

# HUMAN RIGHTS

## Protest, protection & policing

LIZ SNELL investigates the impact on human rights caused by the expansion of police powers in NSW

There is currently a significant lack of transparency and accountability with respect to the enactment of laws that expand New South Wales Police powers. This is evident in the continued introduction of legislation which expands their powers;<sup>1</sup> the speed with which such legislation is introduced;<sup>2</sup> the lack of close analysis, consultation and debate about such laws;<sup>3</sup> and the questionable safeguards surrounding the implementation of the legislation.<sup>4</sup> Arguably, there has been an expansion of police powers in NSW by stealth.

In response to this issue and with a particular focus upon the impact of APEC legislation, the Combined Community Legal Centres Group, NSW and Kingsford Legal Centre have published a report: *Protest, protection & policing: the expansion of police powers and the impact on human rights in NSW*.

This report examines the *APEC Meeting (Police Powers) Act 2007 (NSW)* ('APEC Meeting Act') within a human rights framework and considers what happened in the lead up to, during and post the Asia-Pacific Economic Cooperation forum (APEC). It critically analyses the process of how the legislation came to be enacted and the effectiveness or otherwise of mechanisms of accountability of police with respect to the powers authorised. This report also considers the impact of the legislation upon socially and economically disadvantaged groups, such as the homeless and intellectually disabled,

as well as protestors. The report highlights that it is time to look closely at existing NSW Police powers and the reasons behind the insistence for further expansion of such powers. Moreover, given the Australian Government's recent vocal commitment to domestic enforceability of international human rights<sup>5</sup> and support for the United Nations,<sup>6</sup> combined with recent events of international significance hosted within NSW, such as World Youth Day and the Climate Change Camp,<sup>7</sup> the need to adequately review APEC powers and police powers in general is important and timely.

The APEC Meeting Act particularly expanded police powers within APEC security areas from 30 August to 12 September 2007 inclusive.<sup>8</sup> These areas were divided into 'restricted'<sup>9</sup> and 'declared'<sup>10</sup> areas. The latter were further divided into 'core declared areas', which were designated prior to the start of the APEC period<sup>11</sup> and a pool of 38 local government areas from which, if certain criteria be met, 'additional declared areas' could be designated.<sup>12</sup>

Under the APEC Meeting Act, police had the power within the APEC security areas to establish roadblocks, checkpoints and cordons;<sup>13</sup> search people,<sup>14</sup> vehicles and vessels;<sup>15</sup> seize and detail prohibited items;<sup>16</sup> give reasonable directions;<sup>17</sup> exclude or remove people from APEC security areas.<sup>18</sup> Further powers applied to the restricted areas, including powers of

### REFERENCES

1. For example Part 6A *Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA) (NSW)*; *Terrorism (Police Powers) Act 2002 (NSW)*; *Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005 (NSW)*.
2. Part 6A LEPRA was introduced and assented to on the same day, namely 15 December 2005; *APEC Meeting (Police Powers) Act 2007 (NSW)* was introduced and assented to within three weeks.
3. See, for example, Parliamentary Hansard with respect to introduction of Part 6A LEPRA and *APEC Meeting (Police Powers) Act 2007 (NSW)*.
4. For example, sunset clauses which are later repealed, as discussed in Section 5 of the report.
5. Robert McClelland, 'Australia and International Human Rights: Coming in from the Cold' HREOC, 23 May 2008 <[hreoc.gov.au/legal/seminars/index.html](http://hreoc.gov.au/legal/seminars/index.html)> at 23 May 2008.
6. Prime Minister of Australia, Press Conference, United Nations, New York, 30 March 2008 <[pm.gov.au/media/Interview/2008/interview\\_0154.cfm](http://pm.gov.au/media/Interview/2008/interview_0154.cfm)> at 7 April 2008.
7. This camp was held in Newcastle in July 2008.
8. APEC security area defined in s5 *APEC Meeting (Police Powers) Act 2007 (NSW)*; APEC period defined in s 3 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
9. Sect 7 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
10. Sect 6 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
11. Described in Schedule 2 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
12. See Schedule 1 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
13. Sect 10 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
14. Sect 12 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
15. Sect 11 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
16. Sect 13 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
17. Sect 14 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
18. Sections 24–26 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
19. Sect 21 *APEC Meeting (Police Powers) Act 2007 (NSW)*.
20. Sect 22 *APEC Meeting (Police Powers) Act 2007 (NSW)*.



21. Sect 19; 'prohibited item: defined s3; 'special justification' defined s37 APEC Meeting (Police Powers) Act 2007 (NSW)

22. For example, the Chaser incident. See: 'Chaser APEC Charges Dropped,' SBS World News Australia, 28 April 2008 <news.sbs.com.au/worldnewsaustralia/chaser\_apec\_charges\_dropped\_545833> at 28 April 2008.

23. Sect 31 APEC Meeting (Police Powers) Act 2007 (NSW)

24. Sect 35 APEC Meeting (Police Powers) Act 2007 (NSW)

25. *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), ratified by Australia 13 August 1980, entered into force for Australia 13 November 1980.

26. Article 12 ICCPR

27. Article 19 ICCPR

28. Article 21 ICCPR

29. Article 14(2) ICCPR

30. Article 25 ICCPR

31. Article 17 ICCPR

32. Article 2 UN Code of Conduct for Law Enforcement Officials, A/Res/34/169, 17 December 1979 <un.org/Depts/dhl/resguide/resins.htm> at 7 May 2008.

