

POLICE DEPARTMENT (TRANSIT POLICE) BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

During January 1988 the Commissioner of Police was given administrative responsibility for certain officers of the Transport Investigation Branch of the State Rail Authority. The objects of this Bill are—

- (a) to make formal provision for the transfer of the positions held by those officers from the State Rail Authority; and
- (b) to provide for the employment of those officers as members of the transit police service and for the conditions and other matters relating to their employment.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 contains a detailed statement of the principal objects of the proposed Act.

Clause 4 defines a number of expressions used in the proposed Act.

PART 2—ORGANISATION OF TRANSIT POLICE SERVICE

Clause 5 provides for the formal transfer of certain positions on the staff of the State Rail Authority and for the officers of the Transport Investigation Branch in those positions to be employed as members of the transit police service under the proposed Act.

Clause 6 states—

- (a) that the transit police service consists of the persons employed under the proposed Act; and

Police Department (Transit Police) 1989

(b) that the Public Sector Management Act 1988 does not apply to members of the service,

and specifies the functions of the service.

Clause 7 provides for different classifications of the service and the creation of positions in a classification.

Clause 8 enables the Minister to determine the classes or descriptions, and the number, of members of the service who may be employed in a classification.

Clause 9 provides for the Commissioner of Police ("the Commissioner") to determine the duties of members of the service and includes a provision to protect members carrying out their duties in good faith from certain forms of liability. The members have been appointed as special constables under the Police Offences Act 1901 and will also exercise functions prescribed by the regulations.

PART 3—EMPLOYMENT

Clause 10 empowers the Commissioner to promote or transfer a member of the service ("a member") to a vacant position in a classification of the service. An appointment must be made on merit. No new appointments may be made to the service.

Clause 11 sets out the citizenship or residency requirements which a member of the service must satisfy.

Clause 12 sets out the circumstances in which a member will be taken to have vacated his or her position.

Clause 13 provides that members of the service may retire at 60 years of age and must retire at 65 years of age (with certain exceptions).

Clause 14 enables the Commissioner to retire members of the service who are likely to be permanently unfit to discharge or incapable of discharging their duties.

Clause 15 enables the Commissioner to transfer members of the service from one position to another position of equal remuneration.

Clause 16 enables the Commissioner to transfer a member from one position to another, or dispense with his or her services, in the interests of the efficient, effective and economical management of the functions of the service.

Clause 17 enables the Commissioner to transfer a member from one position to another if it appears the member is in receipt of excessive remuneration for the work performed by the member.

Clause 18 sets out the circumstances in which a member may be dismissed for refusing a transfer.

Clause 19 empowers the Commissioner to give a member directions relating to other employment undertaken by the member.

PART 4—CONDITIONS OF EMPLOYMENT

Clause 20 gives the Public Employment Industrial Relations Authority ("the Industrial Authority") power to fix the conditions of employment of members of the service and provides that regulations may also be made in relation to those conditions.

Clause 21 states that the Industrial Authority is to determine the remuneration of members.

Police Department (Transit Police) 1989

Clause 22 provides that the Industrial Authority is to be taken to be the employer of members for certain industrial purposes and may make agreements with bodies representing members.

Clause 23 preserves the Crown's right to dispense with the services of members who are in the service of the Crown.

Clause 24 provides that (except as may be provided by the proposed or any other Act) members are not entitled to compensation if their services are dispensed with.

PART 5—DISCIPLINE

Clause 25 provides for the Police Regulation (Allegations of Misconduct) Act 1978 to apply in relation to investigation of complaints against members of the service in the same way that it applies to members of the Police Force.

Clause 26 lists what constitutes a breach of discipline by a member.

Clause 27 provides the machinery for dealing with a breach of discipline by a member.

Clause 28 sets out the courses which the Commissioner may take if a member is found to have committed, or admits to having committed, a breach of discipline.

Clause 29 provides that the Commissioner may deal with a member who is convicted of an offence in the same way as the member could be dealt with under clause 28.

Clause 30 gives the Commissioner power to suspend, and to lift the suspension of, a member from duty in certain situations. The remuneration of a suspended member may be withheld during the suspension and may be forfeited if the member has committed a breach of discipline or has been convicted of an offence.

PART 6—MISCELLANEOUS

Clause 31 provides that a member of the service, with at least 5 years' satisfactory service, may apply for appointment to a position in the Public Service. The person's application and appointment is to be treated as that of an officer of the Public Service. There is to be no right of appeal in respect of the filling of the position applied for.

Clause 32 enables the Commissioner to delegate the Commissioner's functions under the proposed Act.

Clause 33 sets out the procedure to be followed in the attachment of the remuneration of a member by way of satisfaction of a judgment debt entered against the member.

Clause 34 makes it an offence for a member to take or solicit any bribe and for any person to bribe a member or make a collusive agreement with a member to induce the member to neglect his or her duty or to evade a provision of the Act or the regulations.

Clause 35 makes it an offence to impersonate a member.

Clause 36 provides for the manner in which proceedings for an offence against the proposed Act or regulations are to be dealt with.

Clause 37 enables the making of regulations.

Clause 38 amends the Government and Related Employees Appeal Tribunal Act 1980—

- (a) to make express mention of a member as an "employee" under that Act so as to ensure that members have a right of appeal in relation to disciplinary and promotional matters; and

Police Department (Transit Police) 1989

(b) to provide that the Commissioner of Police is to be regarded as the employer of the members for the purposes of that Act.

Clause 39 excludes the conduct of members, when exercising functions as such, from the operation of the Ombudsman Act 1974. The provision complements clause 25 which provides for investigation of complaints against members under the Police Regulation (Allegations of Misconduct) Act 1978.

Clause 40 makes consequential amendments to the Transport Administration Act 1988.

Clause 41 gives effect to the Schedule of savings, transitional and other provisions.

SCHEDULE 1—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

Clause 1 contains a definition.

Clause 2 provides for the making of regulations of a savings or transitional nature.

Clause 3 provides for the past service of a member on the staff of the State Rail Authority to be treated as service as a member of the service if the member seeks appointment to the Public Service.

Clause 4 sets out the conditions of employment to apply to the persons affected by the proposed Act.

Clause 5 preserves the superannuation rights of persons affected by the proposed Act.

Clause 6 preserves the leave entitlements of persons affected by the proposed Act.

Clause 7 enables persons affected by the proposed Act to apply, within 3 years after being formally transferred, for a position on the staff of the State Rail Authority as if they were still on the staff. A person may so apply only if qualified for the position.

Clause 8 makes provision for pending appeals to the Transport Appeal Board.
