

2014

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

MAJOR EVENTS BILL 2014

SUPPLEMENTARY EXPLANATORY STATEMENT

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Major Events Bill 2014

Outline of Government Amendments

On 14 August 2014 the Major Events Bill 2014 (the Bill) was introduced to the Legislative Assembly. The Bill creates a comprehensive major events scheme that provides a clear and predictable regime for dealing with major events in a safe and efficient manner.

These amendments respond to comment on the Bill made by the Standing Committee on Justice and Community Safety (Scrutiny Committee) or are technical amendments.

The explanatory statement accompanying the Bill provides a detailed account of the provisions contained in the Bill and can be accessed at:

http://www.legislation.act.gov.au/es/db_50276/default.asp

Government amendments to the Bill (the Government Amendments) are required to address issues that have arisen following the introduction of the Bill on 14 August 2014. These issues are:

1. providing for a higher threshold for declaring or notifying events to ensure greater clarity when applying, declaring and allowing major events legislation to apply;
2. further protecting event attendees from potential misuse of crowd management powers, by ensuring:
 - a. that searches are conducted by someone of the same gender where possible; consistent with similar powers contained in the *Crimes Act 1900*;
 - b. a person who is about to enter a major event or major sporting event and who does not wish to provide a name or home address will have a choice to comply with the request or leave the event venue; and
 - c. clarity around directions to leave an event venue, including prescribing certain information that must be provided by authorised people to a person who is subject to a direction to leave;
3. requiring consideration of the level of risk in making an order banning a person from an event; and
4. repealing the *Major Events Security Act 2000* (MESA). While it was foreshadowed that the Bill would repeal the MESA, this technical clause was omitted from the Bill. This is a technical error as no provisions remain in MESA that will not be addressed in the Bill.

Human Rights

As outlined in the explanatory statement to the Bill, the Bill engages and limits a number of rights under the *Human Rights Act 2004* (the HRA). The Government Amendments restrict limitations placed 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); and
- the right to liberty and security of person (s 18).

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Detail

Government amendment 1 – Clause 6(2), page 4, line 8

Government amendment 3 – Clause 8(2), page 6, line 6

These amendments provide further grounds on which the Executive must be satisfied in order to declare or vary a declaration for any major event.

Ensuring that the Executive must be satisfied *on reasonable grounds* that the declaration is *necessary or appropriate* will ensure that event declarations are only granted where appropriate and reasonable.

This amendment ensures the following rights protected by the HRA are only limited to the least degree necessary to ensure an event is safe and ordered:

- 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); and
- the right to liberty and security of person (s 18).

As outlined in the explanatory statement to the Bill, 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.

These amendments will provide even further support for human rights by ensuring that any limitation on the rights outlined above, as a result of an event being declared to be a ‘major event’ or ‘important sporting event’, will be necessary, appropriate and reasonable. The explanatory statement to the Bill outlines the ways in which these rights might be engaged and limited by a declaration.

Government amendment 2 – Clause 7(2), page 5, line 24

This amendment provides that in order to state that for a major event a specified item is a prohibited item the Executive must consider that the item may be used to interfere with the event or be a risk to public safety. The Executive must also consider such prohibition to be reasonable in the circumstances.

The amendment restricts any limitation on the right to privacy (s 12, HRA) as it ensures very particular grounds for prohibiting specific items for major events under the Bill.

Government amendment 4 – Clause 8(3) and note, page 6, line 18

This amendment provides that any variations made to a major event declaration must be in the form of a disallowable instrument. This will ensure that any variations that are made by the Minister are duly considered by parliament.

A disallowable instrument must be presented to the Legislative Assembly which can disallow or amend the instrument. This will provide for a higher level of scrutiny by the Assembly of any variations to declarations under this legislation.

Government amendment 5 – Clause 9(2), page 7, line 10

This amendment specifies further grounds on which the Executive must be satisfied in order to give notice of an important sporting event.

Ensuring that the Executive must be satisfied *on reasonable grounds* that the notice is *necessary or appropriate* will ensure that event notices are only made where appropriate and reasonable.

This amendment ensures the following rights protected by the HRA are only limited to the least degree necessary to ensure an event is safe and ordered:

- 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); and
- the right to liberty and security of person (s 18).

As outlined in the explanatory statement to the Bill, the process of declaring a special event or making an important sporting event notice, as provided by the Bill, including the matters to be included in a declaration/notice and the public notices requirements mean that people attending the event will be on notice about the conditions of entry to a declared event in relation to search powers and the prohibition of certain items.

This Government Amendment will provide even further support for human rights by ensuring that any limitation on the rights outlined above, as a result of an event being notified as an ‘important sporting event’, will be necessary, appropriate and reasonable. The explanatory statement to the Bill outlines the ways in which these rights might be engaged and limited by a notice.

