



New South Wales

Crimes Legislation Amendment (Gangs) Act 2006 No 61

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Crimes Legislation Amendment (Gangs) Act 2006 No 61

Act No 61, 2006

An Act to amend the *Crimes Act 1900* and the *Law Enforcement (Powers and Responsibilities) Act 2002* to make further provision with respect to organised criminal groups and public disorder; and for other purposes. [Assented to 28 September 2006]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment (Gangs) Act 2006*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

The *Law Enforcement (Powers and Responsibilities) Act 2002* is amended as set out in Schedule 2.

5 Consequential amendment of other Acts

The Acts specified in Schedule 3 are amended as set out in that Schedule.

6 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Crimes Act 1900

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Public disorder means a riot or other civil disturbance that gives rise to a serious risk to public safety, whether at a single location or resulting from a series of incidents in the same or different locations.

[2] Section 59A Assault during public disorder

Omit section 59A (3).

[3] Section 60 Assault and other actions against police officers

Insert “throws a missile at,” after “assaults,” in section 60 (1).

[4] Section 60 (1A)

Insert after section 60 (1):

(1A) A person who, during a public disorder, assaults, throws a missile at, stalks, harasses or intimidates a police officer while in the execution of the officer’s duty, although no actual bodily harm is occasioned to the officer, is liable to imprisonment for 7 years.

[5] Section 60 (2A)

Insert after section 60 (2):

(2A) A person who, during a public disorder, assaults a police officer while in the execution of the officer’s duty, and by the assault occasions actual bodily harm, is liable to imprisonment for 9 years.

[6] Section 60 (3A)

Insert after section 60 (3):

(3A) A person who, maliciously by any means, and during a public disorder:

- (a) wounds a police officer, or
- (b) inflicts grievous bodily harm on a police officer,

while in the execution of the officer’s duty is liable to imprisonment for 14 years.

[7] Section 60A Assault and other actions against law enforcement officers (other than police officers)

Insert “throws a missile at,” after “assaults,” in section 60A (1).

[8] Section 60B Actions against third parties connected with law enforcement officers

Omit “imprisonment for 2 years” from section 60B (2).

Insert instead “imprisonment for 5 years”.

[9] Section 60C Obtaining of personal information about law enforcement officers

Omit “imprisonment for 2 years”. Insert instead “imprisonment for 5 years”.

[10] Section 93GA Firing at dwelling-houses or buildings

Insert after section 93GA (1):

- (1A) A person who, during a public disorder, fires a firearm at a dwelling-house or other building with reckless disregard for the safety of any person is liable to imprisonment for 16 years.

[11] Part 3E

Insert after Part 3D:

Part 3E Participation in criminal groups

93IJ Definitions

- (1) In this Part:

criminal group means a group of 3 or more people who have as their objective or one of their objectives:

- (a) obtaining material benefits from conduct that constitutes a serious indictable offence, or
- (b) obtaining material benefits from conduct engaged in outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious indictable offence, or
- (c) committing serious violence offences, or
- (d) engaging in conduct outside New South Wales (including outside Australia) that, if it occurred in New South Wales, would constitute a serious violence offence.

law enforcement officer has the same meaning as it has in Division 8A of Part 3.

serious violence offence means 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 to a person 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 (within the meaning of Part 7) in relation to any conduct that, if proved, would constitute a serious violence offence as referred to in paragraph (a), (b) or (c).
- (2) A group of people is capable of being a criminal group for the purposes of this Part whether or not:
- (a) any of them are subordinates or employees of others, or
 - (b) only some of the people involved in the group are involved in planning, organising or carrying out any particular activity, or
 - (c) its membership changes from time to time.

93IK Participation in criminal groups

- (1) A person who participates in a criminal group:
- (a) knowing that it is a criminal group, and
 - (b) knowing, or being reckless as to whether, his or her participation in that group contributes to the occurrence of any criminal activity,
- is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- (2) A person who assaults another person, intending by that action to participate in any criminal activity of a criminal group, is guilty of an offence.
Maximum penalty: Imprisonment for 10 years.
- (3) A person who destroys or damages property belonging to another person, or threatens to destroy or damage property belonging to another person, intending by that action to participate in any criminal activity of a criminal group, is guilty of an offence.
Maximum penalty: Imprisonment for 10 years.

