

Passed by both Houses



New South Wales

Law Enforcement Legislation Amendment (Public Safety) Bill 2005

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

Law Enforcement Legislation Amendment (Public Safety) Bill 2005

Act No , 2005

An Act to amend the *Law Enforcement (Powers and Responsibilities) Act 2002* and certain other Acts in relation to the prevention and control of public disorders, and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Law Enforcement Legislation Amendment (Public Safety) Act 2005*.

2 Commencement

This Act commences on the date of assent.

3 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 1.

4 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 2.

5 Amendment of Bail Act 1978 No 161

The *Bail Act 1978* is amended as set out in Schedule 3.

6 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended as set out in Schedule 4.

Schedule 1 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002

(Section 3)

[1] Part 6A

Insert after Part 6:

Part 6A Emergency powers—public disorder

Division 1 Preliminary

87A Definitions

- (1) In this Part:

licensed premises means premises licensed or required to be licensed under the *Liquor Act 1982* for the sale or supply of liquor, and includes the premises of a registered club under the *Registered Clubs Act 1976*.

liquor has the same meaning as in the *Liquor Act 1982*.

mobile phone includes any device that may be used, in whole or in part, for the purpose of sending or receiving voice or other data over a mobile telephone network, whether or not it may be used for any other purpose.

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.

public place includes a school.

road includes a road related area, and a part of a road or road related area.

- (2) For the purposes of this Part, controlling a public disorder includes containing or reducing the disorder or bringing the disorder to an end.
- (3) For the purposes of this Part:
- (a) a person in an area that is the target of an authorisation under Division 3 includes a person who is about to enter the area or who has recently left the area, and
 - (b) a vehicle that is in an area the target of an authorisation under Division 3 includes a vehicle that is about to enter the area or that has recently left the area.

Division 2 Liquor restrictions

87B Emergency prohibition on sale or supply of liquor

- (1) A police officer of or above the rank of Superintendent may authorise the closure of any licensed premises, or the prohibition of the sale or supply of liquor on any licensed premises, if the police officer:
 - (a) has reasonable grounds for believing that there is a large-scale public disorder occurring in the vicinity of the licensed premises or there is a threat of such a disorder occurring in the near future, and
 - (b) is satisfied that the closure or prohibition will reasonably assist in preventing or controlling the public disorder.
- (2) The period that an authorisation relating to any licensed premises has effect must not exceed the period that the police officer giving the authorisation considers reasonably necessary for the purpose for which it is given, but must not in any case exceed 48 hours. The period that the authorisation has effect may be extended by the giving of a further authorisation, but only if the total period of the authorisation in relation to those premises does not exceed 48 hours.

Note. The closure of licensed premises may be extended by the Licensing Court or by an order of an authorised officer under section 104A or 104C of the *Liquor Act 1982*.
- (3) Any police officer may, in accordance with an authorisation under subsection (1), direct any person who is apparently in charge of, or who is selling or supplying liquor on, licensed premises to close the premises or to cease selling or supplying liquor on those premises, as the case requires.
- (4) An authorisation under subsection (1) may be given orally or in writing and, if given orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so.
- (5) An authorisation under subsection (1) may be revoked at any time by a police officer of or above the rank of Inspector if the police officer is satisfied that the authorisation is no longer necessary. The police officer is to give notice to a person apparently in charge of the licensed premises of the revocation of the authorisation.
- (6) A person to whom a direction is given under this section must comply with the direction.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

87C Emergency alcohol-free zones

- (1) A police officer of or above the rank of Superintendent may, by instrument in writing, establish in an area within a public place an emergency alcohol-free zone if the police officer:
 - (a) has reasonable grounds for believing that there is a large-scale public disorder occurring in the vicinity of the area or there is a threat of such a disorder occurring in the near future, and
 - (b) is satisfied that the establishment of the zone will assist in preventing or controlling the public disorder.
- (2) The period for which an emergency alcohol-free zone may be established in any area must not exceed the period that the police officer establishing the zone considers reasonably necessary for the purpose for which it is established, but must not in any case exceed 48 hours. The period for which the zone is established may be extended by a further instrument, but only if the total period that the zone is established in the area does not exceed 48 hours.
- (3) A police officer who finds a person or group of persons drinking or in possession of liquor in an emergency alcohol-free zone may warn the person or group of persons that it is an offence to drink liquor in the zone and that any liquor in the possession of the person or persons may be confiscated unless it is removed from the zone or put away.
- (4) A person who has received a warning under subsection (3) in relation to an emergency alcohol-free zone, but who:
 - (a) commences to drink liquor in the zone, or
 - (b) fails to stop drinking liquor in the zone, or
 - (c) resumes drinking liquor in the zone,is guilty of an offence.
Maximum penalty: 20 penalty units.
- (5) An emergency alcohol-free zone may be established under this section in respect of an area that is an alcohol-free zone established under the *Local Government Act 1993*. In that case, a person cannot be convicted of an offence under this section and that Act in respect of the same act or omission.
- (6) Any liquor in the immediate possession of a person in an emergency alcohol-free zone who is committing, or has just committed, an offence under this section, and any container in which the liquor is packaged, may be seized by a police officer.

