

Passed by both Houses



New South Wales

APEC Meeting (Police Powers) Bill 2007

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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, , 2007*



New South Wales

APEC Meeting (Police Powers) Bill 2007

Act No , 2007

An Act to give police officers special powers with respect to the provision of security for the series of meetings of the members of the Asia-Pacific Economic Cooperation group of economies in Sydney; and for other purposes.

See also the *Industrial and Other Legislation Amendment (APEC Public Holiday) Act 2007*.

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

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *APEC Meeting (Police Powers) Act 2007*.

2 Commencement

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

3 Definitions

(1) In this Act:

APEC meeting means any meeting that forms part of the series of meetings of the members of the Asia-Pacific Economic Cooperation (*APEC*) group of economies to be held in Sydney during the *APEC* period.

APEC period means the period:

- (a) commencing at the beginning of 30 August 2007, and
- (b) ending at the end of 12 September 2007.

APEC security area—see section 5.

Commissioner means the Commissioner of Police.

declared areas—see section 6.

Deputy Commissioner has the same meaning as it has in the *Police Act 1990*.

excludable person—see section 24.

excluded persons list—see section 26.

exercise a function includes perform a duty.

fail to comply includes refuse to comply.

function includes a power, authority or duty.

identity of a person means the name or residential address of the person (or both).

metropolitan Sydney means the local government areas listed in Schedule 1, and includes any part of the waters of Port Jackson (including Sydney Harbour) and its foreshore.

Police Minister means the Minister administering the *Police Act 1990*.

police vehicle means a vehicle used or operated for the purposes of activities engaged in by a police officer while exercising any functions of a police officer (whether under this Act or otherwise).

premises includes a building, structure or place, whether built on or not.

prohibited item means any of the following:

- (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 that are 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 that are 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.

recognised law enforcement officer—see section 27.

restricted area—see section 7.

road means a road within the meaning of the *Road Transport (General) Act 2005* and includes:

- (a) a road related area within the meaning of that Act, and
- (b) a private road, being an area that:
 - (i) is not, or is not generally, open to or used by the public, and
 - (ii) is developed for, or has as one of its main uses, the driving or riding of motor vehicles (within the meaning of that Act).

road transport legislation has the same meaning as it has in the *Road Transport (General) Act 2005*.

special justification—see section 37.

vehicle has the same meaning as it has in the *Road Transport (General) Act 2005*, and includes any aircraft, animal-drawn vehicle or animal that is being ridden or is drawing a vehicle.

vessel includes watercraft of any description used or capable of being used as a means of transportation in or on water.

- (2) Any power that is conferred by this Act by reference to an area or period is also exercisable in relation to any part of the area or period.
- (3) Any power that is conferred by this Act by reference to a person, vehicle or vessel being in an area is also exercisable in relation to any person who, or vehicle or vessel that, has recently left the area.

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Part 1 Preliminary

(4) Notes and any map included in this Act do not form part of this Act.

4 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

Part 2 APEC security areas

5 APEC security area

For the purposes of this Act, an *APEC security area* is any of the following:

- (a) any area that forms part of the declared areas (other than a restricted area),
- (b) any restricted area.

6 Declared areas

- (1) For the purposes of this Act, the *declared areas* are:
 - (a) the areas described in Schedule 2 (the *core declared areas*), and
 - (b) any area that is designated to be an additional declared area by an order under this section (an *additional declared area*).
- (2) The Police Minister may, by order published in the Gazette, designate any area within metropolitan Sydney (other than an area that is in the core declared areas) to be an additional declared area for the period (if any) specified in the order if:
 - (a) the Commissioner has recommended to the Minister that the order be made, and
 - (b) the Minister is satisfied that the designation of the area will substantially assist in promoting the security or safety of an APEC meeting, its participants or the public or in preventing or controlling a public disorder, and
 - (c) the Minister has consulted with such other Ministers as the Minister considers relevant about the proposed addition of the area.

Note. The Police Minister may amend or repeal an order made under this section. See section 43 of the *Interpretation Act 1987*.
- (3) An area is an additional declared area for the purposes of this Act only for:
 - (a) the period specified in the order, or
 - (b) if no period is specified in the order—the APEC period or, if the APEC period has already commenced, the remainder of that period.
- (4) An order under this section may be made before or during the APEC period.

7 Restricted area

- (1) For the purposes of this Act, a *restricted area* is any area that is designated as being a restricted area by an order under this section.
- (2) The Commissioner may, by written order, designate any area within the declared areas to be a restricted area for the period (if any) specified in the order if the Commissioner is satisfied that:
 - (a) the area is being or will be used directly for or in relation to an event, or the administration, of an APEC meeting, and
 - (b) the exercise of the special powers conferred by this Act in relation to restricted areas is necessary to promote the security or safety of the venues or facilities for an APEC meeting or participants in the meeting.