- (4) A person who assaults a law enforcement officer while in the execution of the officer's duty, intending by that action to participate in any criminal activity of a criminal group, is guilty of an offence.

Maximum penalty: Imprisonment for 14 years.

- (5) For the purposes of this section, an action is taken to be carried out in relation to a law enforcement officer while in the execution of the officer's duty, even though the law enforcement officer is not on duty at the time, if it is carried out:

- (a) as a consequence of, or in retaliation for, actions undertaken by that law enforcement officer in the execution of the officer's duty, or
- (b) because the officer is a law enforcement officer.

93IL Alternative verdicts

If, on the trial of a person for an offence under section 93IK (2), (3) or (4), the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under section 93IK (1), it may find the accused not guilty of the offence charged but guilty of an offence under section 93IK (1), and the accused is liable to punishment accordingly.

[12] Section 195 Maliciously destroying or damaging property

Insert at the end of section 195:

- (2) A person who, during a public disorder, maliciously destroys or damages property belonging to another or to that person and another is liable:
- (a) to imprisonment for 7 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, to imprisonment for 12 years.

[13] Section 196 Maliciously destroying or damaging property with intent to injure a person

Insert at the end of section 196:

- (2) A person who, during a public disorder, maliciously destroys or damages property, intending by the destruction or damage to cause bodily injury to another, is liable:
- (a) to imprisonment for 9 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, to imprisonment for 16 years.

[14] Section 197 Dishonestly destroying or damaging property

Insert at the end of section 197:

- (2) A person who, during a public disorder, dishonestly, with a view to making a gain for that person or another, destroys or damages property is liable:
- (a) to imprisonment for 9 years, or
 - (b) if the destruction or damage is caused by means of fire or explosives, to imprisonment for 16 years.

[15] Section 199 Threatening to destroy or damage property

Insert at the end of section 199:

- (2) A person who, 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:
- (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,
- is liable to imprisonment for 7 years.

[16] Section 200 Possession etc of explosive or other article with intent to destroy or damage property

Insert at the end of section 200:

- (2) A person who, 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,
- is liable (if the article is an explosive) to imprisonment for 9 years or (if the article is not an explosive) to imprisonment for 5 years.

[17] Section 351A

Omit the section. Insert instead:

351A Recruiting persons to engage in criminal activity

- (1) A person (not being a child) who recruits another person to carry out or assist in carrying out a criminal activity is guilty of an offence.
Maximum penalty: Imprisonment for 7 years.
- (2) A person (not being a child) who recruits a child to carry out or assist in carrying out a criminal activity is guilty of an offence.
Maximum penalty: Imprisonment for 10 years.
- (3) In this section:
child means a person under the age of 18 years.
criminal activity means conduct that constitutes a serious indictable offence.
recruit means counsel, procure, solicit, incite or induce.

[18] Section 546A Consorting with convicted persons

Insert at the end of section 546A:

- (2) Proceedings for an offence against this section may be commenced at any time within 12 months after the date of commission of the offence.

[19] Eleventh Schedule Savings and transitional provisions

Insert at the end of the Eleventh Schedule (with appropriate Part and clause numbers):

**Part Crimes Legislation Amendment (Gangs)
Act 2006**

Limitation period for consorting

Section 546A (2), as inserted by the *Crimes Legislation Amendment (Gangs) Act 2006*, applies only to an offence against section 546A that is committed, or is alleged to have been committed, after the commencement of that subsection.

Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002

(Section 4)

[1] Section 70 Use of force etc to enter and search premises

Insert after section 70 (1):

- (1A) A police officer authorised to enter premises pursuant to a warrant may, if it is reasonably necessary to do so for the purpose of entering those premises, do any of the following:
- (a) disable any alarm, camera or surveillance device at the premises,
 - (b) pacify any guard dog at the premises.

[2] Section 70 (3)

Insert after section 70 (2):

- (3) A police officer authorised to search premises pursuant to a warrant 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 any drains at or used in connection with the premises.

