

**2014**

**THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**MAJOR EVENTS BILL 2014**

**REVISED EXPLANATORY STATEMENT**

**Presented by  
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## **Introduction**

This explanatory statement relates to the Major Events Bill 2014 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

## **Outline**

### **Purpose of the Bill**

The Bill will repeal the *Major Events Security Act 2000* (MESA) and replace it with a comprehensive major events legislation scheme. It provides for a clear and predictable regime for dealing with major events so that they can be hosted in a safe and efficient manner. It will also help to promote the ACT nationally and internationally as a welcoming place to visit, live, study and invest. The provisions in the Bill accord with broader the Government objective of growing the ACT economy, including by creating an attractive location for the hosting of major events.

The availability of intellectual property rights protection, specifically ambush marketing protections and ticket scalping prohibitions, will give the ACT a significant marketing advantage when bidding for future major events.

The measures in the Bill can be applied selectively to particular events for which it is considered necessary to make additional crowd management, ticketing or intellectual property protection arrangements.

### **Human Rights Considerations**

The Bill engages a number of the rights in the *Human Rights Act 2004*.

The Bill engages, and places limitations on, the following rights:

- the right to privacy (s 12);
- the right to freedom of movement (s 13);
- the right to peaceful assembly (s 15);
- the right to freedom of expression (s 16);
- the right to liberty and security of person (s 18); and
- the right to presumption of innocence (s 22(1)).

The Bill also supports the right to liberty and security of participants and people attending declared major events.

The limits on human rights listed above are reasonable and justifiable in a free and democratic society for the purposes of section 28 of the Human Rights Act having regard to the factors set out below.

Human rights are subject to only reasonable limits which are demonstrably justifiable. Human rights may only be limited when the following relevant factors are considered:

- the nature of the right affected;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the relationship between the limitation and its purpose; and
- the least restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.<sup>1</sup>

In ensuring that limitations on individual human rights are demonstrably justifiable, public authorities must act consistently within these rights. In making decisions, public authorities must give proper consideration to relevant human rights.<sup>2</sup>

Under human rights laws, States have an obligation to their citizens by putting in place legislative and administrative frameworks designed to deter conduct that infringes human rights, and to undertake operational measures to protect an individual who is at risk of suffering treatment that would infringe their rights. This is referred to as the “doctrine of positive obligations”.

For major events, the obligations are satisfied through both the adoption of appropriate laws and effective risk management arrangements to provide for the safety needs of all those attending the relevant event.

Appropriate laws allowing effective risk management at major events can have tangible community benefits and can prevent tragedies like those seen during the Boston 2013 Marathon.

In creating this Bill, care has been taken to consider less restrictive means while maintaining community protection, in order to adhere to the doctrine of positive obligations. In ensuring adequate human rights protection for attendees of events, it is necessary that some limitations are placed on all attendees. These limitations only apply to attendees at declared events. As disallowable instruments, declarations for major events are subject to the scrutiny of the ACT Legislative Assembly. Furthermore, where a person is subject to a criminal charge, the same appeal processes are available as those available for other criminal charges.

## **The right to privacy**

Section 12 of the *Human Rights Act 2004* provides that:

Everyone has the right-

- (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and
- (b) not to have his or her reputation unlawfully attacked.

Section 12 gives effect to article 17 of the International Covenant on Civil and Political Rights (the ICCPR) and protects the individual from unlawful and arbitrary interferences with

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<sup>1</sup> Section 28 of the *Human Rights Act 2004*.

<sup>2</sup> Section 40B of the *Human Rights Act 2004*.

privacy, family, home and correspondence. It also protects everyone from unlawful attacks on their reputation.

The right to privacy has been interpreted to include an individual's physical and psychological integrity<sup>3</sup>, and public authorities have an obligation to protect those rights if interference is foreseeable<sup>4</sup>. There is a large body of international human rights case law making clear that people should have a low expectation of privacy in spaces outside of regular private residences.<sup>5</sup>

The Bill engages and limits the right by providing entry, search and seizure powers to authorised people. The purpose of this limitation is to provide a safe and secure environment for the conduct of major events. The entry, search and seizure powers are the minimum necessary to achieve this purpose and are considered to be justifiable under section 28.

The process of declaring a special event, as provided by the Bill, including the matters to be included in a declaration and the public notices requirements mean that people attending the event will be on notice about the conditions of entry to a declared major event in relation to search powers and the prohibition of certain items.

The Bill gives authorised people who are not police officers the power to conduct a search of a person's property (but not touch their person) and to conduct a scanning search (see clauses 16 and 17). The Bill provides that only police officers may conduct an ordinary search and a frisk search (see clause 18). Authorised people are only able to conduct a search where a person is entering or is about to enter or is already in an event venue.

Similarly, powers to seize prohibited items ensure that people attending major events are not in possession of items that have the potential to disrupt or interfere with the safe and effective running of a major event. To ensure the minimum limitation on the right to privacy necessary, the Bill clearly outlines who may seize prohibited items (clause 15) and what those items are. An authorised person may only request that a person surrender a prohibited item. Only a police officer may confiscate the prohibited item if the person refuses to comply with the request to surrender a prohibited item. The Bill lists 19 items that are prohibited items, including knives, dangerous goods, explosives, prohibited substances and alcohol. A major event or important sporting event declaration may also declare other items to be prohibited items.

These powers are framed as conditions for entry to a major event and failure to allow an authorised officer to conduct a search permitted under the Bill is a criminal offence with a maximum penalty of 10 penalty units.

A number of safeguards exist in the Bill to ensure that authorised people are appropriate for the role. In particular, an authorised person is only a police officer or a person appointed by the director-general. An authorised person who is appointed by the director-general must:

- hold a security licence;
- be employed by a person holding a master licence under the *Security Industry Act 2003*;

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<sup>3</sup> *Sudi and Kracke v Mental Health Review Board* [2009] VCAT 646

<sup>4</sup> *Georgel and Georgeta Stoicescu v Romania* [2011] ECHR 1193 (26 July 2011)

<sup>5</sup> See, for example, the Supreme Court of Canada case *R. v. Suberu* (2009) SCC 33 and the New Zealand Court of Appeal decision *R. v. Grayson & Taylor* [1997] 1 NZLR 399.

- have not committed an offence against the Act created by this Bill;
- have not been convicted or found guilty of an offence involving fraud, dishonesty, violence, drugs or weapons; and
- be capable of competently exercising the functions of an authorised person for the Act created by this Bill.

Additionally, the powers of authorised person appointed by the director-general are restricted to only the minimum powers necessary to ensure safety and security at events. Authorised people appointed by the director-general can, for example, conduct a simple search and a scanning search but only police officers who are authorised people for the event can conduct more thorough searches as necessary.

### **Right to freedom of expression**

Section 16 of the *Human Rights Act 2004* provides that:

- (1) Everyone has the right to hold opinions without interference.
- (2) Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.

The section 16 right to freedom of expression protects expression in any medium, including written and oral communication, the media, public protest, broadcasting and artistic works. The right not only protects favourable information and ideas but also unpopular or inflammatory sentiments. The right includes the freedom to receive and impart information by a wide variety of means including posters, pamphlets and dress. Commercial expression and advertising may fall within the definition although the right is vested in the individual rather than a corporation.

However, the right to freedom of expression can be limited on several grounds. Under Article 19(3) of the ICCPR (from which section 16 derives), freedom of expression may be limited as provided for by law and in circumstances where it is necessary to protect the rights or reputations of others, national security, public order, public health or morals.

The Bill engages and limits the right by protecting symbols used by sponsors and investors and prohibiting commercial trading and advertising in certain zones around an event.

The Bill seeks to protect the use of symbols<sup>6</sup> in order to protect the intellectual property rights of sponsors and investors by creating an offence of using a symbol in breach of the provisions. However, the provisions are appropriately limited to restricting the use of a notified symbol for commercial purposes during a defined period of time to ensure any restriction on the right to freedom of expression is not unduly onerous.

