

Explanatory note

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

The *Industrial and Other Legislation Amendment (APEC Public Holiday) Bill 2007* is cognate with this Bill.

Overview of Bill

The objects of this Bill are:

(a) to confer special powers on police officers with respect to the provision of security for any meeting (an **APEC meeting**) that forms part of the series of meetings of the members of the Asia-Pacific Economic Cooperation group of economies in Sydney, and

(b) to amend the *Evidence (Audio and Audio Visual Links) Act 1998* to allow first bail appearances to be made by audio visual link if the bail proceedings relate to an offence alleged to have been committed in metropolitan Sydney during the period commencing at the beginning of 20 August 2007 and ending at the end of 28 September 2007, and

(c) to amend the *Law Enforcement (Powers and Responsibilities) Act 2002*:

(i) to make provision for matters of a savings or transitional nature consequent on the enactment and repeal of the proposed Act, and

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(ii) to require the Commissioner of Police to report to the Attorney General and the Minister for Police on the operation of the proposed Act, and

(iii) to require the Attorney General and the Minister for Police to report to Parliament on the operation of the proposed Act, and

(d) to amend the *Subordinate Legislation Act 1989* to provide for regulations made under the proposed Act to be excluded instruments for the purposes of that Act, and

(e) to amend the *Terrorism Legislation Amendment (Warrants) Act 2005* to postpone the repeal of Part 6B (Terrorism) of the *Crimes Act 1900* to 13 September 2008 (being the third anniversary of its commencement) and to make a consequential amendment to the *Crimes Act 1900*, and

(f) to amend the *Weapons Prohibition Act 1998* to include in the list of prohibited weapons for the purposes of that Act certain articles or devices (such as caltrops) that are capable of puncturing the feet, paws or hooves of animals as they pass over them.

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 the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act.

In particular, the **APEC period** is defined to mean the period:

(a) commencing at the beginning of 30 August 2007, and

(b) ending at the end of 12 September 2007.

Also, the term **metropolitan Sydney** is defined to mean the local government areas listed in proposed Schedule 1, and includes any part of the waters of Port Jackson (including Sydney Harbour) and its foreshore.

Clause 4 provides that the proposed Act is to bind the Crown.

Part 2 APEC security areas

Clause 5 defines an **APEC security area** to mean any of the following:

(a) any area that forms part of the declared areas (other than a restricted area),

(b) any restricted area.

Clause 6 defines the **declared areas** to mean:

(a) the areas described in proposed Schedule 2 (the **core declared areas**), and Explanatory note page 3

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(b) any area that is designated to be an additional declared area by an order under the proposed section (an **additional declared area**).

The proposed section enables the Minister for Police to designate an area within metropolitan Sydney to be an additional declared area by order published in the Gazette if:

(a) the Commissioner of Police has recommended to the Minister that the order be made, and

(b) the Minister is satisfied that the designation of the area will substantially assist in promoting the security or safety of an APEC meeting, its participants or the public or in preventing or controlling a public disorder, and

(c) the Minister has consulted with such other Ministers as the Minister considers relevant about the proposed addition of the area.

Clause 7 defines a **restricted area** to mean any area that is designated as being a restricted area by an order under the proposed section. The Commissioner of Police may, by written order, designate any area within the declared areas to be a restricted area if the Commissioner is satisfied that:

(a) the area is being or will be used directly for or in relation to an event, or the administration, of an APEC meeting, and

(b) the exercise of the special powers conferred by the proposed Act in relation to restricted areas is necessary to promote the security or safety of the venues or facilities for an APEC meeting or participants in the meeting.

Clause 8 prevents the validity of an order or purported order under proposed section 6 or 7 from being challenged in any court or legal proceedings including an investigation into police or other conduct under any Act (other than an investigation under the *Police Integrity Commission Act 1996*).

Part 3 Special powers in relation to APEC security areas

Division 1 Application of Part

Clause 9 provides that the powers conferred by the proposed Part may be exercised only during the APEC period in, or in relation to, an APEC security area.

Division 2 Stop and search powers

Clause 10 enables a police officer to establish check points, cordons and roadblocks in relation to an APEC security area.

Clause 11 enables a police officer to stop and search vehicles or vessels seeking to enter an APEC security area or that are in such an area.

Clause 12 enables a police officer:

(a) to require a person seeking to enter an APEC security area to submit to a search of the person as a condition of entry into the area, and

(b) to search a person who is in an APEC security area.

Division 3 Surrender and seizure of prohibited items

Clause 13 enables a police officer:

(a) to require a person that the officer reasonably suspects to be in possession or have control of a prohibited item without special justification to surrender the item to the officer as a condition of entry into an APEC security area, and

(b) to seize and detain in an APEC security area all or part of a thing that the officer reasonably suspects to be a prohibited item that is in the possession or control of a person without special justification.