Note. The Commissioner may amend or repeal an order made under this section. See section 43 of the *Interpretation Act 1987*.
- (3) An area is a restricted area for the purposes of this Act only for:
 - (a) the period specified in the order, or
 - (b) if no period is specified in the order—the APEC period or, if the APEC period has already commenced, the remainder of that period.
- (4) An order under this section may be made before or during the APEC period.
- (5) Unless the Commissioner considers that it would significantly compromise security arrangements for an APEC meeting, the Commissioner is to take reasonable steps:
 - (a) to notify the public that an area has been designated as a restricted area under this section as soon as is reasonably practicable after the order designating the area is made, and
 - (b) to notify such public agencies as the Commissioner considers relevant of an order that is made (or is proposed to be made) under this section as soon as is reasonably practicable for the Commissioner to do so.
- (6) Without limiting subsection (5) (a), notification by any of the following means is sufficient compliance with that paragraph:
 - (a) the publication of the terms of the order (or a description of the restricted area concerned) in the Gazette,
 - (b) the publication of the terms of the order (or a description of the restricted area concerned) in a newspaper circulating generally throughout the State,
 - (c) the erection of signs or barriers (or both) around the whole or part of the perimeter of the restricted area concerned.

- (7) A failure to comply with subsection (5) does not affect the validity of an order made under this section.

8 Orders under Part not open to challenge

- (1) An order made or purportedly made under a provision of this Part (and any decision or purported decision of the Police Minister or Commissioner with respect to the order or purported order) may not be challenged, reviewed, quashed or called into question on any grounds whatsoever before any court, tribunal, body or person in any legal proceedings, or restrained, removed or otherwise affected by proceedings in the nature of prohibition or mandamus.
- (2) For the purposes of subsection (1), *legal proceedings* includes an investigation into police or other conduct under any Act (other than the *Police Integrity Commission Act 1996*).

Part 3 Special powers in relation to APEC security areas

Note. Section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* requires police officers to identify themselves and give certain warnings when exercising certain kinds of police powers (whether conferred by that Act or otherwise).

A failure by a person to comply with a requirement of a police officer under this Part is not an offence under this Act, but may result in the person being excluded from the APEC security areas (or parts of them) under section 24.

Division 1 Application of Part

9 Powers available only during APEC period

The powers conferred by this Part may be exercised only during the APEC period in, or in relation to, an APEC security area.

Division 2 Stop and search powers

10 Power to place or establish check points, cordons or roadblocks

- (1) A police officer may, for the purposes of stopping and searching persons, vehicles or vessels under this Part or preventing persons entering or leaving an APEC security area without the permission of a police officer:
 - (a) establish one or more check points, or
 - (b) place one or more cordons around the area, or
 - (c) establish one or more roadblocks on any road that leads into or out of, or that is located in, the area.
- (2) A police officer exercising a function under subsection (1) must not refuse permission for a person to leave the APEC security 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 check point, cordon or roadblock may consist of any appropriate form of physical barrier or obstruction preventing or limiting the passage of persons, vehicles or vessels.

11 Power to stop and search vehicles or vessels

- (1) A police officer may, without a warrant, do any of the following:
 - (a) stop a vehicle or vessel seeking to enter an APEC security area and require, as a condition of entry, that the person in charge of the vehicle or vessel submit the vehicle or vessel (including any thing in or on the vehicle or vessel) to a search,
 - (b) stop and search any vehicle or vessel (and any thing in or on the vehicle or vessel) that is in an APEC security area.

- (2) A police officer may detain a vehicle or vessel for so long as is reasonably necessary to conduct a search under this section.

12 Power to search persons

- (1) A police officer may, without a warrant, do any of the following:
- (a) stop a person seeking to enter an APEC security area and require, as a condition of entry, that the person submit to a search of the person (including any thing in the possession of or under the control of the person),
 - (b) stop and search a person (and any thing in the possession of or under the control of the person) who is in an APEC security area.
- (2) Division 4 of Part 4 of the *Law Enforcement (Powers and Responsibilities) Act 2002* (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.

Division 3 Surrender and seizure of prohibited items

13 Power to require surrender of, or to seize and detain, prohibited items

- (1) A police officer may, in connection with a search under this Part, do any of the following:
- (a) require a person that the officer reasonably suspects to be in possession or have control of a prohibited item without special justification to surrender the item to the officer as a condition of entry into an APEC security area,
 - (b) seize and detain in an APEC security area all or part of a thing that the officer reasonably suspects to be a prohibited item that is in the possession or control of a person without special justification.
- (2) A power conferred by this section to require the surrender of, or 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.
- (3) A police officer to whom a thing is surrendered, or who seizes a thing, under this section need not return it to the person who surrendered it or from whom it was seized.

