



New South Wales

# Sporting Venues (Offenders Banning Orders) Bill 2005

## Explanatory note

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

## Overview of Bill

The object of this Bill is to prevent violence and disorder at sporting events by enabling courts to ban persons from attending at or near specified sporting venues where they have been found guilty of certain offences involving violence or disorder at or in connection with certain sporting events.

## Outline of provisions

### Part 1 Preliminary

**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.

**Clause 3** defines certain words and expressions used in the proposed Act, in particular:

- (a) **sporting event** is defined to mean a sporting event at a sporting venue at which a fee is charged, or for which membership of a club or association is required, for admission to the venue (or both), and
- (b) **sporting event offence** is defined to mean any of the following offences if the offence occurred at or in connection with a sporting event:
  - (i) an offence involving an act of actual or threatened violence,
  - (ii) the offences of riot and affray under the *Crimes Act 1900*,
  - (iii) the offence under section 20D of the *Anti-Discrimination Act 1977* of serious racial vilification,
  - (iv) the offence under section 11B of the *Summary Offences Act 1988* of having custody of an offensive implement in a public place or a school,
  - (v) any offence under the *Crimes Act 1900* relating to the malicious destruction or damage of property,
  - (vi) any offence of attempting, conspiring or inciting to commit, or aiding, abetting, counselling or procuring the commission of, an offence referred to in subparagraphs (i) to (v) above.

## Part 2 Banning orders

**Clause 4** provides that a court that finds a person guilty of a sporting event offence may, in addition to any other penalty that may be imposed for the offence, make a banning order in relation to the person. A court may make such a banning order only if it is satisfied that there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in connection with any sporting event.

**Clause 5** provides that a banning order may, according to its terms, prohibit the person who is the subject of the order from one or both of the following:

- (a) entering certain specified sporting venues for the purpose of attending a sporting event,
- (b) coming within the immediate vicinity of certain specified sporting venues.

**Clause 6** provides that a banning order has effect for the period specified in the order. However, the first banning order made in relation to a person must not be made to have effect for a period that exceeds 5 years and the second or any subsequent order made in relation to a person must not be made to have effect for a period that exceeds 10 years. If a banning order is made in addition to a sentence of imprisonment by way of full-time detention, the court may order that the banning order is to commence on the person's release from full-time detention.

**Clause 7** is a special provision that deals with appeals against banning orders imposed by the District Court. The proposed section provides that, despite section 3 of the *Criminal Appeal Act 1912* (which states that the Court of Criminal Appeal is generally to be constituted by three or more Supreme Court judges), where a person appeals to the Court of Criminal Appeal under that Act and the appeal relates solely

to the making or terms of a banning order (or both) made by the District Court, the Court of Criminal Appeal is to be constituted by a single judge of the Supreme Court for the purposes of hearing that appeal.

**Clause 8** provides for the revocation of banning orders. The proposed section provides that if a banning order has had effect for at least two-thirds of its specified duration, the person subject to the order may apply to the court by which it was made to revoke the banning order. Before revoking an order the court must have regard to the following:

- (a) the person's character,
- (b) the person's conduct since the banning order was made,
- (c) the nature of the offence or conduct which led to the making of the banning order,
- (d) any other circumstances which appear to the court to be relevant.

If an application to revoke a banning order is refused, no further application in respect of the order may be made within the period of 6 months beginning on the day of the refusal.

**Clause 9** provides that it is an offence for a person to contravene a banning order. The proposed offence carries a maximum penalty of 50 penalty units (currently \$5,500) or imprisonment for 6 months, or both.

### **Part 3 Miscellaneous**

**Clause 10** is a formal provision that gives effect to the savings, transitional and other provisions set out in Schedule 1.

**Clause 11** is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

**Clause 12** provides for the review of the proposed Act in 5 years.

### **Schedule 1 Savings, transitional and other provisions**

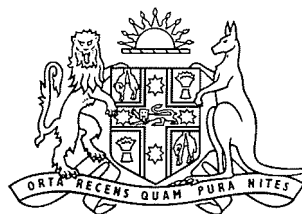
**Schedule 1** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

### **Schedule 2 Amendment of Acts**

**Schedule 2** makes consequential amendments to the *Crimes (Local Courts Appeal and Review) Act 2001* and the *Criminal Appeal Act 1912* to provide that a person who is made the subject of a banning order may:

- (a) in relation to an order made by a Local Court—appeal to the District Court, or
- (b) in relation to a banning order made by the Supreme Court—appeal to the Court of Criminal Appeal.