- (7) Any liquor in the immediate possession of a person in an emergency alcohol-free zone who has received a warning under subsection (3), and any container in which the liquor is packaged, may also be seized by a police officer if:
 - (a) the person does not remove the liquor from the zone or put the liquor away, and
 - (b) the police officer is satisfied that the seizure of the liquor will assist in preventing or controlling the public disorder.
- (8) Any liquor (and any container) seized under this section is, by virtue of the seizure, forfeited to the State and may be disposed of in accordance with directions given by the Commissioner of Police.
- (9) The establishment of an emergency alcohol-free zone under this section may be revoked at any time by a police officer of or above the rank of Superintendent if the police officer is satisfied that it is no longer necessary.

Division 3 Special powers to prevent or control public disorders

87D Authorisation of special powers to prevent or control public disorder in public place

An authorisation for the exercise in a public place of the special powers conferred by this Division may be given in accordance with this Division if the police officer giving the authorisation:

- (a) has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and
- (b) is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder.

87E Target of authorisation

- (1) An authorisation may authorise the exercise of the special powers conferred by this Division in a public place:
 - (a) for the purpose of preventing or controlling a public disorder in a particular area described in the authorisation, or
 - (b) for the purpose of preventing persons travelling by a road specified in the authorisation to an area to create or participate in a public disorder (whether or not the area is also subject to an authorisation under paragraph (a)).

- (2) The area or road is referred to in this Division as the *target* of the authorisation.

87F Giving of authorisation

- (1) An authorisation may be given by the Commissioner of Police or by a Deputy or Assistant Commissioner of Police. The power conferred by this section cannot be delegated.
- (2) An authorisation may be given orally or by instrument in writing.
- (3) If the authorisation is given orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so.
- (4) An authorisation must:
 - (a) state that it is given under this Division, and
 - (b) describe the general nature of the public disorder or threatened public disorder to which it applies (including the day or days it occurs or is likely to occur), and
 - (c) describe the area or specify the road targeted by the authorisation, and
 - (d) specify the time it ceases to have effect.

87G Duration and revocation of authorisation

- (1) An authorisation has effect, unless sooner revoked, during the period beginning at the time it is given and ending at the time specified in the authorisation.
- (2) The period that an authorisation relating to any area or road has effect must not exceed the period that the police officer giving the authorisation considers reasonably necessary for the purpose for which it is given, but must not in any case exceed 48 hours.
- (3) The period that the authorisation has effect may be extended by the giving of a further authorisation, but only if:
 - (a) the total period of the authorisation in relation to the area or road does not exceed 48 hours, or
 - (b) the Supreme Court, on the application of the police officer proposing to give the further authorisation, determines that the police officer is entitled to give the further authorisation.
- (4) The Commissioner of Police or a Deputy or Assistant Commissioner of Police may revoke an authorisation at any time, and must revoke it if directed to do so by order of the Supreme Court.

- (5) The cessation of an authorisation (by revocation or otherwise) does not affect anything lawfully done in reliance on the authorisation before it ceased to have effect.

87H Exercise of special powers conferred by authorisation by police officers

- (1) The special powers conferred by this Division may be exercised by any police officer in a public place for the purposes for which an authorisation is given under this Division.
- (2) A police officer may exercise those powers whether or not the officer has been provided with or notified of the terms of the authorisation.

87I Power to place or establish cordon or roadblock

- (1) A police officer may, for the purposes of stopping and searching persons or vehicles under this Division or preventing persons entering or leaving an area without the permission of a police officer:
- (a) place a cordon around a target area or any part of it, or
 - (b) establish a roadblock on a target road (including any road in a target area).
- (2) A police officer must not refuse permission for a person to leave the area unless it is reasonably necessary to do so to avoid a risk to public safety or to the person's own safety.
- (3) A cordon or roadblock may consist of any appropriate form of physical barrier or obstruction preventing or limiting the passage of vehicles or persons.

