

The object of this Bill is to amend the Crimes Act 1900 (the Crimes Act) and the Law Enforcement (Powers and Responsibilities) Act 2002 (the LEPAR Act) as follows:

- (a) to create new offences relating to participation in criminal groups and recruiting persons to carry out or assist in criminal activity,
- (b) to create new aggravated offences in relation to various offences involving assault or damage to property where the assault or damage occurred during a public disorder (with an increased maximum penalty),
- (c) to extend offences involving assault and other actions taken against law enforcement officers to circumstances where a missile is thrown at the law enforcement officer,
- (d) to increase the maximum penalty for offences involving obtaining personal information about law enforcement officers or members of their families, (e) to extend the limitation period for commencing proceedings for the offence of consorting,
- (f) to give police further powers to disperse groups,
- (g) to give police further powers with respect to entry and search of premises,
- (h) to give police power to remove unnecessary fortifications to premises.

The Bill also amends the Criminal Procedure Act 1986 and the Local Courts Act 1982 as a consequence of the amendments described above.

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.

Clause 3 is a formal provision that gives effect to the amendments to the Crimes Act set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the LEPAR Act set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the consequential amendment to the Acts listed in Schedule 3.

Clause 6 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Crimes Act 1900

Participating in criminal groups

Schedule 1 [11] inserts Part 3E into the Crimes Act to create new offences relating to participation in criminal groups.

Proposed section 93IJ inserts definitions for the purposes of Part 3E. A criminal group is a group of 3 or more people who have any of the following as their objectives:

- (a) obtaining material benefits from conduct that is an indictable offence punishable by imprisonment for life or a term of 5 years or more,
- (b) committing serious violence offences,
- (c) obtaining material benefits from, or engaging in, conduct of a kind referred to in paragraph (a) or (b) outside New South Wales.

A group is capable of being a criminal group whether or not any of them are subordinates or employees of others, or only some of the people involved in the group are involved in planning, organising or carrying out any particular activity, or the group's membership changes from time to time.

A serious violence offence is an offence punishable by imprisonment for life or for a term of 10 years or more, where the conduct constituting the offence involves:

- (a) loss of a person's life or serious risk of loss of a person's life, or
- (b) serious injury or serious risk of serious injury to a person, or

(c) serious damage to property in circumstances endangering the safety of any person, or
(d) perverting the course of justice in relation to any conduct described in paragraph (a), (b) or (c).

Proposed section 93IK makes it an offence for a person to participate in a criminal group knowing it is a criminal group and knowing, or being reckless as to whether, participation in that group contributes to a criminal activity occurring. The maximum penalty for this offence is imprisonment for 5 years.

Proposed section 93IK also contains 3 aggravated offences. It will be an offence:

(a) to assault another person with the intention of participating in a criminal activity of a criminal group (maximum penalty 10 years imprisonment), and

(b) to destroy or damage property belonging to another person, or to threaten to do so, with the intention of participating in a criminal activity of a criminal group (maximum penalty 10 years imprisonment), and

(c) to assault a police officer or other law enforcement officer with the intention of participating in a criminal activity of a criminal group (maximum penalty

14 years imprisonment).

Proposed section 93IL provides for alternative verdicts.

Criminal recruitment

Schedule 1 [17] substitutes section 351A of the Crimes Act to make it an offence to recruit an adult to carry out or assist in a criminal activity. The maximum penalty for this offence is imprisonment for 7 years. It is currently an offence to recruit a child to carry out a criminal activity (punishable by imprisonment for up to 10 years).

New aggravated public disorder offences

The Crimes Act is amended to create new aggravated offences for various crimes involving assault or damage to property. In each case, the maximum penalty for the offence concerned is increased by 2 years if the offence is committed during a public disorder.

Schedule 1 [4] creates an aggravated form of the offence under section 60 (1) where, during a public disorder, a person assaults, throws a missile at, stalks, harasses or intimidates an on-duty police officer.

Schedule 1 [5] creates an aggravated form of the offence under section 60 (2) where, during a public disorder, a person assaults an on-duty police officer and by that assault occasions actual bodily harm.

Schedule 1 [6] creates an aggravated form of the offence under section 60 (3) where, during a public disorder, a person maliciously wounds or inflicts grievous bodily harm on an on-duty police officer.

Schedule 1 [10] creates an aggravated form of the offence under section 93GA (1) where, during a public disorder, a person fires a firearm at a dwelling-house or other building with reckless disregard for the safety of any person.

Schedule 1 [12] creates an aggravated form of the offence under section 195 where, during a public disorder, a person maliciously destroys or damages property belonging to another person or to that person and another person.

Schedule 1 [13] creates an aggravated form of the offence under section 196 where, during a public disorder, a person maliciously destroys or damages property and by that action causes bodily injury to another person.

Schedule 1 [14] creates an aggravated form of the offence under section 197 where, during a public disorder, a person destroys or damages property with the aim of dishonestly making a personal gain or a gain for another person.

Schedule 1 [15] creates an aggravated form of the offence under section 199 where a person, during a public disorder and without lawful excuse, makes a threat to another, with the intention of causing that other to fear that the threat would be carried out either:

(a) to destroy or damage property belonging to that other or to a third person, or

(b) to destroy or damage the first-mentioned person's own property in a way which that person knows will or is likely to endanger the life of, or to cause bodily injury to, that other or a third person.

Schedule 1 [16] creates an aggravated form of the offence under section 200 where a person, during a public disorder, has possession, custody or control of an article with the intention that it should be used maliciously to destroy or damage property belonging to:

(a) some other person, or

(b) the first-mentioned person or the user, or both of them, and some other person.