The Bill also contains the concept of ‘clean zones’<sup>7</sup> where commercial trading and advertising activity must be authorised. Again, this restriction is to ensure sponsors and investors are encouraged to participate in events in the knowledge their legitimate commercial interests are protected. While this may impact on the freedom of expression of individuals in terms of advertising, the Bill ensures the restrictions are limited in time and

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<sup>6</sup> Part 4 Major Events Bill 2014

<sup>7</sup> Ibid

geographical application. The Bill also provides for a series of exemptions to ensure normal existing business and individual activities are not curtailed.

A further safeguard requires the Minister to only declare a ‘clean zone’ if satisfied that the event organiser has commercial arrangements in relation to the event that are likely to be adversely affected by unauthorised advertising in or near the clean zone. The Minister must give notice of the ‘clean zone’ for the stated period which must be published in a daily newspaper. The notice is a notifiable instrument which must be notified under the Legislation Act.

The Bill’s limitations on the right to freedom of expression are both justifiable and proportionate, particularly as commercial expression is less important than other forms of expression. The provisions create a balance between the need to protect the commercial interests of sponsors without whom events could not take place and the interests of other businesses and individuals. This is achieved by restricting the scope of these provisions.

### **Right to liberty and security of person**

Section 18(1) of the *Human Rights Act 2004* provides that everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained.

The ICCPR commentary suggests that the right to liberty and security of person relates only to a very specific aspect of human liberty.<sup>8</sup> This specific aspect of human liberty is an interference that results only from the forceful detention of a person at a certain narrowly bounded location, such as a prison or other detention facility. In *Celepli v Sweden* the United Nations Human Rights Committee considered the assigned residence of a Turkish citizen to a Swedish municipality for nearly seven years and his obligation to report to the police three times a week as an interference with his freedom of movement but not his personal liberty.<sup>9</sup>

The right to security and liberty of person is engaged as imprisonment for breach of a prohibition order arguably amounts to arbitrary detention (section 18(1) of the HR Act). The United Nations Human Rights Committee confirmed in the case of *Van Alphen v the Netherlands* that ‘arbitrary’ deprivation of liberty must not be manifestly disproportionate, unjust or unpredictable.<sup>10</sup>

The Bill engages the right by providing powers to police officers to detain a person where they fail to comply with a direction by an authorised person. This power is limited to the least restrictive necessary to maintain safety and security of people at an event as only police officers can exercise it and the directions that can be given by an authorised person are restricted and clearly outlined in the Bill at clause 21.

The Bill may also engage the right by creating offences for which a person may be detained or arrested. Similarly, only police officers can detain or arrest a person who commits one of these offences and the conduct prohibited by the offences is the minimum necessary to ensure safety and security.

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<sup>8</sup> Murdock, J.L. (ed.), 2005, *Article 5 of the European Convention on Human Rights: The Protection of Liberty and Security of Person*.

<sup>9</sup> (Communication no. 456/1991 *Ismet Celepli v Sweden* ) Under the Optional Protocol, individuals who claim that any of their rights set forth in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Human Rights Committee for consideration.

<sup>10</sup> *Van Alphen v The Netherlands* UN Doc CCPR/C/39/D/305/1988, 15 August 1990, paragraph 5.8)

The purpose of the limitations is to allow more efficiently managed events and to minimise any disruptions to people's enjoyment of those events. The limitations allow community enjoyment of the event and to ensure the community is protected from potentially dangerous substances or situations.

It is in this context that the limitations contained in the Bill are justified and proportionate. The nature and extent of the limitations are restricted. They are minor and transient limitations on people's rights when attending previously declared events, particularly given that many of the provisions are currently available as conditions of entry to certain major events.

The limitations are the least restrictive means available to ensure that the community's rights of the same nature are adequately protected. The limitations are balanced with the right of the individual and are proportionate to the risk to the community's invasion of rights.

### **Right to freedom of movement and peaceful assembly**

The Bill also engages and limits the right to move freely within the ACT<sup>11</sup> and the right to peaceful assembly<sup>12</sup>.

Section 13 of the *Human Rights Act 2004* provides that everyone has the right to move freely within the ACT and to enter and leave it, and the freedom to choose his or her residence in the ACT.

Section 15 of the *Human Rights Act 2004* provides that:

- (1) Everyone has the right of peaceful assembly.
- (2) Everyone has the right to freedom of association.

The right to freedom of movement is not an absolute right. The right has inherent limitations, which are acknowledged at subsection (3) of article 12 of the ICCPR (the equivalent right to section 13 of the HR Act): 'the rights to liberty and freedom of movement shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights or freedoms of others and are consistent with the other rights recognised in the Covenant.'

Section 15 of the Human Rights Act provides that everyone has the right of peaceful assembly and the right to freedom of association.

In *Lavigne v Ontario Public Service Employees Union*<sup>13</sup>, the Canadian Supreme Court observed that 'freedom of association is the freedom to combine together for the pursuit of common purposes or the advancement of common causes'. The European Court of Human Rights has also considered the right to free association in article 11(2) of the European Convention on Human Rights. In *Association X v Sweden*<sup>14</sup> the Court held that freedom of association is a general capacity for citizens to join, without interference from the State, in association in order to obtain various ends.

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<sup>11</sup> Section 13 of the *Human Rights Act 2004*

<sup>12</sup> Section 15(1) of the *Human Rights Act 2004*

<sup>13</sup> (1991) 2 SCR 211

<sup>14</sup> 9 DR 1 (1978)

The right to freedom of movement and the right to peaceful assembly are fundamental human rights that can be exercised by individuals, groups, associations, legal entities and corporate bodies. It is an important concept that only assemblies that are peaceful are protected, but can include conduct that can temporarily hinder, impede or obstruct activities of third parties<sup>15</sup>. The European Court of Human Rights has previously stated that the “only type of events that did not qualify as ‘peaceful assemblies’ were those in which the organisers and participants intended to use violence”<sup>16</sup>. The ACT has a positive obligation to ensure adequate mechanisms to facilitate the enjoyment of these rights, and to guarantee that they are not impeded.

The rights are limited by requiring event attendees to:

- not go onto a playing surface or event venue unless the person has permission of the event organiser;
- not interfere with an event;
- comply with directions to leave events; and
- be subject to court ordered ban orders under certain circumstances.

It also places restrictions on people trading in major events by requiring a person to obtain special approval to trade in declared ‘clean zones’.

The restrictions provided by the Bill do not apply to public protests, and the Executive is not able to declare a public protest or demonstration to be a major event pursuant to clause 6(4) of the Bill. They do not apply to restrict peaceful gatherings of people, nor do they act to destroy the essence of that right by restricting access to property or events. Likewise, states have a duty to protect peaceful assembly from people or groups that attempt to disrupt or inhibit in any way that assembly<sup>17</sup>.

The Bill achieves an appropriate balance between protecting event attendees’ individual rights to peaceful assembly and freedom of movement, and the obligation to protect against disruptions to events that interfere with other people’s peaceful assembly at those events. For example, the power to give a direction and accompanying offence of failure to comply<sup>18</sup> will allow an authorised person to issue requests to do or not to do something which will impact on the enjoyment or safety of others. The Bill provides an appropriate sanction of 10 penalty units for such an offence. If a person attempts to re-enter the event after being told to leave the sanction is a maximum of 20 penalty units. This allows for good management of an event while the requirement for reasonableness in issuing directions provides safeguards.

The Bill restricts commercial activity in “clean zones” which may impinge on the right to freedom of movement. Again, this restriction is designed to protect the activities of sponsors and investors whose involvement is essential to the financial viability of major events. The restriction is proportionate as the Bill provides clear parameters for the restrictions, in terms of geographic area, times and application.