The term **prohibited item** is defined in proposed section 3 (1) to mean any of the following:

(a) spray paint cans,

- (b) chains,
- (c) handcuffs or other devices capable of being used to lock persons to other persons or things,
- (d) poles that are more than 1 metre in length,
- (e) marbles, ball-bearings or other similar spherical items,
- (f) smoke devices,
- (g) flares,
- (h) flammable or noxious liquids or substances,
- (i) laser pointers,
- (j) devices that are capable of being used to interfere with broadcast or communication devices,
- (k) any other things (or things belonging to a class of things) prescribed by the regulations.

The proposed section provides that if an item is not returned within the period of 24 hours after its surrender or seizure, it is forfeited to the Crown.

Division 4 Directions

Clause 14 enables a police officer to give reasonable directions to any person, or group of persons assembled, in an APEC security area for the purpose of assisting in promoting the security or safety of an APEC meeting, its participants or the public or in preventing or controlling a public disorder.

Division 5 Road closures

Clause 15 enables a police officer, at the direction of the Commissioner of Police, to close a road without public notice during the APEC period. A road may only be closed for specified purposes in connection with events, venues or facilities for an APEC meeting.

Clause 16 provides that any road closures are to be for periods no longer than is necessary to serve the relevant purpose.

Clause 17 provides that:

- (a) unauthorised persons or vehicles may not use a road closed under the proposed Division, and
- (b) a road does not cease to be a road for the purposes of any law while it is closed under the proposed Division.

Clause 18 enables a police officer to remove, or to direct an authorised officer (within the meaning of section 76 of the *Road Transport (Safety and Traffic Management) Act 1999*) to remove, a vehicle or other thing from a road that is closed under the proposed Division.

Part 4 Additional powers and other provisions in relation to restricted areas

Division 1 Entry into restricted areas

Clause 19 makes it an offence for a person, without special justification, to enter any restricted area or any part of a restricted area. The maximum penalty for such an offence will be 6 months imprisonment or, if circumstances of aggravation exist, 2 years imprisonment.

Circumstances of aggravation will exist in relation to the offence if (but only if):

- (a) the person was in possession or had control of a prohibited item, and
- (b) the person had no special justification to be in possession or have control of the item.

Proposed section 37 lists the circumstances in which a person will have special justification.

Division 2 Special powers in relation to restricted areas

Clause 20 provides that the powers conferred by the proposed Division may be exercised only during the APEC period in, or in relation to, a restricted area.

Clause 21 enables a police officer to search any premises (other than parts of premises used for residential purposes) in a restricted area without a warrant.

Clause 22 enables a police officer to request a person in (or seeking to enter) a restricted area whose identity is unknown to the officer to disclose his or her identity to the officer. The officer may also request the person to provide proof of his or her identity.

Clause 23 provides that any power conferred by the proposed Part in relation to a restricted area is in addition to, and does not derogate from, any power conferred in relation to such an area by proposed Part 3.

Part 5 Exclusion and removal of persons from APEC security areas

Clause 24 provides that certain persons (*excludable persons*) may be excluded from APEC security areas. These persons include persons who have failed, without lawful excuse or special justification, to comply with requirements made of the persons under the proposed Act. Another category of excludable persons are persons who are named in an excluded persons list prepared under proposed section 26.

Clause 25 enables a police officer to exclude and remove persons from a restricted area if they fail to comply with a request made of them under the proposed Act to identify themselves. It also enables persons to be excluded from such an area if they possess or have in their control prohibited items without special justification or if they are in the area without special justification.

Proposed section 37 lists the circumstances in which a person will have special justification.

Clause 26 enables the Commissioner of Police to prepare one or more lists of persons that the Commissioner is satisfied are persons who would pose serious threats to the safety of persons or property (or both) in an APEC security area during the APEC period.

Part 6 Recognised law enforcement officers

Clause 27 permits a member of the police force of another State or Territory or of New Zealand or a member of the Australian Federal Police to be appointed as a recognised law enforcement officer in relation to the proposed Act by the Commissioner of Police or a Deputy Commissioner of Police. Recognised law enforcement officers remain under the command and control of the police force to which they belong during the term of their appointment.

Clause 28 grants a recognised law enforcement officer the powers, immunities, liabilities and responsibilities of a police officer of the rank of constable appointed under the *Police Act 1990*.

Part 7 Miscellaneous

Clause 29 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 30 makes it an offence for a person, during the APEC period and in the course of State air navigation, to cause an aircraft to enter, or operate an aircraft within, restricted air space without an air traffic clearance given by or on behalf of Airservices Australia under relevant Commonwealth law. The maximum penalty for the offence will be \$250,000.