- (4) A police officer must inform the person who is in possession or has control of the thing that the officer requires the person to surrender, or that the officer is to seize, that the thing might not be returned to the person.
- (5) A police officer must comply with subsection (4):
 - (a) if it is practicable to do so, before or at the time of exercising the power, or
 - (b) if it is not practicable to do so, as soon as is reasonably practicable after exercising the power.
- (6) A failure by a police officer to comply with subsection (4) does not affect the validity of any exercise of power under this section.
- (7) If a thing that has been surrendered or seized under this section is not returned to the person who surrendered it or from whom it was seized within the period of 24 hours after its surrender or seizure:
 - (a) the thing is forfeited to the Crown on the expiry of that period, and
 - (b) no compensation is payable in respect of any such forfeiture.
- (8) Such persons as the Commissioner may direct may destroy or otherwise dispose of any thing forfeited to the Crown under this section in accordance with the directions of the Commissioner.
- (9) The proceeds of any sale of any thing disposed of under this section are to be paid to the Treasurer for payment into the Consolidated Fund.

Division 4 Directions

14 Power to give reasonable directions

- (1) A police officer may give a direction to any person, or any group of persons assembled, in an APEC security area.
- (2) Such a direction must be reasonable in the circumstances for the purpose of substantially assisting in promoting the security or safety of an APEC meeting, its participants or the public or in preventing or controlling a public disorder.
- (3) 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.
- (4) 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 to each person in the group.

- (5) However, just because the police officer is not required to repeat any such direction does not in itself give rise to any presumption that each person in the group has received the direction.

Division 5 Road closures

15 Power to close roads

- (1) A police officer may, at the direction of the Commissioner, close any road in an APEC security area for any of the following purposes:
- (a) facilitating the conduct of an event for an APEC meeting,
 - (b) controlling and regulating vehicular or pedestrian traffic at or near any venue or facility for an APEC meeting,
 - (c) facilitating the movement of vehicles that are being, or are to be, used for conveying participants in an APEC meeting to or from their accommodation, an airport or a venue, facility or event for an APEC meeting,
 - (d) ensuring the safety of persons,
 - (e) protecting property from damage.
- (2) A road may be closed by means of any appropriate form of physical barrier or obstruction preventing or limiting the passage of vehicles or persons or by such other means as the police officer considers appropriate.
- (3) It is not necessary to give public notice of the closure of a road under this section.

16 Road closure to be for shortest possible period

It is the duty of any police officer closing a road under this Division to ensure that the road is not closed for a period longer than is necessary to serve the purpose for which the road is closed.

17 Effect of road closure

- (1) A person or vehicle may not use a road while it is closed under this Division unless:
- (a) the person is a police officer or an authorised person, or
 - (b) the vehicle is a police vehicle or an authorised vehicle.
- (2) A person or vehicle is an *authorised person* or *authorised vehicle* if the person or vehicle is authorised (or belongs to a class of persons or vehicles that is authorised) to use the road by the Commissioner or a police officer.

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- (3) An authorisation for the purposes of this section may be given orally or in writing.
- (4) A road, or any part of a road, does not cease to be a road for the purposes of the road transport legislation, the *Motor Accidents Compensation Act 1999* or any other Act or law because it is closed or its use, or access to it, is restricted under this Division or any other Act.
- (5) In this section, *use* a road includes:
 - (a) any use of the road by pedestrians, and
 - (b) driving, leaving, parking, standing or stopping a vehicle on the road.

18 Power to direct removal of unauthorised vehicles

- (1) A police officer may remove (or direct an authorised officer to remove) any vehicle or other thing from a road that is closed under this Division if the police officer is of the opinion that it is necessary to do so.
- (2) The provisions of section 76 (2)–(8A) of the *Road Transport (Safety and Traffic Management) Act 1999* apply to the removal of a vehicle in accordance with this section in the same way as they apply to the removal of an unattended motor vehicle or trailer in accordance with that section.
- (3) In this section, *authorised officer* has the same meaning as it has in section 76 of the *Road Transport (Safety and Traffic Management) Act 1999*.

Part 4 Additional powers and other provisions in relation to restricted areas

Division 1 Entry into restricted areas

19 Offence: entering restricted area without special justification

- (1) A person must not, without special justification, enter a restricted area or any part of a restricted area.

Maximum penalty: 6 months imprisonment or, if circumstances of aggravation exist in relation to the offence, 2 years imprisonment.

- (2) For the purposes of this section, circumstances of aggravation exist in relation to an offence under this section if (but only if):
- (a) the person was in possession or had control of a prohibited item, and
 - (b) the person had no special justification to be in possession or have control of the item.

Division 2 Special powers in relation to restricted areas

Note. Section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* requires police officers to identify themselves and give certain warnings when exercising certain kinds of police powers (whether conferred by that Act or otherwise).