Government amendment 6 – Clause 9(4) and note, page 7, line 19

This amendment provides that any important sporting event notice must be in the form of a disallowable instrument. This will ensure that any notice made by the Minister is duly considered by parliament.

A disallowable instrument must be presented to the Legislative Assembly which can disallow or amend the instrument. This will provide for a higher level of scrutiny by the Assembly of any notices made under this legislation.

Government amendment 7 – Clause 10(2), page 8, line 11

This amendment provides that in order to state that for an important sporting event a specified item is a prohibited item the Executive must consider that the item may be used to interfere with the event or be a risk to public safety. The Executive must also consider such prohibition to be reasonable in the circumstances.

The amendment restricts any limitation on the right to privacy (s 12, HRA) as it ensures very particular grounds for prohibiting specific items for important sporting events under the Bill.

Government amendment 8 – Clause 12(1), definition of *prohibited item*, paragraph (a)(xii), page 10, line 7

This is a minor technical amendment to ensure the wording describing this prohibited item is clear.

Government amendment 9 – Clause 12(1), definition of *prohibited item*, paragraph (a)(xvi), page 10, line 14

Government amendment 10 – Clause 12(1), definition of *prohibited item*, paragraph (a)(xvii), page 10, line 16

These amendments provide that certain prohibited items are only prohibited if they could be used to interfere with an event or present a risk to safety. The amendments apply to prohibited items at section 12(1)(a)(xvi) and(xvii) of the Bill: a glass item and a metal can.

The amendments will restrict any limitation on the right to privacy (s 12, HRA) by ensuring that these two types of items will only be prohibited where such prohibition is necessary for risk management. The original provision in the Bill, prohibiting certain items, supports the right to liberty and security of person (s 18, HRA) for those attending a major event or important sporting event as their safety will be protected by the removal of items that are likely to be present a risk to safety.

Government amendment 11 – Clause 12(1), definition of *prohibited item*, paragraph (b), page 11, line 5

This amendment amends the definition of ‘prohibited item’ at clause 12 so that it is consistent with government amendments 2 and 7, which require the Executive to be satisfied that the item may be used to interfere with the major event or major sporting event or may be a risk to public safety.

Government amendment 12 – Clause 14(1)(c), page 13, line 6

This amendment provides that it is an offence to cause unreasonable disruption or unreasonable interference to another person at a major event, important sporting event or an activity associated with the event.

The offence may apply, for example, where a person intentionally blocks another’s view or gestures in a way that is likely to agitate others.

The amendment ensures that any limitation on the right to freedom of expression (s 16, HRA) is restricted to situations where a person’s actions are unreasonable and cause disruption or interference to another person at the event. This is an important offence as such disruption or interference may quickly lead to an unsafe situation for event attendees.

Government amendment 13 – Clause 16(1), proposed new example, page 15, line 7

Government amendment 14 – Clause 17(1), proposed new example, page 15, line 20

Government amendment 15 – Clause 18(1), proposed new example, page 16, line 15

Government amendment 18 – Clause 19(1), proposed new examples, page 17, line 11

These amendments provide examples in relation to clauses 16-19 of the Bill. Clauses 16-19 provide that an authorised person or police officer may ask a person to search (or in the case of a police officer require a search) in certain circumstances including where a person is ‘about to enter’ an event venue.

The amendments provide examples for the term ‘about to enter’ for the purposes of these clauses to indicate that a person would be about to enter a venue if they are standing in a queue, or at the entrance to a venue.

This amendment provides clarity around this term for authorised people, police officers and people attending a major event so that it is clear when certain searches can be requested or performed.

Government amendment 16 – Proposed new clause 18A, page 17, line 7

This amendment provides that a police officer may conduct a scanning search, ordinary search or frisk search under sections 17 or 18 only if the officer is the same sex as the person being searched or, where that is not practicable, another person of the same sex, or a sex nominated by the person to be searched is present while the search is conducted.

This amendment restricts limitation on the right to privacy (s 12, HRA) as it ensures that a person’s privacy is protected as much as possible in the course of searching them by providing that at minimum a person of the same gender as the person being searched be present at the time of searching.

The amendment also provides that after conducting a frisk search a police officer must make a written record of the search and must include certain details in the record. This amendment provides a safeguard for limitation on the right to privacy (s 12, HRA) as a police officer must provide a written record of the details of the search, including the date, time and place of the search.

The amendment also provides that a police officer conducting a search under section 18 must not detain a person for longer than is reasonably necessary to conduct a search of the person. This amendment restricts limitation on the right to liberty and security of person (s 13, HRA) as the length of time a person can be detained in these circumstances is limited.

This amendment provides if a person wishes to be searched in a less public place and it is practicable to do so, a police officer searching the person must take the person to a less public place to conduct the search.

This amendment restricts limitation on the right to privacy (s 12, HRA) as it provides the opportunity to protect a person’s privacy as much as possible in the course of searching them by allowing the search to be conducted in a more private space.