[3] Section 87MA

Insert after section 87M:

87MA Power to disperse groups

- (1) If a group of persons are assembled within an area that is the target of an authorisation, a police officer may give a direction to those persons, or to any of them, to disperse immediately.
- (2) The police officer giving the direction must:
 - (a) inform the person or persons to whom the direction is given that an authorisation has been given under this Act to prevent or control a public disorder, and
 - (b) warn the person or persons to whom the direction is given that a refusal or failure to comply with the direction may be an offence.

- (3) If a police officer has complied with this section and section 201 in giving a direction to a person and the person fails to comply with the direction, the police officer may again give the direction and, in that case, must again warn the person that a failure or refusal to comply with the direction may be an offence.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a direction given in accordance with this section.
Maximum penalty: 50 penalty units.
- (5) A direction under this section is to be given orally and, if given to a group of persons, is to be given in such a manner as is likely to be audible to all persons in that group, or to as many of them as practicable.
- (6) If a direction under this section is given to a group of persons, it is not necessary for the police officer to repeat the direction, or to repeat the information and warning referred to in subsection (2), to each person in the group.
- (7) However, just because the police officer is not required to repeat any such direction, information or warning does not in itself give rise to any presumption that each person in the group has received the direction, information or warning.

[4] Section 87N Powers exercisable without authorisation under this Division

Insert “(except section 87MA)” after “Division” where firstly occurring in section 87N (2).

[5] Part 16A

Insert after Part 16:

Part 16A Powers relating to fortified premises

210A Definitions

In this Part:

fortification means 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.

fortification removal order has the meaning given by section 210B.

210B Fortification removal order

- (1) A Local Court may, on application by the Commissioner, make an order (*a fortification removal order*) directing a person named in the order (being an owner or occupier of the premises) to remove or modify any fortifications at the premises, as specified in the order, within a period specified in the order.
- (2) A Local Court is to make a fortification removal order only if satisfied that there are fortifications at the premises concerned and that:
 - (a) the fortifications have been constructed or put in place in contravention of the *Environmental Planning and Assessment Act 1979*, or
 - (b) there are reasonable grounds to believe that the premises are being used, have been used or are likely to be used:
 - (i) for or in connection with the commission of a serious indictable offence, or
 - (ii) to conceal evidence of a serious indictable offence, or
 - (iii) to keep the proceeds of a serious indictable offence.
- (3) A fortification removal order must state the general grounds on which the order is made.
- (4) If the owner or occupier required by a fortification removal order to remove or modify fortifications did not appear, or was not represented, before the Local Court on the making of the order, the Commissioner is to cause a copy of the order to be served:
 - (a) personally on the owner or occupier named in the order, or
 - (b) if personal service cannot be effected promptly, by causing a copy of the order to be affixed to or near the entrance of the premises.
- (5) Part 6 of the *Local Courts Act 1982* applies, subject to any modifications provided for by this Part or by the regulations, to proceedings for a fortification removal order under this Part.

Note. Section 64 of the *Local Courts Act 1982* provides for appeals in relation to matters dealt with under Part 6 of that Act.

210C Application for fortification removal order

- (1) An application for a fortification removal order is to be made by the Commissioner by issuing and filing an application notice in accordance with Part 6 of the *Local Courts Act 1982*.
- (2) Despite section 42 of that Act, the application notice must be served:
 - (a) personally on the respondent, or
 - (b) if personal service cannot be effected promptly, by causing a copy of the application notice to be affixed to or near the entrance of the premises.
- (3) Section 44 of the *Local Courts Act 1982* does not apply to proceedings for a fortification removal order.

210D Enforcement of fortification removal order

- (1) If the fortifications to which a fortification removal order applies are not removed or modified in accordance with a fortification removal order within the period required by the order or, if that period is extended or further extended by the Commissioner under this Part, within the extended period, the Commissioner may cause the fortifications to be removed or modified to the extent required by the order in accordance with this section.
- (2) For that purpose, the Commissioner, or any police officer authorised by the Commissioner, may do any one or more of the following:
 - (a) enter the premises without a warrant,
 - (b) use such force as is reasonably necessary for the purpose of entering the premises,
 - (c) make use of such assistants as the Commissioner or police officer considers necessary to remove or modify the fortifications,
 - (d) seize anything required to be removed for the purpose of complying with the order,
 - (e) do anything else it is reasonably necessary to do to remove or modify the fortifications to the extent required by the order.
- (3) The Commissioner may recover the costs incurred by the Commissioner under this section, as a debt in any court of competent jurisdiction, from any person who caused the fortifications to be constructed or put in place.

