



APEC Meeting (Police Powers) Bill 2007 Industrial and Other Legislation Amendment (APEC Public Holiday) Bill 2007

Extract from NSW Legislative Council Hansard and Papers Thursday 21 June 2007.

Second Reading

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Vice-President of the Executive Council) [5.15 p.m.]: I move:

That these bills be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the APEC Meeting (Police Powers) Bill 2007 and the Industrial and Other Legislation Amendment (APEC Public Holiday) Bill 2007. The APEC Meeting (Police Powers) Bill provides a range of powers to assist police in securing the Asia-Pacific Economic Cooperation Group [APEC] while the Industrial and Other Legislation Amendment (APEC Public Holiday) Bill supports the public holiday which has been declared for the first metropolitan region on 7 September. APEC will be the largest and most significant international meeting in Australia. We need to ensure that the New South Wales police have the necessary powers to keep the event and Sydneysiders safe. The APEC group 2007 comprises a series of meetings culminating in the APEC Leaders Week to be held in Sydney between 2 and 9 September. The planned events will involve the heads of government of 21 member economies and are likely to be attended by up to 5,000 officials and 1,500 international media. APEC venues will include Darling Harbour, Cockle Bay, Farm Cove, the Sydney Opera House and Government House. The NSW Police Force and the Commonwealth have carefully considered the security threat to APEC. On the basis of this assessment, about 3,500 security personnel will be posted in Sydney at this time, including members of the NSW Police Force, the Australian Federal Police, the Australian Defence Force, interstate police and New Zealand police. Such a security force will help to minimise the risk of an act of terrorism directed against APEC leaders. Based on the experience of other APEC meetings overseas and other similar events in Australia, the NSW Police Force has also identified the threat of large organised and sustained violent protests during Leaders Week. I am not talking here about citizens expressing strongly held views by protesting peacefully in public places. We all have the right to do that. However, it is not acceptable when violence is used.

We have all seen footage of extremely violent and organised protestors who engage in planned attacks on police, destroy property and terrify the public. We need to ensure that our police have sufficient powers to prevent or to stop such violence. At the same time we need to ensure that any such powers do not prevent the legitimate exercise of our civil rights. And we need to remember that APEC is occurring in downtown Sydney, where many people live and work. While clearly a meeting the scale of APEC will be disruptive to residents and other users of the

central business district [CBD] we must try to ensure that any security operations create the minimum possible inconvenience to law-abiding residents.

The Government believes that the police powers bill strikes the right balance between police powers, the lawful right to protect and the needs of residents and workers in the central business district. If the APEC Meeting (Police Powers) Bill 2007 is enacted, the Government will roll out a communications plan. This will inform affected people of the impact of the proposed powers. This will involve liaison with residents and businesses. In summary, the bill creates extraordinary policing powers around the duration of the APEC period?namely, 30 August to 12 September 2007. APEC itself is from 2 September to 9 September. However, it is desirable that the powers be available to permit physical security measures such as the putting up and dismantling of barricades to be taken over this slightly longer period on either side of the meetings.

The legislation will be administered by the Attorney General, and there are a number of safeguards in place to ensure that police use these extraordinary powers responsibly. These safeguards include, first, that the bill will apply only to this APEC meeting and will then terminate automatically. Secondly, the powers will apply only within designated and limited areas, essentially in the northern central business district. Every effort has been made to keep the areas as small as possible. To ensure that people are in no doubt as to where the powers will apply, the bill contains a map and a description indicating the main security area. Any variations to this area that must be made to ensure the safe running of APEC will be notified to the public. Thirdly, police will receive specialist training on the use of the powers over coming months. Finally, a review of the powers will be conducted jointly by the Attorney General and the Minister for Police.

I will now outline in more detail the provisions of the APEC Meeting (Police Powers) Bill 2007. The bill creates various special police powers and two categories of security zones in which they apply. These are described in part 2 of the bill.

"Declared areas" essentially serve as an outer perimeter. They therefore cover more than those places that are actually to be used for APEC meetings. Persons will generally be free to enter these areas subject to security screening when required. The bill describes the declared areas as they currently stand, and an indicative map is attached to the bill. Clause 6 of the bill requires that any alterations or extensions to the declared areas must be approved by the Minister on the basis that the change will substantially assist in promoting the security of APEC or preventing or controlling public disorder.

