



New South Wales

Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to repeal the provisions of the *Police (Special Provisions) Act 1901* that allow the appointment of police officers from other Australian jurisdictions as special constables, and
- (b) to amend the *Police Act 1990* to include provisions for the appointment by the Commissioner of Police of police officers from other Australian jurisdictions as recognised law enforcement officers, and
- (c) to confer functions on recognised law enforcement officers that are similar to those exercised by New South Wales police officers of the rank of constable.

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

Schedule 1 [2] inserts into the Act proposed Part 10B which contains proposed sections 207B–207E.

Proposed section 207B provides for the appointment by the Commissioner of Police of police officers of other Australian jurisdictions as recognised law enforcement officers. The Commissioner must be satisfied before appointing a person as a recognised law enforcement officer that the person will be subject to an appropriate disciplinary system in exercising his or her functions.

Proposed section 207C enables the Commissioner of Police to vary or revoke the appointment of a recognised law enforcement officer.

Proposed section 207D requires a person to take the oath or make the affirmation of office in accordance with the regulations before exercising any functions as a recognised law enforcement officer.

Proposed section 207E confers on recognised law enforcement officers the functions (including powers, immunities, liabilities and responsibilities) of a police officer of the rank of constable appointed under the Act. The proposed section specifically applies and disapplies certain provisions of Acts and statutory instruments that apply to police officers in relation to recognised law enforcement officers. The proposed section also enables the regulations to declare provisions that are to apply or not apply to recognised law enforcement officers and to apply provisions with prescribed modifications.

Schedule 1 [1] makes a consequential amendment.

Schedule 1 [3] amends Schedule 4 to the Act to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [4] amends Schedule 4 to the Act to provide that police officers of other jurisdictions appointed as special constables under section 101 (1A) (a) of the *Police (Special Provisions) Act 1901* cease to hold that office on the repeal of that paragraph by Schedule 2 to the proposed Act.

Schedule 2 Amendment of Police (Special Provisions) Act 1901 No 5

Schedule 2 [1] amends section 101 of the *Police (Special Provisions) Act 1901* to remove the provision which enables the appointment of police officers of other Australian jurisdictions as special constables. **Schedule 2 [2]** makes a consequential amendment.

First print



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Police Legislation Amendment (Recognised Law Enforcement Officers) Bill 2010

No. , 2010

A Bill for

An Act to amend the *Police Act 1990* to make provision with respect to the exercise of police powers by police officers of other jurisdictions; 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 (Recognised Law Enforcement Officers) Act 2010</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 3 Definitions	2
	Insert in alphabetical order in section 3 (1):	3
	<i>recognised law enforcement officer</i> means a person appointed as a recognised law enforcement officer under Part 10B whose appointment is in force.	4 5 6
[2]	Part 10B	7
	Insert after Part 10A:	8
	Part 10B Recognised law enforcement officers	9
207B	Appointment of recognised law enforcement officers	10
(1)	The Commissioner may appoint any of the following persons as recognised law enforcement officers (whether by appointing all such persons, any class of them or any individual):	11 12 13
(a)	members of the Australian Federal Police,	14
(b)	members of the police force of another State or a Territory.	15
(2)	An appointment is to be made:	16
(a)	by notice in writing given to each person appointed, or	17
(b)	by notice published in the Gazette.	18
(3)	The notice is to specify any conditions to which the appointment is subject and the term of the appointment if the appointment is for a limited term.	19 20 21
(4)	The Commissioner must not appoint any person as a recognised law enforcement officer unless the person is to be, in the opinion of the Commissioner, subject to an appropriate disciplinary system in respect of the exercise of the person's functions as a recognised law enforcement officer.	22 23 24 25 26
(5)	An appointment as a recognised law enforcement officer may be made subject to conditions, including (but not limited to) conditions as to the kinds of functions conferred and the purposes for and circumstances in which such functions may be exercised.	27 28 29 30
207C	Variation and revocation of appointment and imposition of conditions	31 32
(1)	The Commissioner may, at any time by notice:	33
(a)	revoke an appointment under section 207B, or	34

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Schedule 1 Amendment of Police Act 1990 No 47