A failure by a person to comply with a requirement or request of a police officer under this Division is not an offence under this Act, but may result in the person being excluded from the APEC security areas (or parts of them) under section 24.

20 Powers available only during APEC period

The powers conferred by this Division may be exercised only during the APEC period in, or in relation to, a restricted area.

21 Power to enter and search premises

- (1) A police officer may, without a warrant, enter and search any premises located in a restricted area.
- (2) The police officer must do as little damage as possible.
- (3) This section does not authorise a police officer to enter any part of premises being used for residential purposes, except:
- (a) with the consent of the occupier of the part, or
 - (b) under the authority of a search warrant or under another law that authorises the entry.

22 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 seeking to enter a restricted area (whether or not in or on a vehicle or vessel), or
 - (b) the person is in a restricted area (whether or not in or on a vehicle or vessel).
- (2) A police officer may also request a person who is requested under this section to disclose his or her identity to provide proof of his or her identity.

23 Relationship of this Part with Part 3

Any power conferred by this Part in relation to a restricted area is in addition to, and does not derogate from, any power conferred in relation to such an area by Part 3.

Note. Part 3 confers special powers on police officers in relation to both the declared areas and restricted areas.

Part 5 Exclusion and removal of persons from APEC security areas

24 Exclusion of persons from APEC security areas

- (1) The following persons (*excludable persons*) may be excluded from any APEC security area during the APEC period (or any part of that period):
 - (a) any person who, without lawful excuse, fails to comply with a requirement made of the person under this Act for the person to submit to a search as a condition of entry into an APEC security area,
 - (b) any person in or on a vehicle or vessel seeking to enter an APEC security area in circumstances where the person in charge of the vehicle or vessel fails, without lawful excuse, to comply with a requirement made under this Act to submit the vehicle or vessel to a search as a condition of entry into the area,
 - (c) any person who, without lawful excuse, resists, hinders or obstructs a police officer conducting a search under this Act in an APEC security area,
 - (d) any person who, without special justification, fails to surrender a prohibited item to a police officer as a condition of entry into an APEC security area,
 - (e) any person who, without lawful excuse, fails to comply with a reasonable direction given to the person in an APEC security area by a police officer under this Act,
 - (f) any person who, without lawful excuse, is on a road that is closed under this Act,
 - (g) any person whose name appears on an excluded persons list.
- (2) A police officer may, during the APEC period, do any of the following:
 - (a) prevent an excludable person from entering any APEC security area,
 - (b) remove an excludable person from any APEC security area to another place within that or another APEC security area or to a place outside the APEC security areas,
 - (c) request an excludable person to disclose his or her identity or provide proof of his or her identity (or both) when removing the person from an area,
 - (d) without limiting paragraph (a), (b) or (c), remove any person who is on a road but is not authorised to be on the road to a place outside the road.

25 Exclusion of persons from restricted areas

- (1) A police officer may, during the APEC period, do any of the following:
 - (a) prevent a person from entering a restricted area if the person, without lawful excuse, fails to comply with a request made of the person under this Act to disclose his or her identity or provide proof of his or her identity as a condition of entry into the area,
 - (b) remove any of the following persons from any restricted area to another place within that or another APEC security area or to a place outside the APEC security areas:
 - (i) any person who, without special justification, is in possession or has control of a prohibited item in a restricted area,
 - (ii) any person who, without special justification, is in a restricted area,
 - (iii) any person who, without lawful excuse, fails to comply with a request made of the person under this Act to disclose his or her identity or provide proof of his or her identity.
- (2) Any power conferred by this section in relation to a restricted area is in addition to, and does not derogate from, any other power of exclusion or removal conferred by this Part or this Act in relation to an APEC security area.

26 Excluded persons list

- (1) The Commissioner may, from time to time, compile one or more lists of persons (an *excluded persons list*) that the Commissioner is satisfied are persons who would pose serious threats to the safety of persons or property (or both) in an APEC security area during the APEC period.
- (2) The Commissioner may (but need not) cause an excluded persons list to be published by such means as the Commissioner thinks appropriate.
- (3) Without limiting subsection (2), an excluded persons list may be published:
 - (a) in the Gazette, or
 - (b) in any newspaper published in the State (whether or not circulating generally throughout the State), or
 - (c) on an Internet website.
- (4) A failure by the Commissioner to notify the public of the contents of an excluded persons list does not affect the validity of the list or otherwise limit any powers conferred by this Act in relation to persons named in the list.

