

Special police powers during APEC Conference (30 August to 12 September 2007)

Summary by Jane Sanders, Shopfront Youth Legal Centre, July 2007

1 The APEC legislation

The *APEC Meeting (Police Powers) Act 2007* will provide police with extraordinary powers in parts of the Sydney CBD during the APEC meeting. The *APEC period* covered by the Act is 30 August to 12 September 2007 inclusive.

2 APEC security areas

The Act will affect access to, and police powers within, *APEC security areas*, which are defined in s5 to mean any *restricted area*, and any other part of the *declared areas*.

2.1 Declared areas

The *core declared areas* are defined in s6(1) and Schedule 2. These include:

- A large chunk of the CBD bounded by Clarence St, King St, Macquarie St and the harbour;
- Circular Quay and part of The Rocks;
- Most of the Botanic Gardens and Bennelong Point;
- The part of Darling Harbour around the Convention Centre;
- Part of Hickson Road in Millers Point; and
- Part of the harbour from Circular Quay across to Kirribilli.

Further areas can be declared by order of the Police Minister, published in the Gazette (s6(2)-(4)).

2.2 Restricted areas

These are not specified in the Act, but section 7 provides for them to be designated by the Commissioner of Police, by written order.

The Commissioner must take reasonable steps to notify the public (by erection of signs/barriers, newspaper advertisements and/or publication in the Gazette) unless this would significantly compromise security arrangements.

Restricted areas are expected to include the conference venues and their immediate vicinity (eg the Opera House, Government House, Sydney Convention and Exhibition Centre).

2.3 No review or appeal against designation of declared or restricted areas

Section 8 provides that an order or decision made by the Commissioner or Minister under Section 6 or 7 is not open to any form of legal challenge or appeal.

3 Access to security areas

3.1 Declared areas

In general, there is no restriction on access to declared areas (other than restricted areas).

However, s24 permits police to exclude or remove a person (for the whole or part of the APEC period) if the person:

- fails to submit to a search as a condition of entry;
- fails to surrender a prohibited item as a condition of entry;
- hinders/resists/obstructs police who are performing a search;
- fails to obey a reasonable direction given by police;
- is on a road that is closed under the Act, without lawful excuse; or
- is on the *excluded persons list*.

3.2 Restricted areas

Section 19 creates an offence of entering a restricted area without *special justification*. The offence is aggravated if the person has possession or control of a *prohibited item* without special justification.

The maximum penalty is 6 months imprisonment, or 2 years imprisonment in circumstances of aggravation.

Prohibited items are listed in section 3 and are:

- (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 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 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. [To date, I am unaware of any Regulations but it is possible that some will be made in the coming weeks].

A person has *special justification* to be in a restricted area in circumstances set out in section 37(2). Persons with special justification include residents, police officers on duty in the area, or those persons required to be in or pass through the area for work purposes.

Special justification for possession of a prohibited item is covered by section 37(3) and encompasses a similar range of circumstances.

The onus of proof of special justification lies on the person accused of the offence or who claims to have the special justification (section 38).

Section 25 provides powers to exclude persons from restricted areas. A police officer may prevent a person from entering a restricted area, if the person, without lawful excuse, fails to comply with the request to disclose (or provide proof of) their identity as a condition of entry.

Section 25 also empowers police to remove persons from restricted areas if they are there without special justification, are in possession or control of a prohibited item without special justification, or if they fail without lawful excuse to comply with a request to disclose (or provide proof of) their identity.

3.3 Excluded persons list

Section 26 provides for the Commissioner to compile an *excluded persons list*, comprising persons that the Commissioner is satisfied would pose serious threats to the safety of persons or property (or both) in an APEC security area during the APEC period.

The Commissioner may (but is not obliged to) publish the list by such means as he thinks appropriate, including in the Gazette, in a newspaper or on a website. Failure to notify the public of the contents of the list does not affect the validity of the list or limit any powers in relation to persons named in the list.

The prospect of an excluded persons list has caused much concern among civil liberties groups, as it is anticipated that it may restrict legitimate protest.