87J Power to stop and search vehicles

- (1) A police officer may, without a warrant, stop and search a vehicle, and anything in or on the vehicle, if:
- (a) the vehicle is in an area that is the target of an authorisation, or
 - (b) the vehicle is on a road that is the target of an authorisation.
- (2) A police officer may detain a vehicle for so long as is reasonably necessary to conduct a search under this section.

87K Power to search persons

- (1) A police officer may, without a warrant, stop and search a person, and anything in the possession of or under the control of the person, if:

- (a) the person is in an area that is the target of an authorisation, or
 - (b) the person is in or on a vehicle on a road that is the target of an authorisation.
- (2) Division 4 of Part 4 (except to the extent that it authorises strip searches) applies to the search of a person conducted under this section.
- (3) A police officer may detain a person for so long as is reasonably necessary to conduct a search under this section.

87L Power to obtain disclosure of identity

- (1) A police officer may request a person whose identity is unknown to the officer to disclose his or her identity if:
- (a) the person is in an area that is the target of an authorisation (whether or not in or on a vehicle), or
 - (b) the person is in or on a vehicle on a road that is the target of an authorisation,
- and the police officer reasonably suspects that the person has been involved or is likely to be involved in a public disorder.
- (2) A person who is so requested to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.
Maximum penalty: 50 penalty units or 12 months imprisonment, or both.
- (3) A person must not, without reasonable excuse, in response to any such request:
- (a) give a name that is false in a material particular, or
 - (b) give an address other than the person's full and correct address.
- Maximum penalty: 50 penalty units or 12 months imprisonment, or both.
- (4) A police officer may request a person who is requested under this section to disclose his or her identity to provide proof of his or her identity.

87M Power to seize and detain things

- (1) A police officer may, in connection with a search under this Division:
 - (a) seize and detain, for a period of not more than 7 days, a vehicle, mobile phone or other communication device if the seizure and detention of the vehicle, phone or device will assist in preventing or controlling a public disorder, or
 - (b) seize and detain all or part of a thing (including a vehicle) that the officer suspects on reasonable grounds may provide evidence of the commission of a serious indictable offence (whether or not related to a public disorder).
- (2) The Local Court may, on the application of a police officer, authorise the continued detention of a vehicle, mobile phone or other communication device under subsection (1) (a) for an additional period not exceeding 14 days if satisfied that its continued detention will assist in preventing or controlling a public disorder. More than one extension of the detention may be authorised under this subsection, so long as each extension does not exceed 14 days.
- (3) A power conferred by this section to seize and detain a thing includes:
 - (a) a power to remove a thing from the place where it is found, and
 - (b) a power to guard the thing in or on the place where it is found.
- (4) The regulations may make provision for or with respect to the seizure, detention and return of vehicles, mobile phones or other communication devices referred to in subsection (1) (a).

87N Powers exercisable without authorisation under this Division

- (1) This section applies where a police officer stops a vehicle on a road in accordance with a power conferred by or under this or any other Act, being a road that is not (or not in an area) the target of an authorisation under this Division.
- (2) The police officer may exercise the powers conferred under this Division in relation to the vehicle (and any person or thing in or on the vehicle) without such an authorisation if the officer:
 - (a) has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such a disorder occurring in the near future, and

- (b) suspects on reasonable grounds that the occupants of the vehicle have participated or intend to participate in the public disorder, and
- (c) is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder, and
- (d) is satisfied that the urgency of the circumstances require the powers to be exercised without an authorisation under this Division.

Division 4 Miscellaneous

87O Monitoring by Ombudsman

- (1) The Ombudsman is to keep under scrutiny the exercise of powers conferred on police officers under this Part.
- (2) For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about the exercise of those powers.
- (3) The Commissioner of Police is to ensure that the Ombudsman:
 - (a) is notified as soon as practicable of the giving of any authorisation under Division 2 or 3, and given a copy of any such authorisation, and
 - (b) if an authorisation is revoked—is notified as soon as practicable of the revocation.
- (4) The Ombudsman must, as soon as practicable after 18 months after the commencement of this Part, prepare a report on the exercise of those powers and furnish a copy of the report to the Attorney General and the Minister for Police.
- (5) The report is to be tabled by the Attorney General in each House of Parliament as soon as practicable after it is received by the Attorney General.
- (6) If a House of Parliament is not sitting when the Attorney General seeks to table a report, copies of the report are to be presented to the Clerk of the House concerned by the Attorney General.
- (7) The report:
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and

- (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

87P Sunset provision

This Part is repealed on the second anniversary of the commencement of this Part.

