

Legislative Council Hansard – 09 August 2017 – Proof

SYDNEY PUBLIC RESERVES (PUBLIC SAFETY) BILL 2017*Second Reading***The Hon. SCOTT FARLOW (17:00):** On behalf of the Hon. Niall Blair: I move:

That this bill be now read a second time. I seek leave to incorporate the second reading speech in *Hansard*.

Leave granted.

I ask the House to consider the Sydney Public Reserves (Public Safety) Bill 2017.

This bill is an appropriate and measured response to the unauthorised tents and other materials currently located in Martin Place Reserve.

Background

Martin Place Reserve is Crown land, reserved for public recreation and is managed by the City of Sydney as the reserve trust manager.

It is a public reserve used by the public as a major thoroughfare and by organisations authorised for specific events consistent with the reserve purpose.

The current camp site on Martin Place impedes the reasonable use of the reserve by other members of the public. It operates a 24/7 open kitchen which includes barbecues, gas bottles and knives. None of these activities are authorised or appropriate under the Crown Lands Act.

The City of Sydney Council knows it is an issue. It has already used its powers under Section 125 of the Local Government Act 1993 to address the problems created by this unauthorised use of a reserve before. It could—and should—use them again, but so far has failed in its duty to act.

Instead, it wanted the New South Wales Government to use its powers under the Crown Lands Act. This would require the Minister for Lands to apply to the local court for a warrant for the removal of the occupants at Martin Place.

Issuing of warrants is an extreme course of action for dealing with this situation. The City of Sydney might think this is an appropriate way to deal with vulnerable, homeless people but we do not.

This bill ensures that moving forward, the NSW Police will be able to exercise reasonable powers to remove items and persons from Martin Place reserve where they materially interfere with the reasonable enjoyment of the rights of the public or where the use of the reserve is unlawful.

The public expects that police should have appropriate powers to support a reasonable resolution of the issues at Martin Place Reserve moving forward.

But this is not the whole story

The bill is only one part of a broad approach by this Government to peacefully resolve this issue.

The Department of Family and Community Services has visited the Martin Place campsite 46 times since March 23 to offer services, support and accommodation.

As a result, 73 people are now in permanent social housing.

The Government will ensure that the department will continue to attend Martin Place every day this week to offer permanent accommodation for any homeless person in Martin Place who is eligible for social housing and is willing to engage.

What the bill does

Where the bill will apply

The bill applies to the whole of Martin Place between Macquarie Street and George Street which is a public reserve.

The bill can also apply to other public reserves in the City of Sydney by proclamation.

However, the Minister is not to recommend the making of a proclamation by the Governor unless the Minister is satisfied that, as a result of relocation of persons occupying Martin Place or another occupation of a public reserve, it is in the public interest for Police to intervene.

These restrictions on the Minister ensure that there will be proper consideration that takes into account the public interest before the powers authorised by the bill are extended to any other public reserves within the City of Sydney.

Police "move on" powers

The Police will be given powers to direct people to "move on" immediately and require that person not return within six hours, which has been modelled on the Law Enforcement (Powers and Responsibilities) Act 2002.

However, these "move on" powers will only apply to persons occupying a public reserve if the police officer believes on reasonable grounds that the person's occupation of the reserve materially interferes with the reasonable enjoyment of the rights of the public or is unlawful.

The Police will also be able to remove tents, goods or other items but only if it is necessary of expedient for the purpose of removing or remedying any material interference with the rights of the public in relation to the reserve or any unlawful occupation of the reserve.

In accordance with the proposed section 8(4), a thing that a police officer has seized and removed from a public reserve:

- may be returned to the person from whom it was seized if it is lawful for the person to have possession of the thing, or
- may be disposed of in accordance with the directions of the Commissioner of Police, or
- may be delivered to the council of the area in which the reserve is situated.

The intention of the relevant provision is to provide police with discretion, that is, the discretion to exercise any of these options. It is not intended to mandate any action or any particular action stated in the proposed section 8 (4).

Powers not directed to homeless persons

It is not intended that these "move on" powers will apply generally or specifically to homeless persons in the City of Sydney area.

Under this bill, the Police will only exercise powers to remove items or move people on where their occupation is unlawful or materially interferes with the reasonable enjoyment of the rights of the public in relation to Martin Place or another proclaimed public reserve within the City of Sydney.

Other limits on "move on" powers

These "move on" powers will not apply to industrial disputes.

And they will not apply to authorised demonstrations, protests, processions or assemblies under Part 4 of the Summary Offences Act 1988.

These are important for any citizen to have the right to participate in and reflect a strong and healthy democracy, such as that of New South Wales.

This bill is modelled on the "move on" powers in the Law Enforcement (Police Powers and Responsibilities) Act 2002, so the safeguards applicable to those provisions will apply to the new move on power.

This includes requirements for police officers to give reasons why they are exercising the "move on" power, and warnings that their requirements must be complied with.

Further, the bill provides that a Code of Practice may be developed and applied to the exercise of powers under the Act, setting out how powers are to be used.

Offences

There are only two offences under the bill.

It will be an offence when a person, without reasonable excuse, refuses or fails to comply with a direction to leave the reserve. The Court can apply a maximum penalty of two units, that is \$220. Or a fine can be issued for \$110.

The penalty for this offence is particularly low and the intention is clearly to create a compliance and enforcement mechanism that is appropriate in the circumstances.

Secondly, it will be an offence when a person, without reasonable excuse, obstructs a police officer exercising the power to seize and remove things. The Court can apply a maximum penalty of 20 penalty units, that is \$2200.

CONCLUSION

This Government has and will continue to provide support to the vulnerable people camping out in Martin Place.

However it has a duty to the people of the City of Sydney, and New South Wales more broadly.

That is why we are introducing these specific, limited provisions to ensure the public areas of the City of Sydney are available for use and enjoyment by all members of the public.

I commend the bill to the House.

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