"Restricted areas" are much smaller and will be inside the larger declared areas. Typically, restricted areas will be established at places such as actual APEC venues or accommodation used by delegates. Security restrictions at restricted areas will be much higher than in the declared areas. Additional powers will be available to police and there will not be an assumption that any person has a right to enter the restricted areas. Pursuant to clause 7 the location of restricted areas will be determined by the Commissioner of Police. He will need to be satisfied that the proposed zone is directly related to APEC events or administration and that the applicable powers are necessary to promote the security of APEC facilities and/or participants. Restricted areas will not include private residential premises.

The following specific powers will be available in both declared areas and restricted areas. Under clause 10 police will have an express power to erect barricades and fencing and to establish checkpoints to assist in controlling entry to the area.

Pursuant to clause 11 police may stop and search vehicles that are seeking to

enter, or that are already inside, the area. Pursuant to clause 12 a similar power is created to search persons, which may include a search of any articles in that person's possession and the possible removal of coats or jackets, shoes and hats. A person can be searched in this way upon seeking to enter the area or if they are present in the area.

Under clause 13 certain items will be prohibited, and police will have the power to confiscate these items upon detection unless the person has a lawful excuse for possessing them. Prohibited items are listed in clause 3. They are: spray paint, in order to minimise the risk of large-scale defacing of property; chains, handcuffs and lock-on devices because in the past protesters have chained themselves to immovable objects that can obstruct roads and if police have to cut the person free to remove them there is a chance that the person may be injured, which we wish to avoid; poles longer than one metre because long poles have been used as clubs in the past and poles longer than an arm's length can be used to fend off police who may seek to make an arrest; marbles or ball bearings that can be thrown under the hooves of police horses with the intention of unseating and injuring the rider; smoke devices and flares that can be used to frighten horses or otherwise hinder security forces; flammable or noxious liquids; laser pointers that can be used to blind police or police horses; and jamming devices that can be used to disrupt police communications.

I wish to make it clear that such items will be confiscated only when the person seeking to enter the declared area or restricted area, or who possesses them in such an area, has no special justification for possessing them. Clause 37 defines "special justification". Special justification includes having an object for the purposes of employment or trade. For instance, a shop owner who has spray paint for sale will not be affected by the seizure provisions, nor will an office worker who needs a laser pointer for their employment. These search powers will assist police in removing dangerous items from the possession of persons intending to use them in violent protest. As long as a person agrees to surrender the item they will be allowed to pass. As I said before, the general rule is that, subject to submitting to a search if required and surrendering any prohibited items held without a special justification, persons will be able to enter declared areas.

There is one exception to this. Part 5 of the bill creates a power for police to exclude certain individuals from the declared areas on the basis that they pose a serious threat to the safety of persons or property within the area as identified by the NSW Police Force. These persons will be identified by police on the basis of intelligence information. I would not expect that police will take lightly the decision to categorise people in this way. This exclusion power also applies to the higher-security restricted areas. Under clause 14 police will have the power to give reasonable directions to persons for the purpose of substantially assisting in the reduction of risks to the security of APEC, its participants and the public. Police will have the power to take action to reduce the risk of large-scale public disorder connected with APEC, with persons disobeying a reasonable direction able to be removed from the declared area.

Pursuant to clauses 15 to 18 police will have the power to establish motorcade and clearway routes and to clear or remove vehicles, people or other things blocking these routes—which is similar to the powers already provided for in the World Youth Day Act 2006. Under clause 31 any person who commits an offence of assault police, malicious damage, or throw missile at police within a declared or restricted area will attract a presumption against bail. While the presumption does not

normally apply for these offences, it will apply only for APEC such that the maximum time that a person would be in custody would be 14 days. The purpose of this special restriction on bail is to ensure that people who commit offences such as throwing missiles at police during APEC are not arrested, charged and released on bail simply to return to the APEC zone to repeat their violent actions.

To facilitate the hearing of bail matters during APEC the bill also provides for the use of an audiovisual link so that bail hearings can be heard over this link rather than face to face, which will reduce the logistical burden if significant numbers of persons are arrested during APEC. Police animals will be able to be used on Sydney Opera House or Darling Harbour foreshore premises under clause 33 of the bill to assist in the maintenance of law and order. The liability of the NSW Police Force in respect of actions in nuisance and negligence will be limited under clause 35, in the same way as is already provided for in the World Youth Day Act 2006.