[2] Section 14 Power of police officer to request disclosure of driver or passenger identity

Omit “passenger in or on” from section 14 (1) (a).

Insert instead “driver of, or passenger in or on,”.

[3] Section 14 (1)

Insert “or at or about the time the vehicle last stopped before the request was made or a direction was given under this Division to stop the vehicle” after “so used” wherever occurring.

[4] Section 15 Failure of driver to disclose identity

Omit “passenger in or on” from section 15 (2).

Insert instead “driver of, or passenger in or on,”.

[5] Section 15 (2) (a) and (b)

Insert “driver or” before “passenger” wherever occurring.

[6] Section 15 (2) (b)

Insert “driver’s or” before “passenger’s”.

[7] Part 4, Division 5, heading

Insert “stop,” before “entry”.

[8] Section 36A

Insert after section 36:

36A Power to stop vehicles

A police officer may stop a vehicle if the police officer suspects on reasonable grounds that the driver of, or a passenger in or on,

the vehicle is a person in respect of whom the police officer has grounds to exercise a power of arrest or detention or a search power under this Act or any other law.

[9] Section 38 Power to give reasonable directions

Omit “search power”. Insert instead “stop, search or detention power”.

[10] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Law Enforcement Legislation Amendment (Public Safety) Act
2005*

Schedule 2 Amendment of Crimes Act 1900

(Section 4)

[1] Section 59A

Insert after section 59:

59A Assault during public disorder

- (1) A person who assaults any person during a large-scale public disorder, although not occasioning actual bodily harm, is liable to imprisonment for 5 years.
- (2) A person who assaults any person during a large-scale public disorder, and by the assault occasions actual bodily harm, is liable to imprisonment for 7 years.
- (3) In this section, *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.
- (4) This section is repealed on the second anniversary of the commencement of this section.

[2] Section 93B Riot

Omit “10 years” from section 93B (1). Insert instead “15 years”.

[3] Section 93C Affray

Omit “5 years” from section 93C (1). Insert instead “10 years”.

Schedule 3 Amendment of Bail Act 1978

(Section 5)

[1] Section 8D

Insert after section 8C:

8D Presumption against bail for offences committed in the course of riots or other civil disturbances

- (1) This section applies to the following offences:
 - (a) an offence under section 93B (Riot) of the *Crimes Act 1900*,
 - (b) any other offence that is punishable by imprisonment for 2 years or more and that is alleged to have been committed:
 - (i) in the course of the accused person participating in a large-scale public disorder, or
 - (ii) in connection with the exercise of police powers to prevent or control such a disorder or the threat of such a disorder.
- (2) In this section, **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.
- (3) A person accused of an offence to which this section applies is not to be granted bail unless the person satisfies the authorised officer or court that bail should not be refused.
- (4) The requirement for bail cannot be dispensed with for a person accused of an offence to which this section applies and section 10 (2) does not apply with respect to any such offence.
- (5) Section 9 does not apply to an offence to which this section applies.
- (6) Sections 32 (6) and 38 (1A) apply to an offence to which this section applies in the same way as they apply to an offence to which section 8A applies.
- (7) This section is repealed on the second anniversary of the commencement of this section.

[2] Schedule 1 Savings and transitional provisions

Insert after Part 15:

**Part 16 Law Enforcement Legislation Amendment
(Public Safety) Act 2005**

**33 Offences committed or bail decision made before commencement
of Law Enforcement Legislation Amendment (Public Safety) Act
2005**

- (1) Section 8D, as inserted by the *Law Enforcement Legislation Amendment (Public Safety) Act 2005*, extends to a grant of bail to a person in respect of an offence committed before the commencement of that section, whether the person was charged with that offence before or after that commencement.
- (2) The operation of this clause extends to a review under Part 6 of this Act of a bail decision made before that commencement.

**Schedule 4 Amendment of Criminal Procedure Act
1986**

(Section 6)

[1] Section 268 Maximum penalties for Table 2 offences

Insert “59A,” after “59,” in section 268 (2) (a).

[2] Schedule 1 Indictable offences triable summarily

Insert “59A,” after “59,” in clause 1 of Part 1 of Table 2.