Schedule 1 [2] omits the definition of public disorder from section 59A. Schedule 1 [1] inserts a definition of public disorder in section 4 in the same terms as that which was formerly in section 59A. The definition will apply to the new aggravated public disorder offences.

Throwing missiles at police officers and other law enforcement officers Schedule 1 [3] and [7] extend the offences relating to assaulting, stalking, harassing or intimidating a police officer or any other law enforcement officer so it will also be an offence under those provisions to throw a missile at a police officer or any other law enforcement officer.

Increased penalty for particular offences

Schedule 1 [8] and [9] increase, from 2 years imprisonment to 5 years imprisonment, the maximum penalty for offences involving obtaining personal information about law enforcement officers or their families under sections 60B (2) and 60C of the Crimes Act.

Consorting

Schedule 1 [18] amends section 546A of the Crimes Act (Consorting with convicted persons) to allow proceedings for an offence under that section to be commenced up to 12 months after they are alleged to have been committed.

Schedule 1 [19] limits the extended limitation period to offences committed after the amendment commences.

Schedule 2 Amendment of Law Enforcement

(Powers and Responsibilities) Act 2002 Power to disperse groups

Schedule 2 [3] inserts proposed section 87MA into the LEPAR Act to give further powers to police officers to prevent or control public disorders. The proposed section allows a police officer to give a direction to a group of people to disperse immediately in accordance with the following requirements:

- (a) the police officer giving the direction must inform the persons to whom the direction is given that an authorisation has been given under the LEPAR Act,
- (b) the police officer must warn those persons that a refusal or failure to comply with the direction may be an offence.

It is an offence to refuse or fail to comply with such a direction without reasonable excuse.

The power may be exercised only in relation to an area that is the subject of a public disorder authorisation under the LEPAR Act.

Schedule 2 [4] makes a consequential amendment.

Fortified premises

Schedule 2 [5] inserts a new Part into the LEPAR Act to give police further powers with respect to fortified premises.

Proposed section 210A defines fortification and fortification removal order for the purposes of the Part. A fortification is any security measure that involves a structure or device forming part of, or attached to, premises that:

- (a) is intended or designed to prevent or impede police access to the premises, or
- (b) has, or could have, the effect of preventing or impeding police access to the premises and is excessive for the particular type of premises.

Proposed section 210B establishes the scheme for fortification removal orders. The Commissioner of Police may apply to a Local Court for a fortification removal order that directs the owner or occupier of premises to remove or modify specified fortifications within a specified time period. A Local Court may make such an order only if the fortifications have been constructed or put in place in contravention of the Environmental Planning and Assessment Act 1979 or it is reasonably likely that the premises are being, have been or are likely to be used for purposes related to a serious indictable offence.

Proposed section 210C sets out the application process for fortification removal orders.

Proposed section 210D describes the enforcement process for fortification removal orders. If fortifications subject to such an order are not removed or modified in accordance with the order, the Commissioner of Police may cause them to be removed or modified in accordance with the order.

Proposed section 210E creates an offence for preventing, obstructing or hindering the removal or modification of fortifications in accordance with a fortification removal order.

Proposed section 210F states that the Crown is not liable for property damage resulting from the enforcement of a fortification removal order. However, an owner may recover the reasonable costs of property repairs that are necessary due to damage caused by the creation of fortifications or the enforcement of a fortification removal order from the person who caused the fortifications to be constructed or put in place.

Proposed section 210G states that the Commissioner of Police may extend or further extend the period for compliance with the fortification removal order on application made by the owner or occupier of the specified premises.

Proposed section 210H allows the Commissioner of Police to lodge a withdrawal notice with the Local Court that made the fortification removal order, identifying the relevant order and the relevant premises and stating that the Commissioner has decided not to enforce the order. The order ceases to have effect when the notice is lodged with the Court.

Proposed section 210I states that a consent or approval under the Environmental Planning and Assessment Act 1979 is not required in respect of work required to be carried out to comply with or enforce a fortification removal order.

Proposed section 210J allows the Commissioner of Police to delegate a function conferred under the new Part to a Deputy Commissioner of Police or an Assistant Commissioner of Police.

Police powers to enter and search premises

Schedule 2 [1] provides that, in relation to various warrants granted under the LEPAR Act or other Acts to which the LEPAR Act regime applies, a police officer authorised by the warrant to enter premises may, if it is reasonably necessary to do so for the purpose of entering those premises, disable any alarm, camera or surveillance device at the premises, or pacify a guard dog at the premises.

Schedule 2 [2] provides that, in relation to various warrants granted under the LEPAR Act or other Acts to which the LEPAR Act regime applies, a police officer authorised by the warrant to search premises may do anything that it is reasonably necessary to do for the purpose of preventing the loss or destruction of, or damage to, any thing connected with an offence that the police officer believes on reasonable grounds to be at those premises, including by blocking drains at or used in connection with those premises.

Miscellaneous

Schedule 2 [6] amends clause 1 of Schedule 5 to enable savings and transitional regulations to be made in relation to the proposed Act.

Schedule 3 Consequential amendment of other Acts Amendment of Criminal Procedure Act 1986

Schedule 3.1 amends the Criminal Procedure Act 1986 as a consequence of the amendments to the Crimes Act, to allow some of the new offences to be dealt with summarily in certain circumstances.

Amendment of Local Courts Act 1982

Schedule 3.2 makes it clear that Part 6 of the Local Courts Act 1982 (which sets out procedures for application proceedings in Local Courts) applies to applications for fortification removal orders under the proposed amendments to the LEPAR Act.