Clause 31 provides for a presumption against bail for any offence alleged to have been committed in an APEC security area during the APEC period that involves:

- (a) the assault of a police officer, or
- (b) malicious damage to property, or
- (c) throwing a missile at a police officer.

Clause 32 permits a police officer and persons helping the officer to use reasonable force in the exercise of a power under the proposed Act.

Clause 33 makes it clear that a police officer may use a dog, horse or other animal in the exercise of the officer's functions in an APEC security area despite anything to the contrary in the *Sydney Opera House Trust By-law 2005* or the *Sydney Harbour Foreshore Authority Regulation 2006*.

Clause 34 enables the Commissioner of Police to delegate any of the Commissioner's functions under the proposed Act to a Deputy Commissioner of Police. The proposed section also enables the Commissioner to delegate the Commissioner's functions under proposed section 15 to a police officer of or above the rank of Superintendent.

Clause 35 provides that anything done pursuant to the proposed Act or the regulations does not constitute a nuisance.

Clause 36 provides that nothing in the proposed Act limits a police officer's powers under any other Act and nothing in any other Act limits a police officer's powers under the proposed Act.

Clause 37 provides for what constitutes special justification for the purposes of the proposed Act.

Clause 38 provides that the onus of proof of lawful excuse or special justification (whether in proceedings for an offence against the proposed Act or in relation to the exercise of powers conferred by the proposed Act) lies on the person accused of the offence or who claims to have the lawful excuse or special justification (as the case may be).

Clause 39 provides for the way in which proceedings for offences against a provision of the proposed Act are to be dealt with.

Clause 40 is a formal provision that gives effect to the amendments to the Acts set out in proposed Schedule 3.

Clause 41 repeals the following on the day after the end of the APEC period (namely, 13 September 2007):

- (a) the proposed Act,
- (b) any regulation or other instrument made under the proposed Act,
- (c) item 31 of Schedule 4 to the *Subordinate Legislation Act 1989* (which is to be inserted in that Act by Schedule 3.4 to the proposed Act on the date of assent to the proposed Act).

Schedule 1 Metropolitan Sydney

Schedule 1 sets out the local government areas that form part of *metropolitan Sydney* for the purposes of the definition of that term in proposed section 3.

Schedule 2 Core declared areas

Schedule 2 describes the core declared areas for the purposes of the proposed Act. The Schedule also includes an indicative map of those areas.

Schedule 3 Amendment of Acts

Evidence (Audio and Audio Visual Links) Act 1998 No 105

Sections 5BB and 5BBA of the *Evidence (Audio and Audio Visual Links) Act 1998* require an accused detainee to appear physically before a court on the detainee's first appearance before a court in bail proceedings, unless the court otherwise directs.

Schedule 3.2 inserts a new section 22B in the *Evidence (Audio and Audio Visual Links) Act 1998* to allow such a first appearance to be made by audio visual link if the bail proceedings relate to an offence alleged to have been committed in metropolitan Sydney during the period commencing at the beginning of 20 August 2007 and ending at the end of 28 September 2007.

Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 3.3 amends the *Law Enforcement (Powers and Responsibilities) Act 2002*:

- (a) to make provision for matters of a savings or transitional nature consequent on the enactment and repeal of the proposed Act, and
- (b) to require the Commissioner of Police to report to the Attorney General and the Minister for Police on the operation of the proposed Act within 3 months after its repeal, and
- (c) to require the Attorney General and the Minister for Police to report to Parliament on the operation of the proposed Act within the period of 6 months after its repeal.

Subordinate Legislation Act 1989 No 146

Schedule 3.4 amends Schedule 4 to the *Subordinate Legislation Act 1989* to provide for regulations made under the proposed Act to be excluded instruments for the purposes of that Act.

Terrorism Legislation Amendment (Warrants) Act 2005 No 54

Schedule 3.5 amends section 2 of the *Terrorism Legislation Amendment (Warrants) Act 2005* to postpone the repeal of Part 6B (Terrorism) of the *Crimes Act 1900* to 13 September 2008 (being the third anniversary of its commencement). The Part is currently due to be repealed on the second anniversary of that commencement on 13 September 2007. **Schedule 3.1** make a consequential amendment to the *Crimes Act 1900*.

Weapons Prohibition Act 1998 No 127

Schedule 3.6 amends Schedule 1 to the *Weapons Prohibition Act 1998* to include in the list of prohibited weapons for the purposes of that Act certain articles or devices (such as caltrops) that are capable of puncturing the feet, paws or hooves of animals as they pass over them.