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<sup>15</sup> Panel of Experts on the Freedom of Assembly (2010). *Guidelines on Freedom of Peaceful Assembly (Second Edition)*. OCSE Office for Democratic Institutions and Human Rights (ODIHR), Warsaw, p15.

<sup>16</sup> *Cisse v. France* (2002), para.37. Also see *G v. The Federal Republic of Germany* (1989), in which the European Commission stated that peaceful assembly does not cover a demonstration where the organizers and participants have violent intentions that result in public disorder

<sup>17</sup> See, for example, *Plattform Ärzte für das Leben v. Austria* (1988)

<sup>18</sup> Clauses 21 and 22 of the Bill

The Bill provides that an authorised person may give a person a direction to move from a particular place, including the event itself. This provision is supported by the power to detain following a refusal to comply<sup>19</sup>. Only a police officer can detain a person for failing to follow the direction. The latter power is discussed under the right to liberty and security of person. The power to give a direction to move on is based on preventing risk to public safety and provides the least restrictive approach necessary. In particular, an authorised person can only direct a person to leave an event and not re-enter for 24 hours. The authorised person may only give such a direction where the person has committed or is likely to commit an offence. Other directions must be reasonably necessary for the good management of the event or the safety and enjoyment of people at the event.

### **Right to presumption of innocence**

Section 22(1) of the *Human Rights Act 2004* provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

The right to be presumed innocent requires judges, juries and the relevant public authorities to refrain from prejudging any case. The authorities, particularly prosecutors and police, should not make statements about the guilt or innocence of an accused before the outcome of the trial.<sup>20</sup>

The Bill engages and limits the right as it creates a number of strict liability offences. For example, it is an offence for a person to refuse to permit an authorised officer to carry out a scanning search when asked. The offence is one of strict liability (with a maximum penalty of 10 penalty units).

A strict liability offence engages and limits the presumption of innocence as no fault element applies to the offence.

The core purpose of the limitation is to ensure public safety by providing clear powers to authorised officers and police.

The limitation is justifiable and proportionate for a number of reasons. Firstly, strict liability offences in the Bill generally only apply to conduct that may jeopardise public safety and the security of an event.<sup>21</sup> Secondly, attendees (and others) at special events are on notice that they may be asked to do or not do certain things as part of the conditions of entering the event. Thirdly, the conduct to which the strict liability offences apply is not serious criminal conduct, which is reflected by the maximum penalties which are limited to financial penalties.

The Bill places the least restrictive limitation on this right. In particular, although an evidential onus would be less restrictive on the right to be presumed innocent, it would not be as effective in achieving the public order purposes of the limitation. This is because police officers and authorised people are in a situation at a special event of protecting the safety and

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<sup>19</sup>Clauses 22 and 23 of the Bill

<sup>20</sup> UN Human Rights Committee General Comment 13, para. 7; *Alenet de Ribemont v. France*, 1995

<sup>21</sup> Offences relating to commercial activities are necessary to protect the commercial interests of sponsors without whom events could not take place and the interests of other businesses and individuals. These offences are not offences of strict liability and are discussed under the right to freedom of expression.

security of a large number of people at one time and therefore require the power to quickly and effectively manage conduct that may compromise safety and security. The requirement of police or authorised people to comply with an evidential onus in such a situation, for example, where a person needs to comply with scanning or being searched by police officers when asked, would undermine their ability to act quickly to a situation.

Furthermore, while the use of strict liability limits the range of defences that may be available for a person accused of an offence to which it applies, a number of defences remain open to the accused, depending on the particular facts of each case. Section 23 (1) (b) of the *Criminal Code 2002* provides a specific defence to strict liability offences of mistake of fact. Section 23 (3) of the Criminal Code provides that other defences may also be available for use for strict liability offences, which includes the defence of intervening conduct or event, as provided by section 39 of the Criminal Code.

# Major Events Bill 2014

## Detail

### Part 1 Preliminary

#### Clause 1 Name of Act

This is a technical clause that names the short title of the Act. The name of the Act would be the *Major Events Act 2014*.

#### Clause 2 Commencement

This clause states that the Act commences on the day after it is notified on the ACT Legislation Register.

#### Clause 3 Dictionary

This is a technical clause identifying the dictionary and includes a note explaining conventions used to define words and terms and a note explaining the application of the dictionary to the Act.

#### Clause 4 Notes

This is a technical clause explaining the status of notes to the Act.

#### Clause 5 Offences against Act—application of Criminal Code etc

This clause makes it clear that the *Criminal Code 2002* applies to the Act. The Act should also be read in conjunction with the *Legislation Act 2001*, which provides for interpretation, common definitions, and legislative machinery for the ACT.

### Part 2 Major events and important sporting events

#### Division 2.1 Major event declaration

##### Clause 6 Major event – declaration

This clause provides that the Executive may declare an event to be a major event, and sets out what the Executive must consider before declaring a major event. The provision encourages event organisers and the Executive to keep in mind the profile of the ACT on both an international and national level. It also ensures that consideration is given to sponsorship and media coverage to guarantee relevant consideration of advertising commitments.

The clause requires the Executive to declare an event at least 28 days prior to the proposed event date.

The clause clarifies that a public protest or demonstration cannot be declared a major event. This supports the rights to freedom of movement and peaceful association under the *Human Rights Act 2004*.

Furthermore it provides that a declaration is a disallowable instrument and as such must be notified and presented to the Legislative Assembly under the *Legislation Act 2001*.

Finally the clause provides that the Executive must publish the major event declaration in a daily newspaper; however if this does not occur the validity of the declaration is not affected.

## **Clause 7 Major event— declaration requirements**

This clause sets out what information must be included in a major event declaration. This includes that a notice may be given under section 25 (Notice of protected symbol), section 31 (Notice of clean zone) and section 38 (Notice of protection of ticketing arrangements) of the Act for the event.

Clause 7(2) clarifies that an event declaration may list additional prohibited items pursuant to clause 12(1)(b). In order to list additional prohibited items there must be reasonable grounds in the circumstances for including those items.

## **Clause 8 Major event declaration—variation**

Clause 8 provides that the Minister may amend the details of a major event declaration up to 7 days before the event to ensure the good management of the event or the safety and enjoyment of people attending the event. This allows consideration of developments or changes prior to the event occurring.

Furthermore it provides that a variation is a notifiable instrument which must be notified under the *Legislation Act 2001*.

Finally the clause provides that the Minister must publish the variation in a daily newspaper; however if this does not occur the validity of the variation is not affected.

## **Division 2.2 Important sporting event notice**

### **Clause 9 Important sporting event—notice**

This clause provides that for part 3 (Crowd management) the Minister may give notice that an event is an important sporting event at least seven days before to its proposed date. An important sporting event can be notified independently to a Major Event in circumstances where a low-level sporting event needs to be held and there are good reasons for needing additional crowd control provisions, but the event may not be appropriate for a Major Event declaration.

Examples of where this might be appropriate include:

- One Day International Cricket matches
- National Rugby League Test Matches
- Football test matches (Soccer)
- Rugby Union international test matches

The clause identifies factors that the Minister must be satisfied with before giving notice, and other factors that must be considered when deciding whether to make an important sporting event notice.

Furthermore the clause provides that the notice is a notifiable instrument and must be notified under the *Legislation Act 2001*.

Finally the clause provides that the Minister must publish the notice in a daily newspaper; however if this does not occur the validity of the notice is not affected.

### **Clause 10 Important sporting event notice—requirements**

This clause sets out what information must be included in an important sporting event notice.

Clause 10(2) clarifies that an event declaration may list additional prohibited items pursuant to clause 12(1)(b). In order to list additional prohibited items there must be reasonable grounds in the circumstances for including those items.

