



New Police Powers Effect Near-Immediate Breakup of Martin Place Tent City

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Introduction

Legislation granting police new powers to order people occupying designated public reserves to move on was enacted on 11 August 2017,¹ effecting the near-immediate dismantling of the Martin Place ‘tent city’ under police supervision despite no move-on orders being given.² The tent city provided a 24-hour street kitchen and safe space, informal employment services, clothing store and networking opportunities for people experiencing homelessness, in addition to protesting against a lack of suitable accommodation in the public and private housing markets. One resident cited the intimidatory effect of the new powers combined with the presence of police as his reason to pack up,³ raising concerns of a return to the punishment of vagrancy.

New Powers

The new powers specifically target the Martin Place Reserve (between George and Macquarie Streets), however they may also include any other public reserve in the City of Sydney if proclaimed by the Governor. While the new law has been criticised as being “unwarranted, unnecessary legislation”⁴ and an infringement of human rights,⁵ according to the NSW Government the new powers are necessary to protect public

¹ *Sydney Public Reserves (Public Safety) Act 2017* (NSW).

² Naaman Zhou, ‘Sydney’s homeless tent city taken down after new law comes into force’, *The Guardian* (online), 11 August 2017 <<https://www.theguardian.com/australia-news/2017/aug/11/sydneys-homeless-tent-city-taken-down-after-new-law-comes-into-force>>.

³ *Ibid.*

⁴ New South Wales Council for Civil Liberties, ‘NSWCCL Opposes Harsh Law Against Homeless in Martin Place’ (Media Release, 9 August 2017).

⁵ Australian Lawyers for Human Rights, ‘Human Rights Lawyers Horrified at Legislation Penalising Homelessness in Public Areas’ (Media Release, 9 August 2017).



safety due (at least in part) to the presence of knives, gas bottles and BBQs in the open kitchen established by the homeless in Martin Place.⁶ The new legislation will be subject to the same safeguards and oversight mechanisms as currently exist for other police powers,⁷ and is understood by the Minister for Lands and Forestry to create a gentler way to move on homeless people than existing powers requiring a court-issued warrant.⁸

The new powers enable police to do the following with respect to Martin Place or another proclaimed reserve:

- Direct a person occupying the reserve to leave (including an additional power to direct them not to return within 6 hours) if the police officer believes on reasonable grounds that the person’s occupation of the reserve “materially interferes with the reasonable enjoyment of the rights of the public in relation to the reserve” or is unlawful. However, there are very few circumstances in which police may exercise their powers where an occupation is unlawful.⁹ The penalty for non-compliance is \$220.¹⁰ That homeless people or protestors are interfering with the rights of the public sets an arguably very low, subjective, threshold for Police to exercise the power.
- Seize and remove “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”.¹¹
 - Seized items *may* be returned to the person it was seized from, or may be destroyed or “delivered to the council of the area in which the reserve is

⁶ New South Wales, *Parliamentary Debates*, Legislative Assembly, 8 August 2017, 16:18 (Paul Toole, Minister for Lands and Forestry, and Minister for Racing).

⁷ *Sydney Public Reserves (Public Safety) Act 2017* (NSW), s 9.

⁸ New South Wales, *Parliamentary Debates*, Legislative Assembly, 8 August 2017, 16:18 (Paul Toole, Minister for Lands and Forestry, and Minister for Racing).

⁹ For example, *Summary Offences Act 1988* (NSW), ss 6, 25.

¹⁰ *Sydney Public Reserves (Public Safety) Act 2017* (NSW), s 7.

¹¹ *Ibid*, s 8(1).



situated".¹² It is at police discretion whether the item is returned to the person it was seized from. Penalties for obstruction, seizure and removal include a fine of up to \$2200.

Occupation has been defined broadly to include the presence of a person in the reserve, or its use by a person,¹³ giving police very broad scope to apply the new powers. Police are not permitted to use the power in relation to an industrial dispute, *authorised* public assembly or protest conducted substantially within the scope of authorisation.¹⁴ To be authorised, a public assembly must be formally approved by the Police Commissioner, be court-approved, or the organisers must have given the Commissioner at least 7 days' notice of the protest's details. This makes unauthorised public assemblies in Martin Place or proclaimed reserves now subject to more expansive move-on powers, giving the Government broader power to quash protests. As the Act has already been used against homeless people for political purposes,¹⁵ legitimate questions remain about how it may be used against future political protests. A binding code of practice is expected to be developed around the use of the new powers, with existing restraints applying when it is created.¹⁶ Regulations may be enacted around the Act with the potential for penalties of up to \$55,000.¹⁷ The scope of the regulations being unlimited except by the scope of the Act, and their extraordinarily high maximum penalty, is not only highly unusual¹⁸ but also supports criticisms that the new penalties are designed to be oppressive towards homeless people.

¹² Ibid, s 8(4)(a).

¹³ Ibid, s 3.

¹⁴ Ibid, s 11.