Government amendment 17 – Clause 19(1), page 17, line 10

Government amendment 19 – Clause 19(2), page 17, line 12

These amendments provide that a police officer may request that a person entering (or about to enter) an event venue state the person’s name and home address.

The amendments provide that a person may refuse to comply with the request to provide a name and home address if they do not intend to, or wish to, enter the event venue.

The amendments supports a person’s right to privacy (s 12, HRA) as they have a choice about whether to provide personal details to police officers.

Government amendment 20 – Clause 21(1)(a), page 18, line 3

Government amendment 22 – proposed new clause 21(1A), page 18, line 20

These amendments provide that an authorised person or police officer giving a direction to person to leave or not enter an event venue for a period of 24 hours may only give such a direction where the authorised person has already asked the person to leave the event venue and not re-enter the venue for a period of 24 hours *and* the person has refused to leave, has entered or attempted to enter the venue.

The amendments also provide that any direction to leave must specify that it applies for a period of 24 hours and may be given either orally or in writing.

This amendment provides greater clarity to both authorised officers and event attendees around powers to give and enforce directions to leave. It also ensures that the right to freedom of movement (s 13, HRA) is only limited in the least restrictive way necessary for the safety, security and enjoyment of major events.

Government amendment 21 – Clause 21(1)(b), example heading, page 18, line 13

This amendment is a technical amendment, consequential to government amendment 20.

Government amendment 23- Clause 22(2)(b), page 19, line 11

This amendment is a minor correction as the clause should refer to ‘direction’ rather than ‘notice’.

Government amendment 24 – Clause 23(4)(a), page 20, line 20

This amendment provides that where an order is sought banning a person from a major or important sporting event the court must consider that there is a *significant* risk that an offender may disrupt a major event before such an order is made.

The amendment will introduce an objective standard for measuring risk and therefore the necessity of a ban order and will ensure appropriate scope and guidance for the judiciary when making such an order. The amendment restricts any limitation placed on the right to freedom of movement (s 13, HRA) which may arise as a result of an order banning a person from attending a major or important sporting event.

Government amendment 25 – Clause 25(2), page 25, line 4

Government amendment 26 – Clause 31(2), page 30, line 4

Government amendment 27 – proposed new clause 38(2)(e), page 34, line 26

These amendments provide further grounds on which the Executive must be satisfied in order to:

- (a) give notice that a symbol for an event is a protected symbol;
- (b) give notice that an area is a ‘clean zone’; and
- (c) give notice of protection of ticketing arrangements.

Ensuring that the Executive must be satisfied *on reasonable grounds* that such notice is *necessary or appropriate* will ensure that these notices are only granted where appropriate and reasonable.

This amendment ensures the following rights protected by the HRA are only limited to the least degree necessary to ensure fairness to event sponsors and organisers:

- the right to freedom of movement (s 13);

- the right to peaceful assembly (s 15); and
- the right to freedom of expression (s 16).

As outlined in the explanatory statement to the Bill, a notice under clause 25, 31 or 38 must be published so that members of the public will be on notice about any restrictions on use of symbols, commercial activity in ‘clean zones’ and ticketing arrangements.

These amendments will provide even further support for human rights by ensuring that any limitation on the rights outlined above, as a result of an event notice being made, will be necessary, appropriate and reasonable. The explanatory statement to the Bill outlines the ways in which these rights might be engaged and limited by a notice.

Government amendment 28 – Clause 59, page 50, line 23

Government amendment 29 – Proposed new section 63A, page 54, line 23

These amendments provide that compensation may be sought for loss or expense suffered because of powers exercised by an authorised person under section 16 (offence – authorised person may search personal property) of the Bill. This ensures that where inappropriate searches result in damage to property during the course of a search a person may be duly compensated for such loss, where it is just for such compensation to be ordered.

Government amendment 30 – Clause 64 heading, page 55, line 1

This amendment is a technical amendment consequential to government amendments 4 and 6.

Government amendment 31 – Clause 64(1), page 55, line 2

This amendment is a technical amendment consequential to government amendments 4 and 6.

Government amendment 32 – Clause 64(2)(a), page 55, line 7

Government amendment 33 – Clause 64(2)(b), page 55, line 12

Government amendment 34 – Clause 64(2)(c)(i), page 55, line 21

Government amendment 35 – Clause 64(2)(c)(i), page 55, line 22

Government amendment 36 – Clause 64(2)(c)(ii), page 55, line 24

Government amendment 37 – Clause 64(2)(c)(ii), page 55, line 25

Government amendments 32-37 are minor amendments to ensure clause 64 applies to both major events and important sporting events.

Government amendment 38 – proposed new section 67, page 56, line 11

This amendment repeals the *Major Events Security Act 2000* as the Bill will replace the Act in its entirety.

Government amendment 39 – Dictionary, definition of *important sporting event venue*, page 58, line 14

This is a technical amendment to omit erroneous text.