New South Wales

# Sporting Venues (Offenders Banning Orders) Bill 2005

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New South Wales

# **Sporting Venues (Offenders Banning Orders) Bill 2005**

No. , 2005

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## **A Bill for**

An Act to provide for the making of banning orders in relation to certain sporting events; and for related purposes.

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**The Legislature of New South Wales enacts:** 1

**Part 1 Preliminary** 2

**1 Name of Act** 3

This Act is the *Sporting Venues (Offenders Banning Orders) Act 2005*. 4

**2 Commencement** 5

This Act commences on a day or days to be appointed by proclamation. 6

**3 Definitions** 7

(1) In this Act: 8

*banning order* means an order made under Part 2. 9

*sporting event* means a sporting event at a sporting venue at which a fee is charged, or for which membership of a club or association is required, for admission to the venue (or both). 10  
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*sporting event offence* means any of the following offences if the offence occurred at or in connection with a sporting event: 13  
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(a) an offence involving an act of actual or threatened violence, 15

(b) the offences of riot and affray under the *Crimes Act 1900*, 16

(c) the offence under section 20D of the *Anti-Discrimination Act 1977* of serious racial vilification, 17  
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(d) the offence under section 11B of the *Summary Offences Act 1988* of having custody of an offensive implement in a public place or a school, 19  
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(e) any offence under the *Crimes Act 1900* relating to the malicious destruction or damage of property, 22  
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(f) any offence of attempting, conspiring or inciting to commit, or aiding, abetting, counselling or procuring the commission of, an offence referred to in paragraphs (a) to (e). 24  
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(2) Notes included in this Act do not form part of this Act. 27



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<b>Part 2</b>	<b>Banning orders</b>	1
<b>4</b>	<b>Making of banning orders</b>	2
(1)	A court that finds a person guilty of a sporting event offence may, in addition to any other penalty that may be imposed for the offence, make a banning order in relation to the person.	3 4 5
(2)	A court may make a banning order only if it is satisfied that there are reasonable grounds to believe that making the order will help to prevent violence or disorder at or in connection with any sporting event.	6 7 8
(3)	For the purpose of deciding whether to make an order under this section, the court may, after the finding of guilt, consider evidence (including evidence relating to other conduct of the person) led by the prosecution and the defence.	9 10 11 12
(4)	It is immaterial whether the evidence led under subsection (3) would have been admissible in the proceedings in which the person was found guilty.	13 14 15
(5)	In subsection (2):	16
	<i>disorder</i> includes the following:	17
(a)	inciting hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins, or against an individual as a member of such a group,	18 19 20 21
(b)	using threatening words or threatening or abusive behaviour,	22
(c)	displaying any writing or other thing that is threatening or abusive.	23 24
	<i>violence</i> means violence against persons or property, and includes threatening violence and doing anything that endangers the life of any person.	25 26 27
<b>5</b>	<b>Effect of banning order</b>	28
(1)	A banning order may, according to its terms, prohibit the person who is the subject of the order from doing either or both of the following:	29 30
(a)	entering, for the purpose of attending a sporting event, any one or more of the following sporting venues:	31 32
(i)	any sporting venue specified in the order,	33
(ii)	any sporting venue of a class specified in the order,	34
(iii)	any sporting venue at which a sporting event of a class specified in the order is being held,	35 36