## **Part 3 Crowd management**

### **Division 3.1 Application—pt 3**

#### **Clause 11 Application—pt 3**

This clause sets out that part 3 (other than section 23) applies to a major event during the major event declaration period and to an important sporting event for the important sporting event notice period. The application of crowd management powers does not affect the rights and duties of venue operators and property holders that apply under ACT or Commonwealth laws or the common law.

### **Division 3.2 Crowd Management**

#### **Clause 12 Meaning of *prohibited item***

Clause 12 provides a list of items that are prohibited from major events or important sporting events unless excluded by the major event declaration or the sporting event notice. The list specifies objects that may present a risk to the safety of people at the event or could significantly interfere with the event. It also includes a provision to allow additional items to be prohibited, if reasonable in the circumstances, by inclusion in a major event declaration or sporting event notice. This provides important flexibility in identifying items which may cause issues for the safety or smooth running of a specific declared event.

#### **Clause 13 Offences —unauthorised entry to event venue**

This clause makes it an offence to enter an event venue without authority or to go onto a playing surface at an event venue without permission.

There are two categories of offences that restrict unauthorised entry to an event venue. Clause 13(1) makes it an offence for a person to go into or stay in an event venue without permission, which is designed to include people entering restricted areas of event venues. The maximum penalty for this offence is 5 penalty units.

Clause 13(2) creates an offence for a person to go onto, or stay on, the playing surface at an event venue without permission to do so. This offence is targeting what is commonly known as ‘pitch invasion’. Major sporting events place greater emphasis on provisions relating to pitch invasion and rights protection. In the event of such an offence occurring, there would be

significant financial, legal and reputational implications for the ACT. A pitch invasion offence could also detrimentally affect the ACT's ability to host future major events.

The ACT is an emerging market for major events and is in direct competition with other jurisdictions such as NSW and Victoria. Due to the capacity of NSW and VIC venues, international Events held in Canberra are rare; however the significant and enduring economic impact to Canberra is substantial. In some instances, hosting major events will provide an opportunity to showcase Canberra to a significant world audience and open up trade and other business opportunities.

The penalty for clause 13(2) is 50 penalty units to reflect the seriousness of this behaviour.

#### **Clause 14 Offence—interference with event**

This clause makes it an offence to act in a way that intentionally disrupts another's enjoyment of the major event or important sporting event and includes a person engaging in violent or disorderly behaviour, or delaying or obstructing the conduct of the event or an activity associated with the event, or in any other way intentionally interferes with another's reasonable enjoyment of an event or activity associated with the event. The maximum penalty for this offence is 15 penalty units.

The purpose of the offence is to allow attendees at events to peacefully enjoy the event without fear of disruption, violence or injury. The element of 'violence' in clause 14(1)(a) is designed to cover very low level violence as the offence is to be read in conjunction with the *Crimes Act 1900* offences of violence including common assault<sup>22</sup> and affray,<sup>23</sup> both of which carry a maximum penalty of two years imprisonment.

#### **Clause 15 Offence—possessing prohibited item**

Clause 15 makes it a strict liability offence to take a prohibited item into, or have a prohibited item at an event venue, without the permission of the event organiser or venue manager. Prohibited items are defined at clause 12. The maximum penalty for this offence is 25 penalty units.

If a person attempts to take a prohibited item into the event venue, authorised people can request surrender of that item under clause 15(4).

Clause 15(5) allows a police officer to confiscate a prohibited item if a person refuses to surrender the item to an authorised person.

Part 6 sets out how a person can be appointed as an authorised person, how things can be seized and the management of things once they have been seized.

### **Division 3.3 Crowd management powers**

This division extends certain search powers already available to police officers under MESA and the *Crimes Act 1900* and adds further, limited, powers for authorised officers. The

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<sup>22</sup> *Crimes Act 1900* section 26

<sup>23</sup> *Crimes Act 1900* section 35A

provision of these powers will ensure that all people attending a major event can do so safely, and it will enable police officers to focus on police-only powers, thereby guaranteeing that police resources are used effectively and efficiently.

The powers in this division have been limited in order to ensure that human rights considerations are appropriately balanced with considerations of community safety.

Searches that are conducted by an authorised person who is not a police officer are limited to basic, non-physical searches. Pursuant to clause 15, any prohibited item found by a search conducted by an authorised officer may be surrendered at the request of an authorised officer. If the person refuses to surrender the item, a police officer may confiscate the item.

Division 7.1 (Surrendered or confiscated items) deals with how things may be stored, returned, retained or destroyed by police. Police decisions about whether to proceed against a person who surrenders a prohibited item or has a prohibited item confiscated by police will be determined by all the circumstances of the case. The admissibility of evidence about the surrender or confiscation of a prohibited item will be determined through the application of the general law.

The provisions in this division engage the right to privacy, and the right to liberty and security of the person. Given the careful and restricted manner in which authorised people can be appointed under clause 41, the limitations on these rights contained in this division are justified and proportionate to ensure the safety of those attending major events. Analysis of the restrictions on these rights is undertaken in the section on human rights considerations above.

#### **Clause 16 Offence—authorised person may search personal property**

This clause gives power to an authorised person to request that an event attendee permit a search of their personal property if that person is entering; about to enter; or in; an event venue. If such a request is made, the person must permit the authorised person to search the property as requested. For failing to comply with a request, a strict liability offence with a maximum penalty of 10 penalty units applies.

The policy objective of this provision is to ensure that all people attending a major event can do so safely by permitting the searching of bags or other personal property. These powers are more limited than those given to authorised people acting as security guards in the *Court Procedures Act 2006*. The ability for an authorised person to search personal property of someone *about* to enter an event is important to ensure the safety of all event attendees. Points of entry are congregation points and authorised officers need to have the power to address security issues that arise at these points in order to protect other event attendees. A similar concept of search or inspection of property of people not yet inside an event venue is found in the *Major Sporting Events Act 2009* (VIC).

#### **Clause 17 Offence—authorised person may do scanning search**

This clause gives power to an authorised person to conduct a scanning search of another person who is entering, or is about to enter, or is in an event venue. A scanning search is a search of a person by electronic or other means that does not require any clothing or items to be removed, or for the person being searched to be touched.

It is a strict liability offence for a person to refuse to permit a scanning search when asked. The maximum penalty for this offence is 10 penalty units.

### **Clause 18 Offence—police officer may do other searches**

Clause 18 clarifies that a police officer has the power to ask a person to permit an ordinary search or frisk search of the person. Frisk search and ordinary search have the same definition as is contained in other legislation<sup>24</sup>. In recognition of the need for only fully trained officers to have additional powers, these powers have not been extended to authorised people who are restricted to non-contact searches permitted by clauses 17 and 18.

This clause also creates a strict liability offence for a person to refuse to permit a police officer to conduct the search when asked. The maximum penalty for this offence is 10 penalty units.

### **Clause 19 Offence—police officer may ask for person’s name and address**

This clause gives police identical powers to those already contained in MESA and allows a police officer to ask for a person’s name and home address if that person is entering or about to enter an event venue. The maximum penalty for this strict liability offence is 5 penalty units.

### **Clause 20 Authorised person may refuse entry**

This clause clarifies that an authorised person is able to refuse a person entry to an event venue under certain conditions. This clause is based on the powers police officers had in MESA and extends those powers to authorised people.

Before refusing entry, authorised people (including police officers) must believe on reasonable grounds that a person has committed or is likely to commit an offence or is likely to contravene a condition of entry of the event.

### **Clause 21 Authorised person may give direction**

This clause enables an authorised person to give a direction to an event attendee to leave the event venue and not re-enter it for a period of up to 24 hours. In order to give this direction, the authorised person must believe on reasonable grounds that the event attendee has committed, or is likely to commit, an offence.

An authorised person is also able to give a direction reasonably necessary for the good management and continued safety and enjoyment of people attending an event. This allows authorised people to direct event attendees to move, stop doing certain things or to act on valid complaints made by other attendees.