Part 6 Recognised law enforcement officers

27 Recognition of other law enforcement officers

- (1) The Commissioner or a Deputy Commissioner may, by instrument in writing, appoint any of the following as *recognised law enforcement officers* for the purposes of this Act if of the opinion it is necessary for the more effective exercise of powers under this Act with respect to the APEC meetings:
 - (a) members of the Australian Federal Police,
 - (b) members of the police force of another State or a Territory,
 - (c) members of the police force of New Zealand.
- (2) An appointment as a recognised law enforcement officer may be made subject to conditions.
- (3) If an individual is appointed as a recognised law enforcement officer, the instrument of appointment must specify the term of the appointment (not exceeding the APEC period).
- (4) The Commissioner or a Deputy Commissioner may, at any time, revoke the appointment of a person or persons as recognised law enforcement officers.
- (5) Recognised law enforcement officers remain under the command and control of the police force to which they belong during the term of their appointment under this Part.

28 Recognised law enforcement officers to have police powers

- (1) A recognised law enforcement officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Act 1990* has and may exercise under this Act or under any other law of the State (including the common law).
- (2) Those functions extend to functions conferred after the commencement of this section.
- (3) The conferral of functions by this section on a recognised law enforcement officer is subject to any applicable conditions of the officer's appointment as a recognised law enforcement officer.

Part 7 Miscellaneous

29 Regulations

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.

30 Control of airspace

- (1) In this section:

Airservices Australia means the body established by section 7 (1) of the *Air Services Act 1995* of the Commonwealth.

Commonwealth Air Navigation Regulations means the *Air Navigation Regulations 1947* of the Commonwealth.

restricted air space means air space that Airservices Australia has declared under relevant Commonwealth law to be restricted air space in relation to the APEC meetings.

State air navigation means air navigation within New South Wales to and in relation to which the Commonwealth Air Navigation Regulations are applied as if they were State law by section 4 of the *Air Navigation Act 1938*.

- (2) A person must not, during the APEC period and in the course of State air navigation, cause an aircraft to enter, or operate an aircraft within, restricted air space without an air traffic clearance given by or on behalf of Airservices Australia under relevant Commonwealth law.
Maximum penalty: \$250,000.
- (3) The provisions of this section prevail to the extent of any inconsistency between this section and the provisions of the Commonwealth Air Navigation Regulations (as applied to and in relation to State air navigation by the *Air Navigation Act 1938*).
- (4) This section does not apply to the operation of:
- (a) a military aircraft, or an aircraft of the NSW Police Force, when being operated for military, security or emergency purposes, or
 - (b) an aircraft when being operated exclusively for emergency purposes relating to human life or safety, or the protection of property.

31 Presumption against bail for certain offences committed during the APEC period**(1) Offences to which section applies**

This section applies to any offence alleged to have been committed in an APEC security area during the APEC period that involves:

- (a) the assault of a police officer, or
- (b) malicious damage to property, or
- (c) throwing a missile at a police officer.

(2) Presumption against bail

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.

(3) The requirement for bail cannot be dispensed with for a person accused of an offence to which this section applies and section 10 (2) of the *Bail Act 1978* does not apply with respect to any such offence.

(4) Section 9 of the *Bail Act 1978* does not apply to an offence to which this section applies.

(5) Sections 32 (6) and 38 (1A) of the *Bail Act 1978* apply to an offence to which this section applies in the same way as they apply to an offence to which section 8A of that Act applies.

(6) Nothing in this section limits the operation of section 9D of the *Bail Act 1978*.

Note. Section 9D of the *Bail Act 1978* prevents a person who is accused of a serious personal violence offence and who has previously been convicted of a serious personal violence offence from being granted bail except in exceptional circumstances.

(7) Relationship with Bail Act 1978

This section is to be construed with and as if it forms part of the *Bail Act 1978*.

(8) However, in the event of an inconsistency between this section and the *Bail Act 1978*, this section prevails to the extent of the inconsistency.

(9) Interpretation

Words and expressions used in this section that are defined in the *Bail Act 1978* have the same meanings as in that Act.

32 Use of force generally by police officers

It is lawful for a police officer exercising a power under this Act in relation to a person or thing, and anyone helping the police officer, to use such force as is reasonably necessary to exercise the power.

33 Use of police dogs, horses and other animals

For the avoidance of doubt, nothing in the *Sydney Opera House Trust By-law 2005* or the *Sydney Harbour Foreshore Authority Regulation 2006* prevents a police officer from using a dog, horse or other animal during the APEC period in an APEC security area for the purposes of exercising a function conferred on the officer by or under this Act or any other law.

34 Delegation of Commissioner's functions

- (1) The Commissioner may delegate to a Deputy Commissioner any of the Commissioner's functions under this Act, other than this power of delegation.
- (2) Without limiting subsection (1), the Commissioner may delegate any function of the Commissioner under section 15 to a police officer of or above the rank of Superintendent.
- (3) This section applies despite section 31 (Delegation by Commissioner) of the *Police Act 1990*.

