

Police Powers and Responsibilities and Other Legislation Amendment Bill 2022

Amendments during consideration in detail to be moved by
The Honourable the Minister for Police and Corrective Services and
Minister for Fire and Emergency Services

1 After clause 32

Page 28, after line 8—

insert—

Part 3A **Amendment of Police Service Administration Act 1990**

32A Act amended

This part amends the *Police Service Administration Act 1990*.

32B Amendment of s 1.4 (Definitions)

(1) Section 1.4—

insert—

special constable (associate) means a person holding appointment as a special constable (associate) under section 5.16.

special constable (State officer) means a person holding appointment as a special constable (State officer) under section 5.16.

(2) Section 1.4, definition *senior officer*—

insert—

Note—

In relation to special constables (State officer), see section 5.16A(5).

32C Amendment of s 2.2 (Membership of service)

Section 2.2(2)—

insert—

- (f) the persons holding appointment as a special constable (State officer).

32D Amendment of s 3.1 (Meaning of *officer* in part)

Section 3.1, after ‘constable’—

insert—

(associate)

32E Amendment of s 3.2 (Relation to office of constable)

Section 3.2—

insert—

- (5) This section—
 - (a) applies to a special constable (State officer) subject to section 5.16A(4); and
 - (b) applies to a special constable (associate) subject to section 5.16B(1)(c).

32F Amendment of s 5.14 (Calculation of continuous service as officer)

Section 5.14—

insert—

- (4) For the purpose of calculating continuous service of an officer, a period of service as a special constable (State officer) is to be disregarded.

32G Replacement of s 5.16 (Special constables)

Section 5.16—

omit, insert—

5.16 Appointment of special constables

- (1) The commissioner may make as many appointments of special constables as, in the commissioner's opinion, are necessary for the effectual administration of this Act and the efficient and proper discharge of the prescribed responsibility.
- (2) The commissioner may, in writing, appoint a person as a special constable on the terms and conditions the commissioner considers appropriate.
- (3) An appointment must be as—
 - (a) a special constable (State officer); or
 - (b) a special constable (associate).

5.16A Special constables (State officer)

- (1) Appointment as a special constable (State officer) is to be on the basis of employment other than full-time or part-time employment.
- (2) The commissioner may at any time, by written notice given to a special constable (State officer), revoke or vary the special constable's appointment.
- (3) A special constable (State officer) is entitled to the salary, allowances and other remuneration that are—
 - (a) provided for in the special constable's instrument of appointment; or
 - (b) prescribed by regulation.
- (4) The powers of a special constable (State

officer) may be limited by the special constable's instrument of appointment.

- (5) Despite section 1.4, definition *senior officer*—
- (a) a special constable (State officer) is the senior officer in relation to a constable on probation; and
 - (b) an officer other than a constable on probation is the senior officer in relation to a special constable (State officer).
- (6) In this section—
- constable on probation*** means a constable whose appointment is on probation under section 5.12.

5.16B Special constables (associate)

- (1) A special constable (associate)—
- (a) is not an employee of the State or of the commissioner; and
 - (b) is not entitled to salary, allowances or other remuneration, except as provided for in the special constable's instrument of appointment; and
 - (c) has the powers and duties of an officer, under this Act or another Act, as specified in the special constable's instrument of appointment, and no other.
- (2) Subject to subsection (1), relevant provisions and other Acts apply to a special constable (associate) as if the special constable were an officer.
- (3) In this section—

relevant provision means a provision of this Act relating to an officer that may be reasonably applied to a special constable (associate).

5.16C Exclusion of matters about special constables from review under other Acts

- (1) This section applies to the following matters (each an *excluded matter*)—
 - (a) a decision to appoint or not to appoint a person as a special constable;
 - (b) a decision to revoke or vary a person's appointment as a special constable;
 - (c) the terms and conditions of a person's appointment as a special constable, including the salary, allowances and other remuneration to which a special constable is entitled;
 - (d) a decision about a matter mentioned in paragraph (c).
- (2) An excluded matter, or a matter affecting or relating to an excluded matter, is not an industrial matter for the *Industrial Relations Act 2016*.
- (3) Without limiting subsection (2), an industrial instrument does not apply to a person appointed as a special constable.
- (4) Subsections (2) and (3) apply despite section 5.15(b).
- (5) However, subsection (2) does not affect the *Industrial Relations Act 2016*, section 471.
- (6) Unless the Supreme Court decides an excluded decision is affected by jurisdictional error, the decision—
 - (a) is final and conclusive; and

- (b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (7) The *Judicial Review Act 1991*, part 5 applies to an excluded decision to the extent it is affected by jurisdictional error.
- (8) In this section—
- appoint***, in relation to a special constable (State officer), includes employ.
- decision*** includes a decision or conduct leading up to or forming part of the process of making a decision.
- excluded decision*** means a decision that is an excluded matter.

32H Amendment of s 8.2 (Retirement)

- (1) Section 8.2, from ‘, other’ to ‘basis’—
omit.
- (2) Section 8.2—
insert—
 - (2) Subsection (1) does not apply to—
 - (a) an officer who holds a position on a contract basis; or
 - (b) a special constable (State officer).

32I Insertion of new pt 11, div 15

Part 11—

insert—

Division 15 Transitional provision for Police Powers and Responsibilities and Other Legislation Amendment Act 2022

11.43 Current appointments as special constable

- (1) This section applies to an appointment under section 5.16 in effect immediately before the commencement.
- (2) From the commencement, the appointment is taken to be an appointment as a special constable (associate).

2 Long title

Long title, after ‘the *Police Powers and Responsibilities Act 2000*,’—

insert—

the *Police Service Administration Act 1990*,

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