33. Article 3 UN Code of Conduct for Law Enforcement Officials.

34. Parliament of NSW, *Legislation Review Committee: Legislation Review Digest*, No 1 of 2007, <parliament.nsw.gov.au/prod/parliament/committee.nsf/0/eb56b637c31b7479ca2573fa007fde4/\$FILE/2008.1%20Legislation%20Review%20Digest.pdf> at 16 April 2008.

35. For example, see Sylvia Hale 'Second Reading APEC Meeting (Police Powers) Act 2007,' NSW Legislative Council Hansard and Papers, 21 June 2007 at 1506-1508 <parliament.nsw.gov.au/prod/parliament/hansards.nsf/V3ByKey/LC20070621/\$File/541LC014.pdf> at 21 May 2008.

36. Interview Kirillie Moore, Redfern Legal Centre, 2 May 2008, transcript held by CCLCG; Personal communication, Alexandra Faraguna, Intellectual Disability Rights Services, 20 May 2008.

37. Including Homeless Persons Legal Services. See Elisabeth Baraka, 'The Use of the Protocol for Homeless People During APEC' in *Parity*, 21(1) February 2008 at 34.

38. For example, see: Jordan Baker, 'Identity Parade of the Secret Police,' Sydney Morning Herald (Sydney), 10 September 2007 <smh.com.au/articles/2007/09/09/1189276546303.html> at 21 May 2008.

39. For example, interview with Anna Samson, organiser with Stop the War Coalition, 10 January 2008.

40. David Campbell, 'APEC Meeting (Police Powers) Bill 2007, Agreement in Principle,' NSW Legislative Assembly Hansard and Papers at 1092, 7 June 2007 <parliament.nsw.gov.au/prod/parliament/hansards.nsf/V3ByKey/LA20070607/\$File/541LA010.pdf> at 21 May 2008.

41. Ibid.

entry and search of premises<sup>19</sup> and the power to request disclosure of identity.<sup>20</sup> It was also an offence, punishable with up to 6 months imprisonment (2 years if aggravated circumstances, namely possession of a prohibited item) to be in a restricted area without special justification.<sup>21</sup> The injustice of the severity of this penalty is compounded by the confusion apparent, even among law enforcement officers, as to what constituted a restricted area.<sup>22</sup> Provisions were also included to provide for a presumption against bail for certain offences<sup>23</sup> and to provide law enforcement officials with immunity in nuisance.<sup>24</sup>

Police powers were expanded under the APEC Meeting Act such as to impinge upon basic human rights provided for by the *International Covenant on Civil and Political Rights (ICCPR)*.<sup>25</sup> These include the right to freedom of movement,<sup>26</sup> the right to freedom of expression,<sup>27</sup> the right to peaceful assembly,<sup>28</sup> the right to presumption of innocence,<sup>29</sup> the right to participatory democracy<sup>30</sup> and the right to privacy.<sup>31</sup> The *UN Code of Conduct for Law Enforcement Officials* was also allegedly violated particularly with respect to the upholding of human dignity and human rights of all persons<sup>32</sup> and the use of force only when strictly necessary.<sup>33</sup>

A number of concerns about the *APEC Meeting Act* and police powers exercised during the APEC period were raised by the NSW Legislation Review Committee,<sup>34</sup> The Greens,<sup>35</sup> Community Legal Centres (CLCs),<sup>36</sup> members of the homelessness network,<sup>37</sup> Human Rights Monitors<sup>38</sup> and protestors.<sup>39</sup> These concerns were said to be addressed by the number of safeguards said to accompany the *APEC Meeting Act*.<sup>40</sup>

The safeguards included: the powers being applied within designated and limited areas; public notification of variations to APEC security areas; police receiving specialist training with respect to the use of the powers; a joint review of the powers by the Attorney-General and Minister for Police; a sunset clause such that the powers applied only for the APEC

period and would then terminate automatically.<sup>41</sup> As the report highlights, the so-called 'safeguards' seem to be of limited effect.

Following an analysis of the effectiveness or otherwise of the safeguards and the outlining of some case studies of alleged abuse of police powers, the report makes a series of recommendations. They include that:

1. an independent review of police actions during APEC be undertaken. That this review includes mechanisms for public consultations and submissions;
2. an independent inquiry into the general expansion of NSW Police powers be undertaken before any further expansions be considered;
3. alternative models of policing, other than the expansion of police powers, be considered;
4. more effective and inclusive police consultation and communication strategies be developed in the event of future international events requiring a security presence;
5. more effective and enforceable mechanisms for ensuring the protection of human rights within NSW and Australia be introduced, including, for example, a Charter of Rights and Responsibilities.

Now is the time for closer scrutiny, transparency and accountability with respect to New South Wales Police powers.

For a copy of the report, contact the Combined Community Legal Centres Group NSW. Or a copy of the full report can be downloaded at: <nswclc.org.au/Publications/APEC\_Report.pdf> Many people contributed to this report. Particular thanks to Shirley Southgate and Linda Tucker for all their assistance.

LIZ SNELL is a law graduate who undertook her PLT placement at Kingsford Legal Centre. The Report is a joint project of the Combined Community Legal Centres Group (NSW) and Kingsford Legal Centre.

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## TIM MCCOY TRUST 21st Anniversary Tim McCoy Memorial Dinner 2008



Tim McCoy (1956–87)

Student radical; community worker; solicitor; political activist; law teacher; National Community Legal Centre representative; larrikin; inspiration and friend to all in the community legal centre movement. A life too short.

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