Pursuant to part 6, officers from other Australian jurisdictions and also New Zealand police will be able to be recognised as New South Wales police officers. This will ensure the sufficiency of police numbers. In addition to the above powers, which apply to both declared areas and restricted areas, special offences are created and police will have additional powers in respect of restricted areas only.

Pursuant to clause 19, it will be an offence during APEC for anyone to enter a restricted area without special justification, the maximum penalty being six months imprisonment. And if the person does this while in possession of a "prohibited item" the maximum penalty will be two years imprisonment. Under clause 21 police will have a power of entry into any premises within a restricted area, except private residential premises, to ensure the security of conference and accommodation venues. Persons entering a restricted area will be required to provide evidence of identification under clause 22 to ensure that only those persons who have a need to enter the area gain access. As I said before, this bill creates extraordinary policing powers that will be available temporarily during the APEC period. While they represent a departure from normal policing powers, they are considered necessary for a variety of reasons, not least of which is the security of APEC participants and the maintenance of law and order in Sydney during September.

Finally, the bill makes a number of amendments to other Acts. The bill makes caltrops prohibited weapons under the Weapons Prohibition Act. Caltrops are spiked balls that can be used to injure humans and animals, such as police horses, and damage vehicles. The bill also extends the sunset clause of the covert search warrants regime under the Terrorism (Police Powers) Act 2002. The regime will be retained for a further 12 months, until 13 September 2008, so that the Ombudsman's review of the scheme can be fully considered.

I now turn to the second bill, which is being introduced cognately to support APEC, the Industrial and Other Legislation Amendment (APEC Public Holiday) Bill 2007. Based upon advice from security officials, the New South Wales Government accepts that keeping the Sydney metropolitan area open for workers will be too burdensome. A public holiday on 7 September will allow for the smoother running of the event. Public holidays were declared in Santiago, Chile, in 2004 and in Shanghai, China, in 2001, when these two cities hosted APEC summits.

To avoid undue speculation regarding arrangements during the summit period the Minister for Industrial Relations announced on 28 February that a one-off public holiday would be declared for the Sydney metropolitan area for Friday 7 September. The statutory vehicle for the appointment of an additional public holiday is the Banks and Bank Holidays Act 1912, which is within the administration of the Minister for

Industrial Relations.

Section 19 (3) empowers the Minister to make an order appointing a day or part thereof as a public holiday or half-holiday in any local government area, part of a local government area or other part of New South Wales. On 28 February the Minister made an order under section 19 (3) of the Banks and Bank Holidays Act appointing 7 September as a regional public holiday for the metropolitan area and local government areas of Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, City of Sydney, Fairfield, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Warringah, Waverley, Willoughby and Woollahra. These are referred to as the designated holiday areas.

Section 19 (7) of the Banks and Bank Holidays Act merely stipulates that such an appointed holiday requires the closure of banks. It is left to the holiday clauses of industrial instruments to specify the days on which people are entitled to be absent from work or to payment of penalty rates in lieu of a paid holiday. It is through this mechanism that public holidays under the Banks and Bank Holidays Act are recognised and entitlements enforced under the New South Wales industrial system. Generally, major New South Wales private sector awards only sanction worker absences for holidays proclaimed or gazetted for or throughout the State. For the most part awards do not recognise localised holidays, and employee absences on those days are often permitted by local custom. Many public sector industrial instruments make provision for regional public holidays; however, entitlements vary markedly. The Government is concerned that confining the declared APEC holiday to the designated holiday areas may not attract the usual public holiday entitlements without explicit action by the Government. That is the principal rationale for this bill.

The Industrial and Other Legislation Amendment (APEC Public Holiday) Bill will deem 7 September as a paid public holiday under State industrial instruments for those employees who would otherwise be required to work on that day in the designated holiday areas. This will ensure that the public holiday entitlements set out in State awards and enterprise agreements will be available to workers who are employed under those instruments in the regions covered by the declaration. I take this opportunity to clarify that the public holiday takes effect in relation to businesses, schools, workplaces and other services within the designated holiday areas. It does not operate on the basis of a person's place of residence. If you live outside the designated holiday area but work inside it your workplace will be subject to the public holiday. And if you are employed under a State industrial instrument you will either get a paid day off or get penalty rates if you are required to work on that day. But if your workplace is outside the designated holiday area your workplace will not be subject to the public holiday; your workplace will still open and you will still be required to work, even if you live inside the designated holiday area. A minor consequential amendment is proposed to the Long Service Leave Act 1955 to ensure that the APEC public holiday is treated in the same way as other public holidays falling within an employee's period of long service leave. This will ensure that where an employee in the designated holiday areas is on long service leave during the time of the APEC summit, that employee's period of leave will be extended by one day. Constitutional limitations preclude the amendments to State industrial instruments from applying to those employees who are subject to Federal

industrial instruments.

