

Explanatory Statement

AUSTRALIAN CAPITAL TERRITORY PUBLIC ASSEMBLIES ORDINANCE 1982 TRAFFIC (AMENDMENT) ORDINANCE 1982 No.12 of 1982 THEATRES AND PUBLIC HALLS (AMENDMENT) ORDINANCE 1982

The Public Assemblies Ordinance 1982 recognises the right to peaceful assembly in accordance with Article 21 of the United Nations International Covenant on Civil and Political Rights. There is no requirement for all public assemblies to be authorised. However, where the procedure of notification which is set out in the proposed Ordinance is followed, immunity from prosecution of offences relating to obstruction of traffic is conferred. Where the Commissioner of Police opposes a proposed public assembly he may seek an order from the Supreme Court to prohibit the holding of the assembly.

The Ordinance enables the Commissioner to approve limited participation for a public assembly where that assembly is to be held on a day of special significance, namely, Anzac Day, Canberra Day and such other days as the Minister for the Capital Territory declares to be of special significance. Persons excluded from such an assembly are, however, able to apply to the Commissioner to participate in the assembly and persons aggrieved by his decision may apply to the Court.

The Ordinance provides the police with powers of direction where persons engage in conduct which causes or provokes or is likely to cause or provoke a breach of the peace and where unauthorised persons take part in a limited participation assembly.

Details of the Ordinance are set out below:

Section 1 cites the short title of the Ordinance as the Public Assemblies Ordinance 1982.

Section 2 provides for the Ordinance to come into operation on a date to be fixed by notice by the Minister for the Capital Territory and published in the Gazette.

Section 3 sets out the objects of the Ordinance as being to recognise the right of peaceful assembly in accordance with Article 21 of the Covenant, and to ensure to the greatest extent that is practicable that persons enjoy the freedom to participate in public assemblies subject only to such restrictions as are necessary in the interests of public order and safety or to protect the rights and freedoms of other persons. The Ordinance is required to be construed in accordance with these objects.

Section 4 is an interpretation provision providing, inter alia, that a 'day of special significance' includes Anzac Day and Canberra Day.

Section 5 enables the Minister to declare a day of special significance where he is of the opinion that it is a day of national, historic, religious or social significance or solemnity to or for the people of Australia, the community in the Territory or a section of that community, which declaration must be published in the Gazette not later than 21 days before that day and must be tabled in both Houses of Parliament within 15 sitting days, whereby the declaration may be disapproved and made of no effect thereafter.

Section 6 provides that where an assembly is held substantially in accordance with the particulars specified in the relevant notification and with any terms and conditions imposed by the Commissioner and the Court, a person participating in the assembly is not by reason only of that participation, guilty of an offence against the Ordinance or any law of the Territory relating to the movement or free passage of traffic or pedestrians or the obstruction of a person or vehicle in a public place.

Section 7 provides that it is lawful for a person to participate in a public assembly which is not authorised but that this does not constitute a defence to offences committed during the course of that participation.

Section 8(1) provides that an assembly shall be taken to be authorised where a notification complies with the requirements specified in section 9, was served on the Commissioner in accordance with section 11, and

- . the Commissioner has informed the organiser in writing that he does not oppose the holding of the assembly, or
- . where not less than 7 days notice was given to the Commissioner and the Commissioner has not informed the organiser within 3 days or, in the case of a limited participation assembly, within 7 days, that he opposes the holding of the assembly, or
- . where not less than 7 days notice was given to the Commissioner and the Court has not made an order prohibiting the holding of the assembly, or
- . where less than 7 days notice was given to the Commissioner and the Court has made an order authorising the holding of the assembly and that order has not been revoked.

Section 8(2) provides that in addition a limited participation assembly shall not be taken to be authorised unless at least 14 days notice was given to the Commissioner and a copy of the notification was published in a daily newspaper circulating in the Territory on the same day as it was served on the Commissioner.

Section 9 provides that a notification shall be in writing, be signed by the organiser and must specify the name and address of the organiser; the name of the organisation (where relevant); the proposed date; the anticipated time and place of assembly and its disbandment; the proposed route; the anticipated number of participants; in the case of a public assembly which is held on a day of special significance, whether it is proposed that participation should be limited and, if so, in what manner; and the purpose of the assembly.

Section 10 provides that it is an offence to furnish false or misleading information in a notification.

Section 11 provides that a document may be served on the Commissioner personally or by leaving it at his office or any police station in the Territory with a police officer of and above the rank of Sergeant.

Section 12 requires the Commissioner to wait 4 days after he has received notice of a limited participation assembly before he informs the organiser whether or not he opposes the assembly and to consider any applications made under section 13 which he received in that time.

Section 13(1) requires the Commissioner to consider applications for approval of participation at the same time as considering the relevant notification.