35 No liability in nuisance

Anything done or omitted to be done by any person in the exercise of functions under this Act or the regulations, or pursuant to any of the provisions of this Act or the regulations, does not constitute a nuisance.

36 Relationship with other Acts

- (1) Subject to subsection (2), nothing in any other Act or law limits any powers, or prevents a police officer from exercising any powers, that the police officer has under this Act.
- (2) Nothing in this Act limits the operation of section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.
Note. Section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* requires police officers to identify themselves and give certain warnings when exercising certain kinds of police powers (whether conferred by that Act or otherwise).
- (3) Nothing in this Act limits any powers, or prevents a police officer from exercising any powers, that the police officer has under any other Act or law.

37 Special justification

- (1) For the purposes of this Act, a person has a *special justification* to be in an area or to possess or be in control of a thing only in the circumstances provided for by this section.
- (2) A person has a special justification to be in an area if:
 - (a) the person is a police officer who is on duty in the area, or
 - (b) the person is required, authorised or permitted to be in the area by the Commissioner or a police officer, or
 - (c) the person is required to be in (or pass through) the area for the purposes of the person's employment, occupation, profession, calling, trade or business or for any other work-related purpose, or
 - (d) the person resides (whether on a temporary or permanent basis) in premises that are located in the area, or
 - (e) the person is in the area in such other circumstances as may be prescribed by the regulations.
- (3) A person has a special justification to be in possession or have control of a thing in an area if:
 - (a) the person is a police officer who is on duty in the area, or
 - (b) the person is required, authorised or permitted to be in possession or have control of the thing by the Commissioner or a police officer, or
 - (c) the person is required to be in possession or have control of the thing for the purposes of the person's employment, occupation, profession, calling, trade or business or for any other work-related purpose, or
 - (d) the person has possession or control of the thing in residential premises of the person that are located in the area, or
 - (e) the person is in possession or has control of the thing in such other circumstances as may be prescribed by the regulations.

38 Onus of proof of lawful excuse or special justification

The onus of proof of lawful excuse or special justification (whether in proceedings for an offence against this Act or in relation to the exercise of powers conferred by this Act) lies on the person accused of the offence or who claims to have the lawful excuse or special justification (as the case may be).

39 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations may be dealt with:
 - (a) summarily before a Local Court, or
 - (b) before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought before a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.

40 Amendment of other Acts

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

41 Repeal of Act and other related matters

The following are repealed at the beginning of 13 September 2007:

- (a) this Act,
- (b) any regulation or other instrument made under this Act,
- (c) item 31 of Schedule 4 to the *Subordinate Legislation Act 1989*.

Schedule 1 Metropolitan Sydney

(Section 3 (1), definition of "metropolitan Sydney")

Ashfield
Auburn
Bankstown City
Baulkham Hills
Blacktown City
Botany Bay City
Burwood
Camden
Campbelltown City
Canada Bay
Canterbury City
Fairfield City
Holroyd City
Hornsby
Hunter's Hill
Hurstville City
Kogarah
Ku-ring-gai
Lane Cove
Leichhardt
Liverpool City
Manly
Marrickville
Mosman
North Sydney
Parramatta City
Penrith City

APEC Meeting (Police Powers) Bill 2007

Schedule 1 Metropolitan Sydney

Pittwater

Randwick City

Rockdale City

Ryde City

Strathfield

Sutherland Shire

City of Sydney

Warringah

Waverley

Willoughby City

Woollahra

Schedule 2 Core declared areas

(Section 6 (1) (a))

Bennelong/CBD Area

The area that comprises that portion of Sydney Harbour bounded in the west by the western side of the deck of the Sydney Harbour Bridge, in the east by an imaginary line from Kirribilli Wharf to the easternmost point of Pinchgut Island (Fort Denison) then to the northernmost point of Mrs Macquaries Point. Then following the western shoreline of Woolloomooloo Bay to Lincoln Crescent. Then following the western kerb of Lincoln Crescent to Cowper Wharf Road, then following the northern edge of the Cahill Expressway and Shakespeare Place to the eastern kerb of Macquarie Street. Then following the eastern kerb of Macquarie Street to a point in line with the southern kerb of King Street. Then following the southern kerb of King Street to a point in line with the western kerb of Clarence Street, then following the western kerb of Clarence Street to the point below and in line with the eastern edge of the Western Distributor. Then following the eastern edge of the Western Distributor and Bradfield Highway to a point in line with the foreshore of Sydney Harbour then following the shoreline to a point in line with the western side of the deck of the Sydney Harbour Bridge.

