



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.

Police Legislation Amendment (Special Constables) Bill 2013

Explanatory note

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.