

Youth Justice: your guide to cops and court in New South Wales

Supplement – February 2007 by Jane Sanders

The following is a new section to be read after the chapter “At the police station”.

Special police powers to deal with large-scale public disorder

Background

After the “Cronulla Riots”, Parliament brought in some new police powers, which came into force on 15 December 2005. These special powers are in the *Law Enforcement (Powers and Responsibilities) Act 2002* (“LEPRA”) Part 6A (ss87A-P).

These special powers are intended to deal with “large-scale public disorder”. “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 location” (section 87A). There is no definition of “large-scale”.

There is a sunset clause (section 87P) which provides that Part 6A will stop operating two years after its commencement (ie 15 December 2007). There is also a requirement for the Ombudsman to monitor these powers (section 87O).

What are the special powers?

- Cordoning off a “target area” or any part of it, or establishing a road block on a “target road”, which means a road leading to a target area (or any road in a target area). Police can stop people and vehicles entering a target area, but 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 (section 87I).
- Stopping and searching any vehicle (and anything in or on the vehicle) in a target area or on a target road, and detaining the vehicle for as long as is reasonably necessary to conduct a search (section 87J). No warrant or reasonable suspicion is required.
- Stopping and searching any person (and anything in the person’s possession or control) in a target area or on a target road, and detaining the person for as long as is reasonably necessary to conduct a search (section 87K). No warrant or reasonable suspicion is required. The rules for searches (eg section 32) apply to a search under this section (except to the extent that it authorises strip searches). Police are not allowed to do a strip search under this section.
- Requesting a person in a target area, or in or on a vehicle on a target road, to disclose their identity and to produce proof of identity (but only if the person’s identity is unknown to the police officer, and if the police officer reasonably suspects that the person has been involved or is likely to be involved in a public disorder). Failure to disclose identity, or providing false details, is an offence (section 87L).
- Seizing and detaining a vehicle, mobile phone or other communication device if the seizure or detention will assist in preventing or controlling a public disorder. Items seized may be detained

for up to 7 days (the Local Court can extend this for another 14 days, and can extend the time limit more than once). Police may also seize and detain anything, including a vehicle, that they reasonably suspect may provide evidence of a serious indictable offence (whether or not related to a public disorder) (section 87M).

- As of 15 December 2006, police also have the power to direct a group in a target area to break up. Failure to do so, without a reasonable excuse, is an offence. Police must give information and warnings similar to those required for ordinary move-on directions. The maximum penalty is 50 penalty units (\$5,500) which is 25 times the maximum penalty for disobeying an ordinary move-on direction (section 87MA).

Authorisation

For police to use these powers, there must be an authorisation given by the Commissioner of Police (or a Deputy or Assistant Commissioner) (section 87F).

An authorisation may be given if the officer giving the authorisation:

- has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such disorder occurring in the near future; and
- is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder (section 87D).

The authorisation must be given in writing (or given orally but confirmed in writing as soon as reasonably practicable). It must include certain details including the general nature of the public disorder to which it applies (including the day or days it occurs or is likely to occur), the target area and/or road, and the time it ceases to have effect (section 87F).

An authorisation may be given for a period considered reasonably necessary, up to 48 hours (but may be extended by the Supreme Court). The Commissioner (or a Deputy or Assistant Commissioner) may revoke the authorisation at any time, and must revoke it if so directed by the Supreme Court (section 87G).

The special powers may be exercised by any police officer in a public place for the purposes for which an authorisation is given (whether or not the police officer has been provided with or notified of the terms of the authorisation) (section 87H).

Exercise of special powers without authorisation

If a police officer stops a vehicle on a road *that is not a target road or not in a target area*, (under a power given by LEPR or any other Act, for example for a random breath test), the special powers may be exercised *without authorisation* if the police officer:

- has reasonable grounds for believing that there is a large-scale public disorder occurring or a threat of such disorder occurring in the near future, and
- suspects on reasonable grounds that the occupants of the vehicle have participated or intend to participate in the public disorder, and
- is satisfied that the exercise of those powers is reasonably necessary to prevent or control the public disorder, and
- is satisfied that the urgency of the circumstances require the powers to be exercised without an authorisation (section 87N).

Alcohol restrictions

A police officer of or above the rank of Superintendent may authorise the closure of any licensed premises (or the prohibition of the supply of liquor on such premises) (section 87B) or establish an emergency alcohol-free zone (section 87C) if he or she:

- has reasonable grounds for believing that there is a large-scale public disorder occurring in the vicinity (or there is a threat of such a disorder occurring in the near future), and

- is satisfied that the closure or prohibition (or creation of alcohol-free zone) will reasonably assist in preventing or controlling the public disorder.

This can be done for up to 48 hours. Police have the power to give direction to people in charge of licensed venues, and to people who are drinking or in possession of alcohol in alcohol-free zones. Failure to comply with one of these directions is an offence.