The purpose of this clause is to allow effective and efficient management of an event and to give limited powers to authorised people to ensure events are run safely and are able to be enjoyed by attendees.

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<sup>24</sup> See, for example, *Corrections Management Act 2007* and *Crimes Act 1900*.

In this clause event means a major event or an important sporting event. Event venue is defined in the Dictionary to mean the place stated in the relevant notice or declaration as the location for the event and includes any place reasonably incidental to the holding of the event.

This clause engages the right to freedom of movement. Given the careful and restricted manner in which authorised people can be appointed under clause 41, and the precise way in which an event must be described, the limitations on these rights contained in this division are justified and proportionate to ensure the safety of those attending major events. Analysis of the restrictions of these rights is undertaken in the section on human rights considerations above.

### **Clause 22 Offences—failure to comply with direction**

Clause 22 sets out two offences for event attendees failing to comply with a direction. The first offence applies if a person is given a direction under clause 21 and fails to comply with the direction. The maximum penalty for that offence is 10 penalty units. This allows authorised people the ability to first warn an event attendee to stop doing something by issuing a direction. If a person fails to comply with the direction, this clause provides for that person to be charged with an offence to prevent the behaviour from re-occurring.

The second offence applies to event attendees who have been given a direction to leave an event venue under clause 21(1)(a) and they attempt to return to the event venue before the direction has expired. Under these circumstances, the person has a greater degree of culpability which is reflected in the maximum penalty applicable to this offence of 20 penalty units.

Clause 22(3) states that if an event attendee has committed an offence under clause 22, a police officer can use reasonable force to apprehend, detain or remove the attendee from the venue. Authorised officers that are not police officers do not have the ability to exercise those powers, and must seek assistance from a police officer if clause 3 powers are required. Clause 22(4) allows an authorised person appointed under clause 41 to assist a police officer in exercising this power if reasonable and necessary to do so.

If an event attendee is detained under subsection 3, they must not be detained for longer than is reasonable and necessary to remove them from the event venue.

### **Clause 23 Offence—ban orders**

Under certain circumstances, an interested party will be able to make an application to the Magistrates Court for a ban order preventing an offender from attending a stated event venue or future event venue. An interested person is defined in this clause as the chief police officer, an event organiser or an event manager. The ban order can also apply to prevent an offender from attending a stated part of an event. An example of the operation of an order under this clause is that a person may be allowed to attend an opening ceremony of an event but not the event itself.

In order to apply for the ban order, the interested person must submit an application to the Magistrates Court and give notice of the application to the offender. The court may only

make a ban order if satisfied that the offender is likely to commit a ban order offence in an event venue or future venue. The ban order can only apply to declared events or an event that is likely to be declared as a major event or an important sporting event. This allows some flexibility to cater for known future events, while still limiting the scope of the ban order to ensure minimum restrictions on the person subject to the order.

The ban order will only last up to a maximum of 12 months, and can only apply if a person has been convicted or found guilty of a ban order offence under the Act, or is banned from another Australian jurisdiction under a corresponding law. Spent convictions within the meaning of the *Spent Convictions Act 2000* would not be considered for ban order offences.

Ban order offences are defined in clause 23(8) to include sections 12, 14, 15 and 22 of the Act as well as a number of provisions of the *Crimes Act 1900*. The Crimes Act offences that are listed as ban order offences are primarily offences against the person and need to have a nexus to a previous event. Notably, the only sexual offence listed is indecent exposure. This is to ensure that behaviour known as ‘streaking’ at sporting events is a banning offence.

The subject of a ban order will have all appeal rights that would ordinarily apply to a decision of a Magistrate.

The maximum penalty for entering an event venue in contravention of a ban order is 50 penalty units.

## **Part 4 Protection of commercial arrangements**

This part provides for advertising restrictions to be made in declared, specified and defined areas, or for restrictions to be placed on the use of defined symbols.

The provisions in this division engage the right to freedom of movement; the right to freedom of expression; and the right to peaceful assembly. However, given the manner in which a Minister must give notice for a major event for either a protected symbol or a clean zone, and the reasons for giving notice under clause 25, the limitations on these rights in this division are justified and proportionate to ensure the commercial protection of sponsors investing in major events. Analysis of the restrictions of these rights is undertaken in the section on human rights considerations above.

This part is designed to ensure that any major events with substantial sponsorship are protected against ambush or intrusion marketing. Rights protection is a critical element of hosting major events, and retaining hosting agreements. Implementing appropriate provisions ensures protection of commercial rights and the investment made by event owners or sponsors.

Similar protections can, for example, currently be found in:

- *Major Sporting Events (Indicia and Images) Protection Act 2014* (Cwlth)
- *Sydney 2000 Games (Indicia and Images) Protection Act 1997* (NSW)
- *Major Events Act 2009* (NSW)
- *Melbourne 2006 Commonwealth Games (Indicia and Images) Protection Act 2005* (VIC)
- *Major Sporting Events Act 2009* (VIC)

- *Major Events Management Act 2007* (NZ)

Events that are large enough to warrant a declaration made under this section are mostly reliant on sponsorship revenue to run and manage the event. In return for paid sponsorship, sponsors are able to publicise their support by affiliating themselves with the event. Businesses that do not pay for sponsorship and seek to gain affiliation with the event for free damage the reputation of the event and the management of the event, and are seeking to gain at a detriment to others.

The manner in which the restrictions apply is specifically structured to ensure that the application is not arbitrarily applied to any event, but only to specific events for specific periods with sufficient justification.

## **Division 4.1 Protected symbols**

### **Clause 24 Application—div 4.1**

This clause states that division 4.1 does not apply to a major event to the extent that the Commonwealth *Major Sporting Events (Indicia and Images) Protection Act 2014* applies to the event.

Clause 24(2) and (3) make it clear that the division does not affect a right or remedy available to a person under other Commonwealth legislation. Clause 24(4) protects the common law right or remedy relating to ‘passing off’.

Clauses 24(2) to (4) are designed to ensure the ACT is consistent with the Constitution and the *Australian Capital Territory (Self-Government) Act 1988*.

### **Clause 25 Notice of protected symbol**

This clause sets out the mechanisms for the Minister to declare protected symbols for a major event. The Minister may only give notice if satisfied that the symbol to be declared relates to and is sufficiently connected to the identity and conduct of the major event, and that the event organiser has commercial arrangements in relation to the event that are likely to be adversely affected by unauthorised use of the symbol.

In declaring symbols to be protected for certain events, the Minister must state the period the notice (termed the protection period) is in force and publish the notice in a daily newspaper. A failure to publish a notice in a daily newspaper will not invalidate the notice.

Symbol is defined in clause 25(7) to mean any design, emblem, image, logo, mascot, mark or word and includes any visual or aural representation of any part of those things.

The purpose of this section is to ensure that, where appropriate, major events allow advertising protection for certain symbols in designated areas only at designated times.

### **Clause 26 Offences—unauthorised use of protected symbol**

This clause makes it an offence for a person to use a protected symbol for a commercial purpose during a protection period for a major event without written permission. Written permission must be provided by the event organiser.

Clause 26(1) makes it an offence for a user to intentionally use a protected symbol and has a maximum penalty of 300 penalty units. A user uses a protected symbol for a major event for commercial purposes if they meet the criteria in clause 27(1).

Clause 26(2) makes it an offence for a secondary user to use a protected symbol and has a maximum penalty of 200 penalty units. A secondary user uses a protected symbol for a major event for commercial purposes if they meet the criteria in clause 27(2). A secondary user has a slightly lower culpability than a user and as such the penalty reflects that.

The maximum penalties reflect that the unauthorised affiliation or use of protected symbols at major events causes significant loss for event organisers and the ACT and that behaviour of this kind can have a lasting negative impact.

#### **Clause 27 When protected symbol is used for a *commercial purpose*—pt 4**

This is a technical clause in which important terms are defined for division 4.1.