4 Special police powers in APEC security areas

Police will have the following powers in relation to all APEC security areas (that is, both the declared areas and restricted areas):

4.1 Roadblocks, checkpoints, cordons

Section 10 empowers police to establish checkpoints or roadblocks, or to cordon off a security area, for the purpose of:

- stopping and searching persons, vehicles or vessels; or
- preventing persons entering or leaving the APEC security area without police permission (however, police must not prevent a person from leaving an APEC security area unless it is reasonably necessary to avoid a risk to public safety or to the person's own safety).

4.2 Power to search people, vehicles and vessels

Sections 11 and 12 give police the power to stop and search a person, vehicle or vessel inside, or seeking to enter, a security area. *No warrant or reasonable suspicion is required.*

The safeguards in Part 4 Division 4 of the *Law Enforcement (Powers and Responsibilities) Act* (LEPRA) apply to personal searches under section 12, except to the extent that they authorise strip searches. [Obviously, though, a strip search will be permitted if police suspect on reasonable grounds that the person is in possession of something listed in LEPRA section 21, or if the person has been

placed under arrest, and if the seriousness and urgency of the circumstances warrant a strip search (see LEPR sections 21, 23, 24, 31).]

4.3 Power to seize and detain prohibited items

Section 13 empowers police to seize and detain *prohibited items* (see 3.2 above) as a condition of entry to a security area, unless the person has *special justification* (see 3.2 above) to have the item.

Items seized do not have to be returned to the person and may be forfeited to the Crown (without any compensation being payable to its owner) if not returned to the owner within 24 hours of seizure.

4.4 Power to give directions

Section 14 provides that police may give a direction to any person, or any group of persons assembled, in an APEC security area.

Such a direction must be reasonable in the circumstances for the purpose of substantially assisting in promoting the security or safety of the APEC meeting, its participants or the public or in preventing or controlling a public disorder.

The section sets out procedures for the giving of directions. Failure to comply is not an offence but may lead to exclusion or removal from the area.

4.5 Road closures

Section 15 empowers the Commissioner to direct the closure of roads in an APEC security area for various purposes set out in the section. It is not necessary to give public notice of the road closure.

Section 17 provides that a person or vehicle may not use a road while it is closed under section 15, unless the person is a police officer or authorised person, or the vehicle is a police vehicle or other authorised vehicle. There is no offence associated with this; however, section 18 gives police the power to remove (or direct removal of) unauthorised vehicles. A person on a road that is closed may also be excluded or removed from the APEC security area.

5 Special police powers in restricted areas

The following additional powers apply to restricted areas:

5.1 Powers of entry and search

Section 21 provides that police may, without warrant, enter and search any premises located in a restricted area. They must do as little damage as possible.

Police are not authorised to enter residential premises except with the consent of the occupier, or under the authority of a search warrant or other law that authorises the entry.

5.2 Power to request disclosure of identity

Section 22 empowers a police officer to request a person to disclose his or her identity if the person's identity is unknown to the police officer, and the person is in (or seeking to enter) a restricted area (whether or not in a vehicle or vessel). A person may also be requested to provide proof of his or her identity.

There is no offence associated with this power, but failure to disclose identity would enable police to exclude or remove the person from the restricted area under section 25.

5.3 Powers to exclude or remove persons from restricted areas

See 3.2 above.

6 Presumption against bail for certain offences

Perhaps the most worrying provision of the Act is section 31, which provides a presumption against bail for any offence allegedly committed in an APEC security area during the APEC period that involves:

- the assault of a police officer; or
- malicious damage to property; or
- throwing a missile at a police officer.

The section further provides that bail cannot be dispensed with in relation to any such offence.

7 Use of police officers from outside NSW

Sections 27 and 28 allow the Commissioner or a Deputy Commissioner to appoint members of other police forces (Australian Federal Police, other States and Territories, New Zealand) as *recognised law enforcement officers* for the APEC period. Such officers may exercise all the functions and powers that a constable may exercise in NSW.

8 Miscellaneous

There are also some miscellaneous provisions concerning the control of air space, use of police animals including dogs and horses, and the use of reasonable force (see sections 30, 33, 32).

9 Further information

Further information about security arrangements, road closures, etc during the APEC period can be found on the APEC website at www.apec2007.org.au.