 2

Schedule 2 Repeal of Act

1

The *Police (Special Provisions) Act 1901* No 5 is repealed.

2

Schedule 3	Amendment of other legislation	1
3.1	Crimes Act 1900 No 40	2
	Section 60AA Meaning of “law enforcement officer”	3
	Insert at the end of paragraph (n) of the definition of <i>law enforcement officer</i> :	4
	, or	5
	(o) a recognised law enforcement officer within the meaning of the <i>Police Act 1990</i> , or	6
	(p) a special constable within the meaning of section 82L of the <i>Police Act 1990</i> .	7
		8
		9
3.2	Firearms Act 1996 No 46	10
[1]	Section 6 Application of Act	11
	Insert after section 6 (2) (a):	12
	(a1) as a special constable within the meaning of section 82L of the <i>Police Act 1990</i> who is exercising functions of a police officer, or	13
		14
		15
[2]	Section 12 Genuine reasons for having a licence	16
	Omit “a special constable” from paragraph (a) of the matter relating to the genuine reason of animal welfare in the Table to the section.	17
	Insert instead “appointed by the Minister administering the <i>Prevention of Cruelty to Animals Act 1979</i> as an officer for the purposes of that Act”.	18
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		20
3.3	Law Reform (Vicarious Liability) Act 1983 No 38	21
	Section 5 Definitions	22
	Omit the definition of <i>office</i> from section 5 (1).	23
3.4	Local Government Act 1993 No 30	24
[1]	Section 680A	25
	Insert after section 680:	26
	680A Authorised person may give directions relating to public places	27
	(1) A council employee who is authorised in writing by the Commissioner of Police for the purposes of this section (<i>enforcement officer</i>) may give a direction to a person in a public place if the enforcement officer believes, on reasonable grounds,	28
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that the person's behaviour or presence in the place is obstructing another person or persons or traffic.	1 2
(2) A direction given by an enforcement officer under this section must be reasonable in the circumstances for the purpose of reducing or eliminating the obstruction.	3 4 5
(3) A person must not, without reasonable excuse, refuse or fail to comply with a direction given in accordance with this section. Maximum penalty: 2 penalty units.	6 7 8
(4) A person is not guilty of an offence under this section unless it is established that the person persisted, after the direction concerned was given, to engage in the relevant conduct.	9 10 11
(5) The other person or persons referred to in subsection (1) need not be in the public place but must be near that place at the time the relevant conduct is being engaged in.	12 13 14
(6) Section 201 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (Supplying police officer's details and giving warnings) applies to the exercise of a power under this section by an enforcement officer in the same way as that section applies to a police officer.	15 16 17 18 19
(7) This section does not authorise an enforcement officer to give directions in relation to:	20 21
(a) an industrial dispute, or	22
(b) an apparently genuine demonstration or protest, or	23
(c) a procession, or	24
(d) an organised assembly.	25
[2] Dictionary	26
Omit the definition of <i>police officer</i> .	27
3.5 Prevention of Cruelty to Animals Act 1979 No 200	28
[1] Section 4 Definitions	29
Omit paragraph (b) from the definition of <i>officer</i> in section 4 (1).	30
Insert instead:	31
(b) an officer of an approved charitable organisation who is appointed by the Minister as an officer for the purposes of this Act, or	32 33 34

[2] Section 24A Officers may demand name and address	1
Insert after section 24A (3):	2
(4) An officer may request a person who is required to give information under subsection (1) to provide proof of that information.	3 4 5
[3] Section 24NA	6
Insert after section 24N:	7
24NA Power to question persons	8
(1) An inspector may require a person whom the inspector suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of:	9 10 11
(a) exercising the powers of an inspector under this Division, or	12 13
(b) determining whether there has been a contravention of this Act or the regulations,	14 15
to answer questions in relation to those matters.	16
(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under this section. Maximum penalty: 25 penalty units.	17 18 19
(3) A person must not furnish any information or do any other thing in purported compliance with a requirement made under this section knowing that it is false or misleading in a material respect. Maximum penalty: 25 penalty units.	20 21 22 23 24
[4] Section 34 Proceedings for offences	25
Insert after section 34 (4):	26
(5) In any criminal proceeding for an offence against this Act or the regulations, an officer may give evidence in chief for the prosecution by reading or being led through a written statement previously made by the officer.	27 28 29 30
(6) Evidence referred to in subsection (5) may not be so given unless:	31
(a) the statement was made by the officer at the time of or soon after the occurrence of the events to which it refers, and	32 33
(b) the officer signed the statement when it was made, and	34
(c) a copy of the statement had been given to the person charged or to his or her Australian legal practitioner or	35 36

legal counsel a reasonable time before the hearing of the evidence for the prosecution.	1
	2
(7) A reference in subsections (5) and (6) to an officer includes a reference to a person who, at the time the statement concerned was made, was an officer.	3
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	5
[5] Schedule 2 Savings and transitional provisions	6
Insert after Part 5 of Schedule 2:	7
Part 6 Provision consequent on enactment of Police Legislation Amendment (Special Constables) Act 2013	8
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9 Existing officers	11
A person who was an officer within the meaning of paragraph (b) of the definition of <i>officer</i> in section 4 (1) immediately before the substitution of that paragraph by the <i>Police Legislation Amendment (Special Constables) Act 2013</i> is, on that substitution, taken to have been appointed by the Minister as an officer for the purposes of this Act.	12
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3.6 Road Transport (General) Regulation 2005	18
Schedule 2 Authorised officers	19
Omit paragraph (a) from the definition of <i>Class 1 officer</i> .	20
3.7 Road Transport (General) Regulation 2013 (as set out in Schedule 3 to the Road Transport (Statutory Rules) Act 2013 No 20)	21
	22
	23
Schedule 4 Authorised officers	24
Omit paragraph (a) from the definition of <i>Class 1 officer</i> .	25
3.8 Roads Act 1993 No 33	26
Dictionary	27
Omit “and, in relation to the provisions of sections 232 and 233, includes a special constable authorised by RMS to exercise the functions of an authorised officer under those provisions” from the definition of <i>authorised officer</i> .	28
	29
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3.9 Security Industry Act 1997 No 157	1
Section 6 Application of Act	2
Omit section 6 (2) (d).	3
3.10 Weapons Prohibition Act 1998 No 127	4
Section 6 Application of Act	5
Insert after section 6 (2) (a):	6
(a1) as a special constable within the meaning of section 82L of the <i>Police Act 1990</i> who is exercising functions of a police officer, or	7 8 9
3.11 Weapons Prohibition Regulation 2009	10
[1] Schedule 1 Persons exempt from requirement for permit	11
Omit clause 3 (1) (d).	12
[2] Schedule 1, clause 3 (1) (k)	13
Insert after clause 3 (1) (j):	14
(k) an inspector within the meaning of Division 2 of Part 2A of the <i>Prevention of Cruelty to Animals Act 1979</i> .	15 16