#### **Clause 28 Presumption etc relating to advertising or promotion etc**

This clause clarifies that there is a presumption that if a person is using the protected symbol for the primary purpose of advertising or promoting, or enhancing the demand for goods or services that suggests a sponsorship arrangement, then their behaviour will satisfy the application of the above provisions.

Using a protected symbol for the primary purpose of criticism or review or the provision of information, including reporting news and presenting current affairs is not enough to suggest the existence of a sponsorship arrangement.

The purpose of this section is to ensure that freedom of expression for criticism, review, news and reporting is not hampered by the application of this division.

### **Division 4.2 Clean zones**

#### **Clause 29 Application—div 4.2**

This clause sets out that division 4.2 applies to a major event for the protection period for the event. Protection period is defined as the period which the Minister may give notice for a major event under clause 31(1).

#### **Clause 30 Definitions—div 4.2**

This clause defines ‘advertise’ to mean any form of communication made to the public or a section of the public in relation to any goods or services, a brand of goods or services or a person who provides goods or services. Advertise includes selling or giving away goods or services. The purpose of this broad definition is to ensure that people who wish to provide free branded products within a clean zone will need written approval to do so. A person

advertises if the person pays for, commissions or authorises the advertisement or receives consideration for the placement or location of the advertisement.

This clause also defines ‘clean zone’ as the location stated in the notice made under clause 31(1) for the event.

### **Clause 31 Notice of clean zone**

This clause sets out the mechanism for the Minister to declare an area for a major event that is a clean zone for a stated period. The stated period in the notice is the protection period.

The Minister may only give notice if satisfied that the event organiser has commercial arrangements in relation to the event that are likely to be adversely affected by unauthorised advertising in or near the clean zone.

In declaring a zone to be protected for certain events, the Minister must state the period the protection is in force and publish the notice in a daily newspaper. Failure to publish the notice will not affect its validity.

The purpose of this section is to ensure that, only where appropriate and justified, major events allow specified areas to be ‘clean zones’ to protect commercial rights of sponsors. The notified zones must be adequately described to ensure that any restrictions are not arbitrary and are clearly marked and publicised.

### **Clause 32 Offences—unauthorised street trading in or adjacent to clean zone**

This clause creates two offences for a person engaging in street trading in a clean zone.

Clause 32(1) creates an offence for a person to street trade in a clean zone for a major event without written permission to do so. This offence applies to people who set up transient trading operations directly in a clean zone. The maximum penalty for this offence is 300 penalty units to reflect the potential financial harms caused by this offence.

Clause 32(2) creates an offence for a person to street trade in an area adjacent to a clean zone for a major event without written permission to do so. This offence applies to people who set up transient trading operations near to or in close proximity to a clean zone. The term ‘adjacent’ has its ordinary meaning. The maximum penalty for this offence is 200 penalty units to reflect the lowered criminal responsibility of not trading *in* a clean zone, but to ensure that there is sufficient deterrence to prevent people intentionally trading just outside the clean zone.

The clause defines ‘street trade’ to include sale or gifting of goods or services but excludes existing permanent business premises.

### **Clause 33 Offence—unauthorised advertising in clean zone**

This clause makes it an offence for a person to intentionally advertise in a clean zone for a major event without the written permission of the event organiser to do so. The maximum penalty for this offence is 300 penalty units.

Exceptions to this offence are listed at clause 35. Defences to this offence are listed at clause 36.

### **Clause 34 Offence—unauthorised advertising that is clearly visible from clean zone**

This clause makes it an offence for a person to advertise outside a clean zone in a way that is clearly visible from a place within the clean zone. This offence only applies to people who do not have the written permission of the event organiser for the event to advertise. The maximum penalty for this offence is 250 penalty units to reflect the slightly lowered criminal responsibility of not advertising in a clean zone, but to ensure that there is sufficient deterrence to prevent people intentionally trading just outside the clean zone in a way that is still visible from within the zone.

Clause 34(2) defines ‘clearly visible’ as meaning advertising that can be seen by a person in the clean zone without the person using visual apparatus other than contact lenses or glasses. This definition is designed to only capture advertising that can be seen by an ordinary person, unaided, from any place within the clean zone.

Exceptions to this offence are listed at clause 35. Defences to this offence are listed at clause 36.

### **Clause 35 Exceptions—s 33 and s34 offences**

This clause sets out a number of exceptions to the offences at clause 33 and 34.

Clause 35(a) makes it an exception if the advertising is done in accordance with honest practices in industrial or commercial matters by an existing organisation. The organisation must be carrying out ordinary business activities for this exception to apply. This exception is designed to protect businesses that already operate in a zone that is subsequently declared a ‘clean zone’.

Clause 35(b) makes it an exception if the advertising is on clothing (including shoes) or other personal items being worn, carried or used by a member of the public without the intention that the advertising intrude on the major event. The exception does not extend to event attendees who coordinate clothing with the purpose of advertising a brand, label or design that is not a sponsor of the event and does not have authorisation to ordinarily be advertised in the event. This exception is designed to protect event attendees, participants and volunteers who wear brand label clothing (including bags and shoes) to a major event.

Clause 35(c) makes it an exception if the advertising is in a newspaper, magazine, television, radio or other similar device that is being used for personal use. This exception will not apply if the device is being used with the intention for the advertising to intrude on the major event in any way.

Clause 35(d) makes it an exception if the advertising is on a train, boat or other vehicle that is being used to carry out its ordinary activities in its usual manner. The purpose of this exception is to ensure that vehicles that would ordinarily have advertising on the side are not liable if driving through a clean zone as part of their ordinary business activities. This exception does not extend so far as to cover branded vehicles that intentionally drive through clean zones to advertise their product at a major event.

Clause 35(e) makes it an exception if the advertising is the normal markings on an aircraft or if the aircraft is used in an emergency or in the provision of emergency services. This clause is intended to cover ordinary low-flying aircraft that may be required to be at the major event. This exception does not extend so far as to cover drones or similar aircraft that have advertising or markings on them that fly through or over the major event without prior written permission of the event organiser.

### **Clause 36 Defences—s 33 and s 34 offences**

This clause sets out a defence to the offences at clause 33 and 34.

In order for this defence to apply, the defendant must prove that their business includes publishing or arranging for the publication of advertisements and that they received the advertisement in the ordinary course of the business and did not know, and had no reason to believe that publishing it would be an offence against clause 33 or 34.

The purpose of this defence is to allow businesses who publish or arrange for publication of advertisements to do so in good faith if requested to do so by a third party.

## **Part 5 Protection of ticketing arrangements**

This part applies to protection of ticket sales for major events if the Minister has given notice that ticketing restrictions apply. The purpose of protection of ticketing arrangements is to discourage instances of ticket scalping.

Ticket scalping occurs when a person who is not the box office or authorised ticket seller buys a number of tickets with the intention of on-selling those tickets at a substantial gain. The policy objectives behind these provisions are to ensure that people are not making an unreasonable profit from buying and then on-selling tickets to major events and to protect the public from purchasing tickets at elevated prices.

On 26 March 2014 the Senate Economics References Committee provided a report on ticket scalping in Australia. They noted that there was an indication that ticket scalping distorts the market by creating a false demand and inflating the price of tickets of major events.<sup>25</sup>

One committee member considered that ticket scalping should be ‘outlawed’ given the extent of the harm caused by ticket scalping.

The Committee noted that ticket scalping was rare and limited to a small number of high profile events in Australia and recommended an industry-wide standard of conduct be established.

The offences under these provisions apply maximum penalties of 30 penalty units and are not punishable by imprisonment. The most likely means in which these offences would be pursued by summons. Only in very limited circumstances would there be sufficient grounds for arrest for a person engaging in ticket scalping activities.