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(b)	coming within the immediate vicinity, or a specified distance, of any one or more of the following sporting venues while a sporting event is being held at the venue or venues:	1
		2
		3
(i)	any sporting venue specified in the order,	4
(ii)	any sporting venue of a class specified in the order,	5
(iii)	any sporting venue at which a sporting event of a class specified in the order is being held.	6
		7
(2)	For the purpose of this section, a sporting event is taken to be held at a sporting venue for the period commencing 2 hours before the event begins and concluding 2 hours after the event has finished.	8
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	<b>Note.</b> A banning order is a sentence for the purpose of appeals under the <i>Crimes (Local Courts Appeal and Review) Act 2001</i> and the <i>Criminal Appeal Act 1912</i> .	11
		12
		13
<b>6</b>	<b>Duration of banning order</b>	14
(1)	A banning order has effect for the period specified in the order.	15
(2)	The first banning order made in relation to a person must not be made to have effect for a period that exceeds 5 years.	16
		17
(3)	The second or any subsequent order made in relation to a person must not be made to have effect for a period that exceeds 10 years.	18
		19
(4)	If a banning order is made in addition to a sentence of imprisonment by way of full-time detention, the court may order that the banning order is to commence on the person's release from full-time detention.	20
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<b>7</b>	<b>Special provision—appeals solely against banning orders imposed by District Court</b>	23
		24
	Despite section 3 of the <i>Criminal Appeal Act 1912</i> , if a person appeals to the Court of Criminal Appeal under that Act and the appeal relates solely to the making or terms (or both) of a banning order made by the District Court, the power of the Court of Criminal Appeal to hear and determine the appeal is to be exercised by a single judge of the Supreme Court as directed by the Chief Justice.	25
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<b>8</b>	<b>Revocation of banning orders</b>	31
(1)	If a banning order has had effect for at least two-thirds of its specified duration, the person subject to the order may apply to the court by which it was made to revoke the order.	32
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(2)	As soon as practicable after a court receives an application for the revocation of a banning order, the court is to notify:	35
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(a)	if the prosecutor in proceedings that led to the making of the banning order was a police prosecutor—the Commissioner of Police, or	1 2 3
(b)	in any other case—the Director of Public Prosecutions.	4
(3)	A person who is notified under subsection (2) is taken to be the respondent in the application proceedings.	5 6
(4)	On the application, the court may revoke the banning order as from a specified date or refuse the application.	7 8
(5)	In exercising its powers under subsection (4), the court must have regard to the following:	9 10
(a)	the person’s character,	11
(b)	the person’s conduct since the banning order was made,	12
(c)	the nature of the offence or conduct that led to the making of the banning order,	13 14
(d)	any other circumstances that appear to the court to be relevant.	15
(6)	If an application under subsection (1) in respect of a banning order is refused, no further application in respect of the order may be made within the period of 6 months beginning on the day of the refusal.	16 17 18
(7)	Despite section 212 of the <i>Criminal Procedure Act 1986</i> , the court may award costs (including professional costs) in application proceedings at its discretion and may determine by whom, to whom and to what extent costs are to be paid in or in relation to application proceedings.	19 20 21 22
(8)	An order for the payment of costs by the applicant made by a court under subsection (7) is taken to be a fine within the meaning of the <i>Fines Act 1996</i> .	23 24 25
(9)	In this section, <i>professional costs</i> means costs relating to professional expenses and disbursements (including witnesses’ expenses) in respect of proceedings before a court.	26 27 28
<b>9</b>	<b>Offence of contravening a ban</b>	29
	A person who contravenes a banning order is guilty of an offence.	30
	Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.	31 32

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Clause 10 Sporting Venues (Offenders Banning Orders) Bill 2005

Part 3 Miscellaneous

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<b>Part 3</b>	<b>Miscellaneous</b>	1
<b>10</b>	<b>Savings, transitional and other provisions</b>	2
	Schedule 1 has effect.	3
<b>11</b>	<b>Amendment of other Acts</b>	4
	The Acts specified in Schedule 2 are amended as set out in that Schedule.	5 6
<b>12</b>	<b>Review of Act</b>	7
(1)	The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	8 9 10
(2)	The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	11 12
(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	13 14

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<b>Schedule 1</b>	<b>Savings, transitional and other provisions</b>	1
		2
	(Section 10)	3
<b>Part 1</b>	<b>General</b>	4
<b>1</b>	<b>Regulations</b>	5
(1)	The Governor may make regulations of a savings or transitional nature consequent on the enactment of the following Acts: this Act	6 7 8
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	9 10
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	11 12 13
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	14 15 16
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	17 18 19
<b>Part 2</b>	<b>Provisions consequent on enactment of this Act</b>	20 21
<b>2</b>	<b>Banning orders only to be made in relation to offences committed after commencement of Act</b>	22 23
	Section 4 of this Act applies only to offences committed after the commencement of that section.	24 25

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<b>Schedule 2</b>	<b>Amendment of Acts</b>	1
	(Section 11)	2
<b>2.1</b>	<b>Crimes (Local Courts Appeal and Review) Act 2001 No 120</b>	3
	<b>Section 3 Definitions</b>	4
	Insert at the end of paragraph (e) of the definition of <i>sentence</i> in section 3 (1):	5
	or	6
	(f) a banning order made by a Local Court under the <i>Sporting Venues (Offenders Banning Orders) Act 2005</i> .	7 8
<b>2.2</b>	<b>Criminal Appeal Act 1912 No 16</b>	9
	<b>Section 2 Definitions</b>	10
	Insert in appropriate order in the definition of <i>Sentence</i> in section 2 (1):	11
	or	12
	(j) a banning order under the <i>Sporting Venues (Offenders Banning Orders) Act 2005</i> ,	13 14