

Police Powers and Responsibilities and Other Legislation Amendment Bill 2022

Explanatory Notes

For

Amendments during consideration in detail to be moved by The Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services

Short title

Police Powers and Responsibilities and Other Legislation Amendment Bill 2022

Policy objectives and the reasons for them

The policy objective of amendments to be moved during consideration in detail of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022 (the amendments to the Bill) is to amend the *Police Service Administration Act 1990* (PSAA) to support frontline policing functions through the establishment of a police reserve. The police reserve will consist of people with policing experience who can be employed at short notice, and on terms different to those which apply to police officers employed on a part-time or full-time basis.

A tight labour market and social and demographic factors are leading to police recruitment and retention issues in police jurisdictions across Australia and overseas. The Queensland Police Service (QPS) is no exception.

The attrition rate is increasing, and the pool of suitable police applicants is decreasing. The QPS is implementing diverse strategies to address this issue.

The QPS believes there is a pool of potential applicants in the form of people with policing experience who are unable or unwilling to commit to full time permanent employment but who are willing to perform police duties on a more flexible basis.

This would include police officers who have recently reached the mandatory retirement age of 60 but who would like to keep working. It could also include officers who have left for other employment and are willing to undertake duties as a police officer on an ad hoc basis.

The amendments to the Bill will allow these former officers to be employed as special constables under the PSAA. These special constables will be police officers and members of the QPS. They will have police powers and be subject to the same disciplinary laws and processes as other police officers.

It is anticipated that paid special constables will be useful in addressing temporary resource gaps impacting service delivery and peak periods of frontline demand. They will also be of significant utility in providing a surge capability in times of acute need, such as disasters and major events.

The concept of a reserve or auxiliary police workforce is not novel. However, in Queensland, there are legislative barriers to the development of such a scheme. Most significantly, the existing special constable provision in the PSAA does not contemplate the employment of special constables or their remuneration.

Achievement of policy objectives

The amendments to the Bill will achieve its objectives by amending the PSAA to allow for the employment of former police officers as paid special constables.

Police legislation in other Australian jurisdictions makes provision for the appointment of a class of police officers variably referred to as special constables, police reservists, recognised law enforcement officers or auxiliary police. These provisions provide scope for the transfer of police powers to police officers from other jurisdictions and, the employment of police officers on employment terms and conditions that differ from those that apply to the rest of the police workforce.

Currently, s 5.16 ‘Special Constables’ of the PSAA is used to provide powers to persons other than Queensland police officers including law enforcement officers from other jurisdictions. In those circumstances, no employment relationship is contemplated.

That intention is manifested in s 5.16(2) of the PSAA which states that a special constable is not an employee of the Crown or the Commissioner. Further, the default position is that special constables do not receive remuneration.

For these reasons, the policy objective will be achieved by amending the PSAA to expand the concept of ‘special constable’ so that it can facilitate the conferral of police powers to former police officers on employment terms that are different from those which apply to the full-time or part-time police workforce.

The existing concept of special constable will be amended to allow for two separate categories:

- Special constable (associate); and
- Special constable (State officer).

The category of special constable (associate) reflects the existing concept of special constable. It allows for the conferral of powers on individuals who are not employees of the State or the Commissioner. Law enforcement officers from other jurisdictions may be appointed as special constable (associate). For those who already hold appointments as special constables in Queensland, their appointment will continue as a special constable (associate).

The category of special constable (State officer) is a new category of special constable. Special constable (State officer) will be members of the QPS. They will hold the same powers, duties and responsibilities as permanent police officers. They will be subject to the same discipline laws and procedures that apply to permanent police officers.

The conditions and remuneration of a special constable (State officer) will be determined by their instrument of appointment or prescribed by regulation.

The commissioner will have an unqualified power to revoke or vary the appointment of a special constable (State officer) by written notice given to the officer.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative reform.

Estimated cost for government implementation

Any costs incurred through the implementation of the amendments in the Bill will be met through the existing budget of the QPS.

Consistency with fundamental legislative principles

The amendments in the Bill have been drafted with due regard to the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992* (LSA). Potential breaches of fundamental legislative principles are addressed below.

The Bill has some impact on the rights and liberties of individuals and may be seen to affect ss 4(3)(a) & (b) of the *Legislative Standards Act 1992*.

The Bill creates a new category of people who may gain employment as a special constable (State officer) with the QPS other than on a full-time or part-time basis. The Bill provides for the exclusion of several matters about special constables from review under other Acts, including decisions regarding the appointment of a special constable or revocation of appointment of a special constable, or, in relation to the terms and conditions of a person's appointment as a special constable. The Bill makes clear that an excluded matter, or a matter affecting or relating to an excluded matter, is not an industrial matter for the *Industrial Relations Act 2016*. The excluded matters contained within the Bill affect the application of industrial laws and the availability of recourse to the individual.

This limits the rights, including the rights of review, available to a special constable (State officer) that would otherwise be available to a part-time or full-time police officer within the QPS. However, the Bill does not impact existing employment rights as it seeks to create a new

category of people who are afforded the opportunity and choice to commence employment with the QPS under the terms and conditions provided for in the instrument of appointment as a special constable (State officer).

The limitations that apply to special constables also resemble limitations that apply to other public sector employees under the *Public Sector Act 2022*, such as public service officers whose employment is on contract for a fixed term.

Consultation

The Queensland Police Union of Employees, the Queensland Police Commissioned Officers' Union of Employees and the Crime and Corruption Commission were consulted on the amendments.

Consistency with legislation of other jurisdictions

The amendments in the Bill are specific to the State of Queensland and is not uniform with, or complementary to legislation of the Commonwealth or another State.