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<sup>25</sup> Senate Economics References Committee Report: *Ticket scalping in Australia*. Published 26 March 2014. Accessed at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Ticket\\_scalping\\_2013/Report/~media/Committees/Senate/committee/economics\\_ctte/ticket\\_scalping/report/report.pdf](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Ticket_scalping_2013/Report/~media/Committees/Senate/committee/economics_ctte/ticket_scalping/report/report.pdf)

### **Clause 37 Definitions—pt 5**

This clause defines important terms for part 5.

Original sale price of a ticket is defined to include charges necessary to effect the sale or trade of the ticket; for example booking fees, delivery fees or credit card charges. The allowance for ‘necessary charges’ is intended to allow the ability for people to change their minds about an event once it has been booked and paid for. The intention of the definition is to allow no financial loss for transferring a ticket to another, while ensuring no financial gain for doing so.

Ticket is defined to include a ticket to an activity that makes up part of an event. The purpose of this definition is to make clear that any on-sale of any ticket related to a major event for a profit is discouraged.

### **Clause 38 Notice of protection of ticketing arrangements**

This clause sets out the mechanism for the Minister to declare a major event to have protected ticketing arrangements. The Minister may only give notice if the Minister:

- (a) consults with the event organiser for the major event; and
- (b) considers any submissions made by the event organiser about the need for this part to apply to the major event; and
- (c) considers the likely demand by the public for tickets to the event; and
- (d) considers the availability to the public of tickets to the event.

This clause requires the Minister to assess whether there is a need for ticketing protections to apply and requires the Minister to give notice for a major event that has been assessed as requiring such a level of protection.

When considering the availability to the public of tickets to the event the Minister may consider the ticketing arrangements proposed for the major event including how those arrangements will support the public access to tickets.

A notice is a notifiable instrument and the notice must also be published in a daily newspaper; however, a failure to publish a notice in a daily newspaper will not invalidate the notice.

### **Clause 39 Offence—ticket-scalping**

This clause creates an offence for ticket-scalping with a maximum penalty of 30 penalty units. If a person has written permission of the event organiser to sell or trade tickets to a major event for a value higher than the original sale price the offence does not apply to them.

Clause 39(2) defines ‘sell or trade’ to include a form of transaction in which the substantial purpose of the transaction is the sale or trade of the ticket for a value greater than the original sale price of the ticket.

## **Clause 40 Offence—unauthorised use of ticket for financial benefit**

This clause creates an offence for a person to use a ticket to a major event for the substantial purpose of receiving a financial benefit or giving a financial benefit to a related party with a maximum penalty of 30 penalty units. Similar to ticket-scalping offences, if a person has written permission of the event organiser to use the ticket for financial benefit no offence is committed.

The purpose of this clause is to ensure that people or businesses do not use tickets to declared events to obtain any kind of financial benefit. For example, under this clause a person could not ‘swap’ a ticket for a ‘free holiday’. Likewise, a business could not create a package where they provide goods or services at an inflated price with a ‘free’ ticket included in the price.

Clause 40(3) defines the terms ‘financial benefit’ and ‘uses’.

## **Part 6 Authorised people**

### **Division 6.1 Authorised people— appointment**

#### **Clause 41 Appointment of authorised people**

This clause provides for the appointment of a person by the director-general as an authorised person for the Act. The clause outlines that the director-general may only appoint a person who holds a security licence, can be employed under the *Security Industry Act 2003* and is capable of competently exercising the functions of an authorised person under the Act. The authorised person cannot be appointed if they have committed an offence against this Act or have been convicted or found guilty of any offence involving fraud, dishonesty, violence, drugs or weapons. In cases where the authorised person no longer meets the criteria required for appointment, the director-general may end their appointment.

The clauses relating to the appointment of authorised people will guarantee that there are adequate measures for enhanced security at major events. This will ensure that event security is managed in an efficient and effective manner, and that police are able to undertake their official duties without having to provide the extra security measures required at a major event. These provisions are modelled on those relating to the appointment of security officers in the *Court Procedures Act 2004*.

The important limitations on who may be appointed ensure that sufficient protections are in place so that any person appointed as an authorised person has the appropriate knowledge and training to undertake the security functions under the Act.

Authorised person is defined in the Dictionary as a person appointed under this clause or a police officer.

Security licence is defined in this clause as meaning a licence under the *Security Industry Act 2003* that authorises the licensee to carry out crowd control powers under that Act.

#### **Clause 42 Offence—identity cards;**

This clause provides that an authorised person appointed under clause 41 must be given an identity card, by the director-general, that states the person's name and that they are an authorised person. The identity card must show a recent photograph of the authorised person, the card's date of issue and expiry, and anything else prescribed by regulation.

Clause 42 creates an offence where person stops being an authorised person and does not return the person's identity card to the director-general as soon as practicable (but not later than 7 days) after the person stops being an authorised person. The offence does not apply if the person can prove evidentially that the person's identity card has been lost or stolen, or destroyed by someone else. This is a strict liability offence and is punishable by 1 penalty unit.

### **Clause 43 Offences — authorised person must show identity card**

Clause 43(2) provides that it is an offence for an authorised person to exercise a power under the Act in relation to a person unless they first show their identity card to that person.

Clause 43(3) provides that it is an offence for an authorised person to not show their identity card when asked to do so by a police officer or investigator.

These offences do not apply where the authorised person's identity card is prominently displayed on their body.

The maximum penalty for these strict liability offences is 10 penalty units.

The provision places important limitations on the power of an authorised person to ensure that they exercise their powers as described in the Act and not in an arbitrary manner.

## **Division 6.2 Powers of authorised people**

This division outlines the powers that are available under the Act to authorised people. These powers provide for the enhanced security measures required at a major event, supplementing those already found in MESA.

The provision of these powers will ensure that all people attending a major event can do so safely, and it will enable police officers to focus on police-only powers, thereby guaranteeing that police resources are used appropriately.

The powers in this division have been limited in order to ensure that human rights considerations are appropriately balanced with considerations of community safety.

The provisions in this division engage the right to privacy, and the right to liberty and security of the person. Given the careful and restricted manner in which authorised people can be appointed under clause 41, the limitations on these rights contained in this division are justified and proportionate to ensure the safety of those attending major events. Analysis of the restrictions of these rights is undertaken in the section on human rights considerations above.

Division 6.2 also creates offences relating to misuse of those powers.

## **Clause 44 Definition—div 6.2**

Clause 44 defines ‘premises’ for the application of division 6.2.

For the purposes of the division, premises has been defined in a restrictive manner to ensure the powers given to authorised people limit human rights in the least restrictive manner.

The definition makes a distinction between an authorised person appointed under section 41 and a police officer. For the purposes of an authorised person appointed under section 41 ‘premises’ means premises that the public is entitled to use that are in a major event venue or important sporting event venue (for the relevant declaration or notice periods of those events).

For the purposes of a police officer ‘premises’ means premises that the public is entitled to use that are in a major event venue or important sporting event venue *or* a clean zone (for the relevant declaration, protection or notice periods).

For example, an important sporting event notification states that the Canberra Stadium and the area around it (specified on a map) is the event venue from 14 November 2014 to 18 November 2014. Any shops, buildings or other premises to which the public have access within the specified area during those dates will be subject to the powers contained in Division 6.2. On 19 November 2014 the powers will no longer be available.

## **Clause 45 Power to enter premises**

Clause 45 provides powers for an authorised person to enter premises in certain circumstances, without the payment of an entry fee or other charge. For this Act, an authorised person may at any time when the premises is open for business or at any reasonable time, enter the premises with the occupiers consent (without payment of an entry fee or other charge).

This clause does not authorise entry into a part of premises that is being used only for residential purposes. However, an authorised person may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.

## **Clause 46 Production of identity card**

Clause 46 provides that an authorised person must not remain at the entered premises under this part if they do not produce their identity card when asked by the occupier. This includes a police officer exercising powers under this part, who must produce evidence that the person is a police officer.