- (4) Before premises are first entered under this section, the Commissioner must cause a notice to be prepared that:
 - (a) contains a summary of the fortification removal order, and
 - (b) specifies the intention of the Commissioner to enter, or to authorise entry, to the premises to cause the fortifications to be removed or modified in accordance with the order on or from a date specified in the order (*the enforcement date*).
- (5) A copy of the notice must be served, not less than 7 days before the enforcement date:
 - (a) personally on the occupier of the premises, or
 - (b) if personal service cannot be effected promptly, by causing a copy of the notice to be affixed to or near the entrance to the premises.

210E Hindering removal or modification of fortifications

- (1) A person must not do anything with the intention of preventing, obstructing or hindering the removal or modification of fortifications in accordance with a fortification removal order.
Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.
- (2) Subsection (1) applies to the removal or modification of fortifications by a person who is, or is acting for or on the instructions of, an owner or occupier of the premises, or a person who is acting under section 210D.

210F Liability for damage

- (1) No action lies against the Crown or any person for damage to property resulting from the enforcement of a fortification removal order.
- (2) However, an owner of premises may recover the reasonable costs associated with repair or replacement of property damaged as a result of creation of fortifications or enforcement of a fortification removal order as a debt from any person who caused the fortifications to be constructed or put in place.

210G Extension of order

The Commissioner may extend or further extend the period for compliance with a fortification removal order if, before the end of the period allowed for compliance with the order, an application is made by the owner or occupier of the premises specified in the order for an extension.

210H Withdrawal of order

- (1) If the Commissioner decides that a fortification removal order will not be enforced, the Commissioner is to lodge a notice (*a withdrawal notice*) with the court that made the fortification removal order that:
 - (a) identifies the fortification removal order and the premises to which it relates, and
 - (b) states that the Commissioner has decided the fortification removal order will not be enforced.
- (2) The fortification removal order ceases to have effect when the withdrawal notice is lodged with the court.
- (3) A copy of the withdrawal notice is to be served:
 - (a) personally on the owner or occupier named in the fortification removal order, or
 - (b) if personal service cannot be effected promptly, by causing a copy of the withdrawal notice to be affixed to or near the entrance of the premises.

210I Application of planning controls

A consent or approval under the *Environmental Planning and Assessment Act 1979* is not required to carry out any work required to be carried out to comply with or enforce a fortification removal order.

210J Delegation

The Commissioner may delegate a function conferred on the Commissioner by this Part, other than this power of delegation, to a Deputy Commissioner of Police or an Assistant Commissioner of Police.

[6] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Crimes Legislation Amendment (Gangs) Act 2006

Schedule 3 Consequential amendment of other Acts

(Section 5)

3.1 Criminal Procedure Act 1986 No 209

[1] Schedule 1 Indictable offences triable summarily

Insert “or (2A)” after “60 (2)” in clause 2 of Table 1.

[2] Schedule 1, Table 1

Insert after clause 10B:

10C Offences relating to participation in criminal groups

An offence under section 93IK (2) or (3) of the *Crimes Act 1900*.

[3] Schedule 1, Table 2

Insert “or (1A)” after “60 (1)” in clause 1.

[4] Schedule 1, Table 2

Insert after clause 4C:

4D Offences relating to participation in criminal groups

An offence under section 93IK (1) of the *Crimes Act 1900*.

3.2 Local Courts Act 1982 No 164

Section 36 Proceedings to which Part does not apply

Insert after section 36 (2) (c):

- (d) applications for orders under Part 16A of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

[Second reading speech made in—

Legislative Assembly on 30 June 2006

Legislative Council on 19 September 2006]

BY AUTHORITY