For those workers who are engaged under Federal instruments, the entitlement to the APEC public holiday will be governed exclusively by the Commonwealth Workplace Relations Act. That Act creates a wide range of different types of industrial instruments, including awards and different kinds of workplace agreements, and there may be some uncertainty as to whether workers under these instruments will get public holiday entitlements on the APEC holiday. For employees who were previously on State awards but whose awards were converted on 27 March into so-called National Agreements Preserving State Awards [NAPSAs], it seems clear that their entitlement will be subject to the same concerns as for workers still on State awards.

While the bill I now introduce will protect the latter group of employees, it cannot protect the entitlements of those who have been forced into the Federal system. It will require legislative or executive intervention at the Federal level to ensure uniform entitlement to the APEC public holiday under those instruments. The Premier will write to the Prime Minister to invite him to consider similar legislative action if required at the Federal level to ensure that workers in New South Wales who work under the WorkChoices legislation are not disadvantaged as compared with their colleagues under the State system. I stress that the declaration of a public holiday does not amount to a requirement that businesses or other services actually close on the designated day.

Therefore, the appointment of a regional public holiday and the enactment of special State legislation granting a holiday entitlement under State industrial instruments may not be sufficient to reduce crowd levels in the Sydney central business district during the APEC summit. While security planning is still underway, this bill also contains provisions that will enable the Minister for Industrial Relations to declare the closure of general shops in the central business district, should this be required to assist in achieving the optimum level of security. The proposed amendments will have the immediate effect of deeming the APEC day to be a closed holiday for all general shops in the designated holiday areas under the Shops and Industries Act. However, in line with the framework of the Shops and Industries Act, and in keeping with usual practice well understood by those in the retail industry, the Minister for Industrial Relations will be issuing orders under section 85 (2) of the Act to suspend that effect. Those orders will be published as closely as possible to the time of the commencement of this bill. In other words, despite the bill providing that APEC day will be a closed holiday under section 85 (1) of the Act, orders will be published under section 85 (2) of the Act to ensure that general shops can indeed trade on that day. If developments in the security area later demand it, the Government will be able to vary or revoke those orders to suit those requirements.

It is to be noted that the Shops and Industries Act deals only with what are termed "general shops" and the hours and days on which they may trade. It does not regulate the opening hours of small shops or "scheduled" shops: these include the local corner shop, newsagents, chemists, video shops and the like. But it is the larger shops, such as the department stores, that attract the crowds and raise potential security issues. It is my understanding that the present position is that shop closures in the central business district will not be necessary. However, it must be appreciated by everyone that security is a fluid thing, and the Government cannot ignore genuine concerns about such issues that might arise in the future. If the security settings change, and shop closures are required, this bill means that the Minister for Industrial Relations will be in a position to take action to assist in

ensuring that those security outcomes are achieved.

The final aspect of the bill acknowledges that there are a number of other legislative and statutory instruments which may be affected by the declaration of the APEC public holiday on 7 September. These are not laws about industrial relations or shop closures but a range of statutes in various portfolio areas that use the term "public holiday", "business day" or "working day". For example, there are many statutes that require things to be done or actions to be taken within a prescribed number of "business days". "Business day" is usually defined to mean "any day which is not a Saturday, Sunday or public holiday".

The bill inserts into the Banks and Bank Holidays Act a regulation-making power that the Minister for Industrial Relations will be able to exercise to make regulations that clarify whether the use of such terminology in a particular piece of legislation should be taken to include the APEC public holiday or not. The Minister for Industrial Relations would only make such regulations on advice from the Minister who is responsible for the relevant statute. The Minister for Industrial Relations will be writing to his ministerial colleagues to inform them of this power and to invite them to consider whether any relevant regulations need to be made. This power will also be able to be exercised in retrospect should it later become apparent that there was confusion or uncertainty in a particular area about how the APEC holiday should be treated. I commend these bills to the House.