The purpose of these clauses is to allow an authorised officer to appropriately enter premises in a declared clean zone to allow them to carry out their functions as an authorised officer.

## **Clause 47 Consent to entry**

This clause outlines the steps that an authorised person must take when seeking the consent of an occupier to enter premises under clause 45(1)(b). An authorised person must produce an identity card or evidence that the person is a police officer, and tell the occupier the

purpose of the entry, that anything found and seized under this part may be used in evidence in court, and that consent may be refused.

If the occupier consents to entry, the authorised person must ask them to sign a written acknowledgement of consent including the time and date that the consent was given. The authorised person must immediately give a copy to the occupier.

A court may find that consent was not given where an acknowledgement of consent is not produced in evidence and it is not proved that the occupier consented to the entry.

#### **Clause 48 General powers on entry to premises**

This clause outlines the general powers available to an authorised person who enters premises under this part. The authorised person may do 1 or more of a number of things in relation to the premises of anything at the premises, which are: inspect or examine, and take photographs, films, or audio, video or other recordings.

A police officer who enters the premises may take measurements or conduct tests, take samples and also require the occupier, or anyone at the premises, to give the authorised person reasonable help to exercise a power under this part. If the occupier or anyone at the premises does not take reasonable steps to comply with this requirement they have committed an offence and they are liable to a maximum penalty of 20 penalty units.

#### **Clause 49 Police officer may seize things**

This clause provides a specific power to a police officer who enters premises under this part with the occupier's consent to seize anything at the premises in certain circumstances. The nature of the exercise of the power to seize a thing is dependent on whether the occupier consented to the entry and the nature of the thing itself.

Where a police officer exercises the power to seize a thing, they may remove the thing from the premises where it was seized, or leave the thing at the place but restrict access to it. An offence is committed where a person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted and they do not have the police officer's approval to do so. This is a strict liability offence and is punishable by a maximum of 20 penalty units.

### **Division 6.3 Return and forfeiture of seized things**

This division extends certain powers already available to police officers under Division 10 of the *Crimes Act 1900* to apply specifically when a major event or an important sporting event has been declared. The provision of these powers will ensure that all people attending a major event can do so safely, and it will enable police officers to focus on police-only powers, thereby guaranteeing that police resources are used appropriately.

The provisions in this division engage the right to privacy, and the right to liberty and security of the person. Analysis of the restrictions of these rights is undertaken in the section on human rights considerations above.

#### **Clause 50 Application – div 6.3**

This clause provides that where a thing is seized by a police officer outside an event venue, division 6.3 applies.

#### **Clause 51 Receipt for seized things**

This clause provides that when a police officer seizes a thing under this part they must give a receipt for it to the person from whom it was seized as soon as practicable. If this is not practicable they can leave the receipt, secured conspicuously, at the place of seizure.

This clause also outlines the details that must be included in the receipt.

#### **Clause 52 Access to things seized**

This clause provides for the inspection of seized things in certain circumstances.

#### **Clause 53 Return of things seized**

This clause provides for the return of, or reasonable compensation for, a thing seized under this part. It also outlines exceptions in certain circumstances, such as where a prosecution for an offence against a territory law in connection with the thing is begun within 1 year after the day the seizure is made and the thing is required to be produced in evidence.

This clause does not apply to a thing if the director-general believes on reasonable grounds that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act, or if possession of it by its owner would be an offence.

#### **Clause 54 Forfeiture of things seized**

This clause outlines the circumstances in which a seized thing is forfeited to the Territory. If forfeited, the seized thing may be sold, destroyed or otherwise disposed of as the director-general directs.

#### **Clause 55 Power to destroy unsafe thing**

This clause provides that if a police officer is satisfied on reasonable grounds that anything inspected or seized under this part poses a health or safety risk to people or of damage to property or the environment, they may direct a person in charge of the premises to destroy or otherwise dispose of the thing.

If the person in charge of the premises where the thing is contravenes this direction they commit a strict liability offence which attracts a maximum penalty of 20 penalty units.

Alternatively, if the thing has already been seized under this part, the police officer may destroy or otherwise dispose of the thing, and costs incurred by the Territory in relation to the disposal are a debt owing to the Territory that can be recovered together and separately from the person who owned the thing and each person in control of the premises where the thing was.

#### **Clause 56 Application for order disallowing seizure; and Clause 57 Order for return of seized thing**

These provisions enable a person claiming to be entitled to anything seized under this part to apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure. The applicant must serve a copy of the application on the director-general, who is entitled to appear as a respondent at the application hearing.

The Magistrates Court must make an order disallowing the seizure if satisfied on a number of matters. If the Magistrates Court makes such an order, certain ancillary orders may also be made, which include an order directing the director-general to return the thing to the applicant or to someone else who appears to be entitled to it.

## **Division 6.4 Enforcement—miscellaneous**

This division ensures that the powers available to an authorised person in this part are exercised in a fair, measured and non-arbitrary manner. It also ensures that enforcement under this part has been balanced with human rights concerns to ensure that any limitations are justified and the least restrictive means available.

### **Clause 58 Damage etc to be minimised**

This clause provides that in the exercise of a function under this part, an authorised person must take all reasonable steps to ensure that they cause as little inconvenience, detriment and damage as practicable.

If anything is damaged, the authorised person must give written notice to the person they believe on reasonable grounds is the owner of the thing. This clause outlines what the notice must state, including details of potential compensation from the Territory.

### **Clause 59 Compensation for exercise of enforcement powers**

This clause provides that a person may claim compensation from the Territory in relation to loss or expense suffered because of the exercise of a function under this part by an authorised person. The methods of claim are also outlined in this provision.

## **Part 7 Miscellaneous**

### **Division 7.1 Surrendered or confiscated prohibited items**

#### **Clause 60 Definitions—div 7.1**

This is a technical clause including definitions relevant to division 7.1.

#### **Clause 61 Retention and return of certain prohibited items**

This clause sets out the way in which prohibited items can be kept, or should be returned and provides that a police officer must keep a non-returnable item or keep a prohibited item for a proceeding for an offence against this Act. In all other circumstances, the police officer must either return the item to the item holder or store and/or dispose of the item in accordance with clause 62(2).

## **Clause 62 Storage and disposal of returnable items**

Clause 62 provides that a venue organiser must ensure that a returnable item surrendered or confiscated under section 15 is stored in a secure way at the event until either the item is collected by the item holder or the collection period ends. Collection period is defined in clause 60.

Clause 62(2) states that if a returnable item has not been collected within the collection period, it is forfeited to the venue organiser and the organiser may sell, destroy or otherwise dispose of that item.

## **Division 7.2 Other matters**

### **Clause 63 Obligations of ticket sellers**

This clause states that if a ticket seller believes on reasonable grounds that the event may be declared, or if the event is already declared to be, a major event, they must take reasonable steps to tell each person buying a ticket to that event that this Act may apply to the event.

### **Clause 64 Effect of disallowance of declaration**

As it is possible that the Legislative Assembly could disallow a declaration after the event to which it relates has already occurred, it is necessary for the proposed Act to deal with the consequences of such a disallowance.

In brief, clause 64(2) "undoes" any offences against the proposed Act committed by spectators and any acts done in good faith by authorised persons (including the police), organisers or the Territory. Clause 64(2)(a) discontinues any prosecutions or investigations for offences under the Act. Clause 64(2)(b) quashes any convictions, which are deemed not to have occurred, and any fines and costs paid by to the Territory must be refunded. Clause 64(2)(c) protects from criminal or civil liability any acts done in good faith under the declaration by the Territory, the occupier or an authorised person.

### **Clause 65 Approved forms**

This clause allows the Minister to approve forms for this Act.

### **Clause 66 Regulation making power**

This clause allows the Executive to make regulations for the Act as the need arises.