Section 13(2) requires applications and approvals of participation to be signed in writing and to specify the applicant's name and address, the name of the organisation (if relevant), the names of the person(s) or a description of the classes of persons sufficient to enable those persons to be identified, the estimated number of persons, and the purpose for which those persons are seeking approval to participate in the assembly.

Section 13(3) provides that where the Commissioner does not oppose the holding of a limited participation assembly he must approve the additional participation of any person who has applied to him unless he is of the opinion that it would not be in the public interest.

Section 13(4) sets out the criteria to which the Commissioner must have regard in deciding whether participation of persons would be in the public interest. He must consider the objects of the proposed Ordinance as set out in section 3 and in particular the right of peaceful assembly. He must also consider whether the purpose those persons have in seeking to participate is consistent with the purpose for which the assembly is to be held and whether there is any likelihood that if those persons participated serious public disorder or damage to property would result, the safety of any person would be placed in jeopardy, or the assembly would cause an unreasonable obstruction.

Section 13(5) requires the Commissioner to inform the organiser and the applicant(s) of his decision as to whether those persons applying to participate have been approved.

Section 14 enables an organiser or a person aggrieved by the Commissioner's decision under section 13 to apply to the Supreme Court for a review of the decision. The Court is able to make such orders as it considers just.

Section 15 enables the Commissioner to impose terms and conditions subject to which he does not oppose the holding of the assembly although he may not specify terms and conditions which would substantially alter the nature of the assembly. His decision may be reviewed by the Court which may also specify different terms and conditions.

Section 16 requires the Commissioner before he opposes the assembly to consider the objects of the Ordinance and whether it is likely that any serious public disorder or damage to property would result, the safety of any person would be put in jeopardy, or the assembly would cause an unreasonable obstruction.

Section 17 enables the Commissioner to withdraw his objection to an assembly and requires him to inform the organiser in writing of his withdrawal.

Section 18 enables the Commissioner to apply to the Court for an order prohibiting the assembly where he has been given not less than 7 days notice. However, he must first inform the organiser that he opposes the assembly, specify his reasons, and invite the organiser to a conference with him or a nominated police officer or to make written representations. Only after he or the police officer has made himself available at the conference and has taken any matters raised by the organiser into account, may he approach the Court. The Court may make an order prohibiting the assembly or specifying terms and conditions for the holding of the assembly.

Section 19 provides that where less than 7 days notice of an assembly is given to the Commissioner and the Commissioner has indicated that he opposes or has not indicated that he does not oppose the assembly, the organiser may apply to the Court for an order authorising its being held. The Court may attach terms and conditions to such an order.

Section 20 enables the Commissioner to apply to the Court for an order revoking an order made under section 19 where he has received further information which makes him of the opinion that it would not be in the public interest for the assembly to be held. The Court may make the order or may specify terms and conditions for the holding of the assembly.

Section 21 requires the Court in determining an application under section 18, 19 or 20 to consider whether it would be in the public interest for the assembly to be held. In considering this the Court must have regard to the objects of the Ordinance, and whether it is likely that serious public disorder or damage to property could result, the safety of any person would be placed in jeopardy or the assembly would cause an unreasonable obstruction.

Section 22 gives jurisdiction to the Supreme Court to hear and determine applications under the Ordinance.

Section 23 specifies in respect of which applications to the Court the Commissioner is a respondent, in respect of which an organiser is a respondent, and in respect of which an applicant is a respondent.

Section 24 makes it an offence for a person to engage in conduct in or near a public assembly which causes or provokes or is intended to cause or provoke a breach of the peace by any person. Where a police officer of or above the rank of Sergeant has reasonable grounds for believing that a person's conduct is likely to cause or provoke a breach of the peace he may direct that person to leave the vicinity of the assembly. It is an offence to contravene such a direction.

Section 25 enables a police officer of or above the rank of Sergeant to direct a person who is not entitled to participate in a limited participation assembly to refrain from participating and to contravene such a direction is an offence.

Section 26 enables the Commissioner to delegate his powers to a police officer of or above the rank of Sergeant.

Section 27 enables the Minister to make regulations.

The Schedule to the proposed Ordinance sets out the text of Article 21 of the International Covenant on Civil and Political Rights.

The Traffic (Amendment) Ordinance 1982 repeals sections 23 and 23A of the Principal Ordinance. Those provisions deal with public assemblies and are inconsistent with the Public Assemblies Ordinance 1982.

The Theatres and Public Halls (Amendment) Ordinance 1982 adds section 26(3) to the Principal Ordinance. Section 26(3) provides that section 26 of the existing Ordinance does not apply to an authorised public assembly within the meaning of the Public Assemblies Ordinance 1982.

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