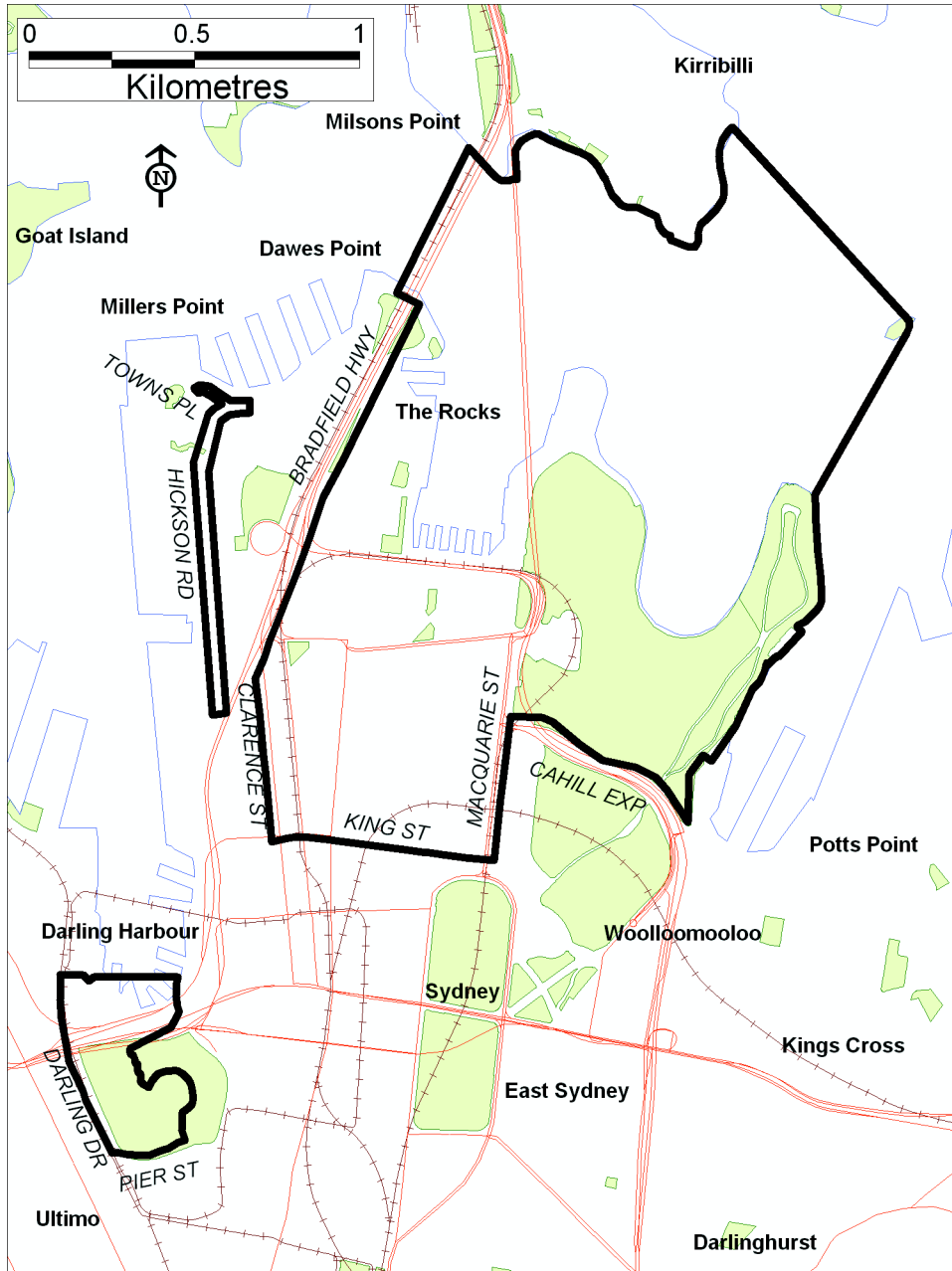
Hickson Road Area

The area that comprises the footpath commencing at the south western corner of the intersection of Sussex Street and Shelley Street following the western edge of the western footpath of Sussex Street and then Hickson Road to Towns Place, then following the southern kerb of Towns Place to the commencement of Dalgety Road. Then crossing to the northern kerb of Towns Place following the northern kerb of Towns Place and Hickson Road to a point below and in line with the first Hickson Road overpass. Then crossing Hickson Road and following the eastern footpath of Hickson Road then Sussex Street to a point on the south eastern footpath of the intersection of Sussex Street and Shelley Street, then crossing Sussex Street to the commencement point at the south western corner of the intersection of Sussex Street and Shelley Street.

Darling Harbour Area

The area that comprises that portion of Darling Harbour bounded in the south by the northern edge of Pier Street then following the western footpath of Darling Drive to a point in line with the southern end of the "Convention" metro light rail platform then following an imaginary line due east to the Harbourside shopping centre then to the southern extremity of the shopping centre then due east to the western edge of Wheat Road, then following the eastern edge of the Darling Harbour area, then following the southern edge of the Western Distributor, then in a southerly direction between the exhibition centre and the Palm Pavilion to the western edge of Tumbalong Park, then in a clockwise direction following the western, northern and eastern edge of Tumbalong Park, then following the western wall of the Chinese gardens to the northern edge of Pier Street.

