



New South Wales

Sydney Public Reserves (Public Safety) Act 2017 No 35

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Definitions	2
Part 2 Application of Act	
4 Application to Martin Place Reserve	3
5 Governor may apply Act to other public reserves in the City of Sydney	3
6 Act does not apply to activities authorised by public reserve manager	3
Part 3 Martin Place Reserve and other declared Sydney public reserves—police powers	
7 Directions to remove or remedy interference or unlawful occupation	4
8 Seizure and removal of things to remove or remedy interference or unlawful occupation	4
9 Safeguards under LEPRA apply	4
10 Giving of directions to groups of persons	5
11 Limitation on exercise of police powers under this Act	5
12 Code of practice	5

	Page
Part 4	
Miscellaneous	
13 Penalty notices	6
14 Nature of proceedings for offences	6
15 Act not affected by enactment of Crown Land Management Act 2016	6
16 Regulations	6



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Sydney Public Reserves (Public Safety) Act 2017 No 35

Act No 35, 2017

An Act to authorise police officers to exercise powers with respect to the occupation of the Martin Place Reserve and other declared public reserves in the City of Sydney. [Assented to 11 August 2017]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Sydney Public Reserves (Public Safety) Act 2017*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Definitions

(1) In this Act:

Martin Place Reserve means the public reserve in Martin Place, Sydney, between Macquarie Street and George Street.

occupation of a public reserve, includes the use of the reserve or the presence of a person in the reserve.

public reserve means:

- (a) land dedicated or reserved for a public purpose under the *Crown Lands Act 1989* or the *Crown Land Management Act 2016*, or
- (b) a public reserve within the meaning of the *Local Government Act 1993*.

public reserve to which this Act applies means:

- (a) the Martin Place Reserve, and
- (b) any other public reserve in the City of Sydney to which this Act is applied by a proclamation under Part 2.

the public includes any section of the public.

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) Notes included in this Act do not form part of this Act.

Part 2 Application of Act

4 Application to Martin Place Reserve

This Act applies to the Martin Place Reserve.

5 Governor may apply Act to other public reserves in the City of Sydney

- (1) The Governor may, by proclamation made on the recommendation of the Minister, apply this Act to any other public reserve described in the proclamation that is within the City of Sydney.
- (2) The Minister is not to recommend the making of a proclamation under this section unless satisfied that, as a result of the relocation of persons occupying the Martin Place Reserve or any other occupation of a public reserve, it is in the public interest that police officers exercise powers under this Act in relation to the public reserve.
- (3) A proclamation under this section may be amended or revoked by a further proclamation of the Governor.

6 Act does not apply to activities authorised by public reserve manager

- (1) Subject to subsection (2), this Act does not apply to a thing or person in a public reserve if the manager of the reserve has authorised the presence of the thing or person in the reserve.
- (2) The Minister may, by notice to the Commissioner of Police and the manager of the reserve, direct that this Act applies to specified things or persons (or to things or persons of a specified kind) on a public reserve.
- (3) In this section:
manager of a public reserve means the body or person having the control and management of the reserve under the legislation relating to the reserve.

Part 3 Martin Place Reserve and other declared Sydney public reserves—police powers

7 Directions to remove or remedy interference or unlawful occupation

- (1) A police officer may give a direction to a person who is in a public reserve to which this Act applies if the police officer believes on reasonable grounds that the person's occupation of the reserve:
 - (a) materially interferes with the reasonable enjoyment of the rights of the public in relation to the reserve, or
 - (b) is unlawful.
- (2) A direction given by a police officer under this section must be reasonable in the circumstances for the purposes of removing or remedying the interference or unlawful occupation.
- (3) Without limiting the directions that may be given under this section, a direction may be given to a person to leave the public reserve and not return for a specified period (not exceeding 6 hours after the direction is given).
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a direction given under this section.
Maximum penalty: 2 penalty units.

8 Seizure and removal of things to remove or remedy interference or unlawful occupation

- (1) A police officer may seize and remove from a public reserve to which this Act applies any tent, goods or other thing if the police officer believes on reasonable grounds that it is necessary or expedient for the purposes of removing or remedying any interference or unlawful occupation referred to in section 7 in relation to the reserve.
- (2) A police officer may seize and remove things under this section with the aid of such assistants as the police officer considers necessary.
- (3) A person must not, without reasonable excuse, obstruct a police officer (or a person assisting a police officer) in the exercise of the power to seize and remove things under this section.
Maximum penalty: 20 penalty units.
- (4) A thing that a police officer has seized and removed from a public reserve under this section:
 - (a) 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
 - (b) may be disposed of in accordance with the directions of the Commissioner of Police, or
 - (c) may be delivered to the council of the area in which the reserve is situated.
- (5) On being so delivered to the council, the thing is taken to be an article duly impounded by an impounding officer appointed by the council in accordance with the *Impounding Act 1993*.

9 Safeguards under LEPRA apply

Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002* sets out safeguards relating to the exercise of powers by police officers under this Act.

10 Giving of directions to groups of persons

- (1) A police officer may give a direction under this Act to persons comprising a group.
- (2) In any such case, the police officer is not required to repeat the direction, or to repeat the information and warning referred to in Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, to each person in the group.
- (3) 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.

11 Limitation on exercise of police powers under this Act

- (1) This Act does not authorise a police officer to exercise a power in relation to an industrial dispute.
- (2) This Act does not authorise a police officer to exercise a power in relation to a demonstration, protest, procession or assembly that is an authorised public assembly for the purposes of Part 4 of the *Summary Offences Act 1988* or a demonstration, protest, procession or assembly that is being held substantially in accordance with any such authorisation.

12 Code of practice

- (1) The regulations may prescribe a code of practice relating to the exercise of powers by police officers under this Act and the rights of persons to whom directions are given under this Act.
- (2) The exercise of powers by police officers under this Act is subject to any such prescribed code of practice.
- (3) Until any such code of practice is prescribed, the Commissioner of Police may require police officers exercising powers under this Act to comply with any specified requirements of the code of practice prescribed under section 200A of the *Law Enforcement (Powers and Responsibilities) Act 2002* in relation to directions under Part 14 of that Act.

Part 4 Miscellaneous

13 Penalty notices

- (1) A police officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is:
 - (a) an offence against section 7 (4), or
 - (b) an offence against the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

Note. The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court). Until an amount is prescribed by the regulations for an alleged offence against section 7 (4), the amount of \$110 is prescribed.
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

14 Nature of proceedings for offences

Proceedings for offences against this Act or the regulations may be dealt with summarily before the Local Court.

15 Act not affected by enactment of Crown Land Management Act 2016

The application of this Act to a public reserve is not affected by the repeal of the *Crown Lands Act 1989* by the *Crown Land Management Act 2016* or the transfer of the care, control and management of the reserve under the *Crown Land Management Act 2016*.

16 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may create offences punishable by a penalty not exceeding 50 penalty units.

[Second reading speech made in—

Legislative Assembly on 8 August 2017

Legislative Council on 9 August 2017]