Notes on provisions

Amendment 1 After clause 32

Amendment 1 inserts after clause 32 the new Part 3A ‘Amendment of Police Service Administration Act 1990’. Part 3A consists of the following amendments.

32A Act amended

This amendment provides that this part amends the *Police Service Administration Act 1990*.

32B Amendment of s 1.4 (Definitions)

This amendment inserts new definitions of ‘special constable (associate)’ and special constable (State officer)’ into section 1.4.

This amendment also inserts a note at the end of the existing definition of ‘senior officer’ to refer to new section 5.16A(5).

32C Amendment of s 2.2 (Membership of service)

This amendment expands s 2.2 ‘Membership of service’ to include persons holding appointment as a special constable (State officer). People holding an appointment as a special constable (State officer) will be members of the QPS and will be police officers for the purposes of s 2.2 of the PSAA.

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

This amendment clarifies that a reference to an ‘officer’ in part 3 includes a special constable (associate). This amendment is necessary to reflect that, following these amendments, the concept of special constable will now consist of two subtypes: special constable (associate) and special constable (State officer).

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

This amendment confirms that this section applies to a special constable (State officer) subject to section 5.16A(4) and applies to a special constable (associate) subject to section 5.16B(1)(c)

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

This amendment clarifies that for the purpose of calculating continuous service as an officer, a period of service as a special constable (State officer) is to be disregarded. Except as provided by the Queensland Employment Standards, police officers are not permitted to carry over their entitlements from a previous period of service as a police officer.

32G. Replacement of s 5.16 (Special constables)

This amendment replaces the existing section 5.16 ‘Special constables’ with the new section 5.16 ‘Appointment of special constables’ and inserts the new section 5.16A ‘Special constables (State officer), the new section 5.16B ‘Special constables (associate) and the new section 16C ‘Exclusion of matters about special constables from review under other Acts’.

The new section 5.16(1) reflects the existing law and provides that the commissioner may make as many appointments of special constables as are necessary for the effectual administration of the PSAA and the efficient and proper discharge of the prescribed responsibility.

The new section 5.16(2) also replicates the existing position that commission may, in writing, appoint a person as a special constable on terms and conditions that the commissioner considers appropriate.

The new section 5.16(3) provides that an appointment as a special constable must be an appointment of one of two categories:

- Special constable (associate); or,
- Special constable (State officer).

The new section 5.16A ‘Special constables (State officer)’ provides under section 5.16A(1) that the appointment of a special constable (State officer) is to be on an employment basis other than part-time or full-time employment.

This section also allows for the powers of a special constable (State officer) to be limited by their instrument of appointment and authorises the commissioner with an unqualified power to revoke or vary the appointment of a special constable (State officer) by written notice.

The new section 5.16A outlines that a special constable (State officer) is entitled to the salary, allowances and other remuneration that are provided for in the instrument of appointment or are prescribed by regulation.

The new section 5.16A(5) clarifies the operation of the definition of senior officer in s 1.4 of the PSAA as it applies to a special constable (State officer). A special constable (State officer) is only a senior officer with respect to a constable that is on probation. Otherwise, all other police officers are the senior officer in relation to a special constable (State officer).

The new section 5.16A(6) inserts a definition for section 5.16 for ‘constable on probation’.

New section 5.16B ‘Special constables (associate) reflects the existing law and provides that a special constable (associate):

- is not an employee of the State or the commissioner;
- is not entitled to salary, allowances or other remuneration except as provided by their instrument of appointment; and
- has all the powers and duties of an officer under the PSAA or another Act, as specified in their instrument of appointment.

The new section 5.16B also reflects the existing law by providing that subject to section 5.16B(1) relevant provisions and other Acts apply to a special constable (associate) as if the special constable (associate) were an officer.

The new section 5.16B(3) inserts definitions for section 5.16 for ‘relevant provision’.

The new section 5.16C ‘Exclusion of matters about special constables from review under other Acts’ outlines the following matters as ‘excluded matters’ which are not an industrial matter for the *Industrial Relations Act 2016*:

- a decision to appoint or not to appoint a person as a special constable;
- a decision to revoke or vary a person’s appointment as a special constable;

- 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; and
- a decision about the terms and conditions of a person’s appointment as a special constable, including a decision about the salary, entitlements and other remunerations of which a special constable is entitled.

Further, this section provides that an industrial instrument does not apply to a person appointed as a special constable.

This section also stipulates that section 5.16C(2) & (3) apply despite section 5.15(b).

However, an excluded matter does not affect section 471 of the *Industrial Relations Act 2016*.

This section provides that, unless the Supreme Court decides an excluded decision is affected by jurisdictional error, the decision is:

- is final and conclusive; and
- 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
- is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

This section also stipulates that the *Judicial Review Act 1991*, part 5 applies to an excluded decision to the extent it is affected by jurisdictional error.

The new section 5.16C(8) inserts definitions for section 5.16 for ‘appoint’, ‘decision’ and ‘excluded decision’.

32H. Amendment of s 8.2 (Retirement)

This amendment provides that the requirement to retire from employment in the QPS upon reaching 60 years of age does not apply to an officer who holds a position on a contract basis or a special constable (State officer).

32I. Insertion of new pt 11, div 15

This amendment inserts the new Division 15 ‘Transitional provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2022’.

Division 15 consists of section 11.43 ‘Current appointments as a special constable’. Section 11.43 provides that an appointment of a special constable before the commencement of these amendments will be taken to be an appointment as a special constable (associate) after these amendments commence.

Amendment 2 Long title

Amendment 2 expands the long title of the Bill by inserting a reference to the *Police Service Administration Act 1990*.