Indicative map of core declared areas



Schedule 3 Amendment of Acts

(Section 40)

3.1 Crimes Act 1900 No 40

Part 6B Terrorism

Omit “the second anniversary of its commencement” from the note at the beginning of the Part.

Insert instead “13 September 2008”.

3.2 Evidence (Audio and Audio Visual Links) Act 1998 No 105

Section 22B

Insert after section 22A:

22B Bail appearances—special provision relating to APEC meeting 2007

- (1) Sections 5BB and 5BBA do not apply to any bail proceedings in respect of an offence alleged to have been committed in metropolitan Sydney during the period commencing at the beginning of 20 August 2007 and ending at the end of 28 September 2007.
- (2) In this section:
metropolitan Sydney has the same meaning as it has in the *APEC Meeting (Police Powers) Act 2007*, as in force on the date of commencement of this section.

3.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

[1] Schedule 5, heading

Omit “and transitional”. Insert instead “, transitional and other”.

[2] Schedule 5, clause 1

Insert at the end of clause 1 (1):

APEC Meeting (Police Powers) Act 2007

[3] **Schedule 5**

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

Part Provisions consequent on enactment and repeal of APEC Meeting (Police Powers) Act 2007

Definitions

In this Part:

APEC Act means the *APEC Meeting (Police Powers) Act 2007*.

APEC meeting has the same meaning as it had in the APEC Act immediately before its repeal.

Police Minister means the Minister administering the *Police Act 1990*.

Effect of repeal of APEC Act

- (1) The repeal of the APEC Act does not affect the continued operation in relation to matters arising before the repeal of that Act of:

- (a) section 8 (Orders under Part not open to challenge) of that Act, or
- (b) any other exemption or immunity from, or limitation of, liability under that Act,

as in force before that repeal.

Note. The APEC Act is to be repealed on 13 September 2007 by section 41 of that Act.

- (2) The provisions of subclause (1) are in addition to, and do not derogate from, section 30 of the *Interpretation Act 1987*.

Note. Section 30 of the *Interpretation Act 1987* provides that the repeal of an Act or statutory rule does not, among other things, affect the previous operation of the Act or statutory rule or anything duly suffered, done or commenced under the Act or statutory rule or affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act or statutory rule.

Report on APEC Act by Commissioner of Police

- (1) The Commissioner of Police is to report to the Attorney General and Police Minister on the exercise of powers by police officers under the APEC Act. The report is to be provided within 3 months after the repeal of that Act.

- (2) The report is to specify the following matters:
 - (a) the terms of any order designating an area to be an additional declared area or a restricted area and the period during which it had effect,
 - (b) a general description of the powers exercised pursuant to the APEC Act and the manner in which they were exercised,
 - (c) a description of the result of the exercise of those powers,
 - (d) the number of complaints that are made under any Act about conduct relating to the exercise of any power conferred on police officers by the APEC Act and the number of those complaints that are, or have been, the subject of an investigation under any Act,
 - (e) any other matters requested by the Attorney General or the Police Minister.

Review of APEC Act by Attorney General and Police Minister

- (1) The Attorney General and the Police Minister are to review the APEC Act to determine whether the policy objectives of that Act were met and whether the terms of that Act remain appropriate for future meetings or events comparable to an APEC meeting.
- (2) The review is to be undertaken as soon as possible after the Commissioner has provided the Attorney General and the Police Minister with the Commissioner's report on the APEC Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within the period of 6 months after the repeal of the APEC Act.
- (4) If a House of Parliament is not sitting when the Attorney General or Police Minister seeks to table the report, the Attorney General or Police Minister may present the report to the Clerk of the House concerned.
- (5) 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.

3.4 Subordinate Legislation Act 1989 No 146

Schedule 4 Excluded instruments

Insert at the end of the Schedule:

- 31** Regulations under the *APEC Meeting (Police Powers) Act 2007*.

3.5 Terrorism Legislation Amendment (Warrants) Act 2005 No 54

Section 2 Commencement

Omit “the second anniversary of the commencement of section 5” from section 2 (2).

Insert instead “13 September 2008”.

3.6 Weapons Prohibition Act 1998 No 127

Schedule 1 Prohibited weapons

Insert after clause 4 (6):

- (7) Any article or device, such as a device known as a **caltrop**, that is made up of two or more sharp nails or spines arranged in such a manner that one of them always points upward however the article or device is placed and that is capable of puncturing the feet, paws or hooves of animals when they pass over the article or device.