(b)	impose any condition on an appointment under section 207B, or	1 2
(c)	vary or revoke any condition of an appointment under section 207B.	3 4
(2)	Without limiting subsection (1), the Commissioner may, at any time by notice, revoke the appointment of a person as a recognised law enforcement officer if the Commissioner is of the opinion that the person is not a suitable person to be a recognised law enforcement officer.	5 6 7 8 9
(3)	A notice required to be given under this section must:	10
(a)	be in writing given to each recognised law enforcement officer concerned, or	11 12
(b)	be published in the Gazette.	13
(4)	A person who is a recognised law enforcement officer because he or she is a member of the Australian Federal Police or of the police force of another State or a Territory ceases to be a recognised law enforcement officer on ceasing to be such a member.	14 15 16 17 18
207D	Oath or affirmation by recognised law enforcement officers	19
(1)	Before a person commences to exercise any of the functions of a recognised law enforcement officer, the person must take the oath or make the affirmation of office as a recognised law enforcement officer in accordance with the regulations.	20 21 22 23
(2)	The regulations may exempt a person or class of persons from the operation of this section.	24 25
207E	Recognised law enforcement officers to have police functions	26
(1)	A recognised law enforcement officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under this Act has and may exercise under any law of the State (including the common law and this Act).	27 28 29 30 31
(2)	Those functions extend to functions conferred after the commencement of this section on a police officer of the rank of constable duly appointed under this Act.	32 33 34

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- (3) For the purposes only of subsections (1) and (2), a provision of any Act or statutory instrument applies to a recognised law enforcement officer in the same way as it applies to a police officer in his or her capacity as a police officer and, in particular, the following provisions so apply:
- (a) the *Law Enforcement (Powers and Responsibilities) Act 2002*,
 - (b) Division 8A of Part 3 of the *Crimes Act 1900*,
 - (c) the *Law Reform (Vicarious Liability) Act 1983*,
 - (d) the *Firearms Act 1996*,
 - (e) the *Weapons Prohibition Act 1998*.
- (4) However, the provisions of this Act (except this Part and sections 6, 14 and 213), and the regulations under this Act, applying to police officers do not apply to a recognised law enforcement officer.
- (5) Despite subsections (3) and (4), the regulations may:
- (a) declare that any provision of any Act or statutory instrument applies to a recognised law enforcement officer in the same way as it applies to a police officer in his or her capacity as a police officer, either generally or in prescribed circumstances, and
 - (b) provide that any such provision applies to a recognised law enforcement officer with such modifications as may be prescribed, and
 - (c) declare that any provision of any Act or statutory instrument that applies to a police officer in his or her capacity as a police officer does not apply to a recognised law enforcement officer, either generally or in prescribed circumstances.
- (6) The conferral of functions by this section on a recognised law enforcement officer is subject to any applicable conditions of the officer's appointment as a recognised law enforcement officer.
- (7) The regulations may make provision for or with respect to identification requirements for, or the wearing of uniforms by, recognised law enforcement officers.
- (8) A reference in this section to a police officer in his or her capacity as a police officer includes a reference to a police officer in his or her capacity as a member of the NSW Police Force.

[3] Schedule 4 Savings, transitional and other provisions	1
Insert at the end of clause 2 (1):	2
<i>Police Legislation Amendment (Recognised Law Enforcement Officers) Act 2010</i>	3
	4
[4] Schedule 4, Part 26	5
Insert after Part 25:	6
Part 26 Provisions consequent on enactment of Police Legislation Amendment (Recognised Law Enforcement Officers) Act 2010	7
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78 Existing special constables	11
(1) A person appointed as a special constable under section 101 (1A) (a) of the <i>Police (Special Provisions) Act 1901</i> immediately before the repeal of that paragraph ceases to hold the office of special constable on that repeal.	12
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(2) The repeal of section 101 (1A) (a) of the <i>Police (Special Provisions) Act 1901</i> does not affect the validity of the exercise of any function by a special constable before that repeal or any proceedings initiated by a special constable before that repeal.	16
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Schedule 2	Amendment of Police (Special Provisions) Act 1901 No 5	1
		2
[1]	Section 101 Magistrates or Justices may appoint special constables	3
	Omit section 101 (1A) (a).	4
[2]	Section 101 (4)	5
	Omit the subsection.	6