¹⁵ AAP, 'Police to tear down Sydney's Martin Place tent city', 10 August 2017, *The New Daily* (Online) <<http://thenewdaily.com.au/news/state/nsw/2017/08/10/sydney-martin-place-tent-city/>> .

¹⁶ Ibid, s 12.

¹⁷ Ibid, s 16.

¹⁸ Private communication.

Existing Powers

Given the limited geographic scope of the new powers, their potentially oppressive impacts on vulnerable people and nearly open-ended penalties, their necessity is questionable when other powers are already available to police. Under existing laws, police have the following move-on powers:

- Direct a person to move on from a public place where the police officer has a reasonable suspicion that the person's behaviour or presence:
 - Is obstructing another person(s) or traffic, or
 - Constitutes harassment or intimidation, or
 - Is causing (or likely to cause fear) to another person, or
 - Is for obtaining or supplying drugs.¹⁹
- Police may also direct an intoxicated person to move on from a public place and not return for a specified period of up to 6 hours when they are likely to:
 - Cause injury, damage or otherwise be a risk to public safety, or
 - Are disorderly.²⁰

The new move-on powers are significantly stronger than existing powers, which had already been significantly expanded in late 2016 to give more power over most unauthorised protests.²¹ Under the existing powers, the listing of specific and narrow criteria means the circumstances when a police officer can move on a person make those powers significantly weaker. The new powers permit immediate prosecution for failing to comply with a move-on direction,²² whereas under existing powers a person was only guilty of failing to comply with a direction if they persisted.²³ Police have also been given a broader set of circumstances where they can exercise the new powers. Under existing powers, police are not allowed to give directions in relation to an

¹⁹ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 197.

²⁰ *Ibid*, s 198.

²¹ *Ibid*, s 200.

²² *Sydney Public Reserves (Public Safety) Act 2017* (NSW), s 7.

²³ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), s 199.

industrial dispute, “apparently genuine demonstration or protest, or a procession or an organised assembly”.²⁴ The new powers are simply limited to exclude industrial disputes or authorised protests as discussed above.²⁵

Notably, the standard of suspicion differs between new and existing powers. In the new powers, the officer must have a “reasonable belief”, compared to a lower threshold of “reasonable suspicion” in the existing powers. However, the reasonable belief is tied to much broader and lower threshold move-on criteria, effectively negating the higher standard of belief.

Police also have the power to seize and detain property under existing powers.²⁶ A police officer may seize and detain all or part or something only if the officer suspects on reasonable grounds it is stolen or unlawfully obtained, may provide evidence of the commission of a relevant offence, is dangerous or is a prohibited plant or drug.²⁷ Additionally, police may seize a dangerous article on any premises if the police officer suspects on reasonable grounds it was or is being used in connection with the commission of a relevant offence. These existing powers are also more specific than the new powers, giving police less discretion to exercise them. Property seized under the existing powers *must* also be returned if it is not needed as evidence and it is lawful for the person to have possession of it.²⁸

As police were previously able to move on people for obstructing people or traffic, harassment or intimidation, the need for the new powers is questionable. However, the new powers enable police to seize property that they would not have otherwise been permitted to seize (notwithstanding existing local council regulations that may have enabled seizure). Seizure of homeless peoples’ shelter and other possessions is

²⁴ Ibid, s 200.

²⁵ *Sydney Public Reserves (Public Safety) Act 2017* (NSW), s 11.

²⁶ Ibid, s 21.

²⁷ Ibid, s 21(2).

²⁸ Ibid, 218.



particularly callous, especially given the absence of a requirement for their possessions to be returned to them.

The second reading speech makes it clear the Act is designed to override the City of Sydney's discretion not to exercise its powers to move on residents, while framing the powers in terms of public safety. The lower threshold required for police to give move-on directions and seize property will further disenfranchise homeless people. The intimidatory effect of the powers has been demonstrated with residents packing up their tents in Martin Place before being issued a move-on order, under police supervision, out of fear of violence.²⁹

Conclusions

New powers came into effect on 11 August 2017 that give police broader move-on and property seizure powers, although their exercise is limited to Martin Place Reserve and any other reserves to be declared in the City of Sydney. The powers are largely aimed at moving on homeless people camping in Martin Place, and have been implemented for political ends under the guise of public safety. While existing move-on powers were sufficient to break up campsites that were causing obstructions or constituted harassment or intimidation, new powers to seize tents, cooking equipment and other possessions without guarantee of return paves the way for a return to the offence of vagrancy and risks further disenfranchisement of homeless people.

Where can I go if I need help?

Redfern Legal Centre may be able to assist you, or tell you where you may be able to get help. Call RLC on 02 9698 7277, email info@rlc.org.au, or drop in to see us at 73 Pitt St, Redfern.

²⁹ Naaman Zhou, 'Sydney's homeless tent city taken down after new law comes into force', *The Guardian* (online), 11 August 2017 <<https://www.theguardian.com/australia-news/2017/aug/11/sydneys-homeless-tent-city-taken-down-after-new-law-comes-into-force>>.