



DEPARTMENT OF	
PAPER NO.	790
DATE	
PRESENTED	21 APR 1982
<i>Abdullahi</i>	
Clerk of the Senate	

THE SENATE

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

SEVENTY-SECOND REPORT

A.C.T. PUBLIC ASSEMBLIES ORDINANCE 1982

APRIL 1982



AUSTRALIAN SENATE

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SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

MEMBERS OF THE COMMITTEE

Senator A.W.R. Lewis (Chairman)
Senator M.C. Tate (Deputy Chairman)
Senator N.T. Bonner
Senator J. Coates
Senator D.J. Foreman
Senator A.J. Missen
Senator M.S. Walters

PRINCIPLES OF THE COMMITTEE

(Adopted 1932; Amended 1979)

The Committee scrutinises delegated legislation to ensure:

- (a) that it is in accordance with the statute;
- (b) that it does not trespass unduly on personal rights and liberties;
- (c) that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- (d) that it does not contain matter more appropriate for Parliamentary enactment.

SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

SEVENTY-SECOND REPORT

1. The Committee has the honour to present its Seventy-second Report to the Senate. The purpose of this Report is to advise the Senate of the Committee's consideration of the Public Assemblies Ordinance, contained in A.C.T. Ordinance No. 10 of 1982 and made under the Seat of Government (Administration) Act 1910.

BACKGROUND

2. Honourable Senators may recall that, on 14 May 1981, the Committee made a statement to the Senate indicating:
 - (a) that it had received certain undertakings from the Minister for the Capital Territory in relation to the Traffic (Amendment) Ordinance 1981;
 - (b) that advice had been sought concerning the consequences for accused persons of the disallowance of an Ordinance in force at the time prosecutions are lodged; and
 - (c) that the Committee had consulted with both the A.C.T. House of Assembly and the Joint Committee on the

Australian Capital Territory on whether the matters contained in the Traffic (Amendment) Ordinance 1981 should more appropriately be contained in legislation made by the Parliament, rather than in delegated legislation.

3. The Committee now discusses each of these in detail.

(a) Undertakings by Minister

4. Following its examination of the Traffic (Amendment) Ordinance, and extensive correspondence with the Minister, the Committee received from the Minister the following undertakings:

- (i) that it was the Minister's intention to give instructions for the preparation of a general Ordinance, in effect setting out a Code covering the law relating to parades, processions and assemblies, generally, in the Australian Capital Territory, to be done as expeditiously as possible;
- (ii) that the proposed Ordinance would be referred to the A.C.T. House of Assembly;
- (iii) that the proposed Ordinance would also be referred to the Standing Committee on Regulations and Ordinances; and

- (iv) that the general Ordinance would be made prior to Anzac Day 1982.

In the light of these undertakings and on the clear understanding that the Traffic (Amendment) Ordinance 1981 would not operate in 1982, the Committee decided to take no further action in relation to the Ordinance.

(b) Effect of Disallowance on Prosecutions

5. The Committee received advice that disallowance would not, in law, have the effect of halting prosecutions of accused persons under an Ordinance in force at the time prosecutions are lodged. The Committee sought confirmation of its understanding of the law from the Attorney-General. In a detailed response dated 1 June 1981 (attached as Appendix A to this Report), the Attorney-General confirmed the advice previously received.

(c) Consultations with the Joint Committee on the Australian Capital Territory and the A.C.T. House of Assembly

6. The Joint Committee on the Australian Capital Territory advised that the Committee did not consider that the Traffic (Amendment) Ordinance 1981 warranted an Act of Parliament, but made the point that the Ordinance should be considered by locally elected representatives.

7. The House of Assembly, however, suggested as a general comment that "many ministerial decisions taken under the authority of Parliament by means of subordinate legislation are of such substance that Parliament cannot ignore the consequences of its delegation" and recommended three steps:

"(1) ... significant matters of policy should be subjects of parliamentary enactment.

"(2) Such matters should be the subject of scrutiny by committees of Parliament before they are embodied in any subordinate legislation.

"(3) All proposed legislation changes should be referred to the A.C.T. House of Assembly for its advice before they are made."

8. In this connection, the Committee also took note of the Report of the Senate Standing Committee on Constitutional and Legal Affairs on the Evidence (Australian Capital Territory) Bill 1972, which recommended, inter alia, that:

"(d) Legislation which, in Australian States, would usually be made by Act of a State Parliament, should normally be made by Ordinance.

"(f) Legislation of a particular territory which is socially innovative or affects fundamental rights or liberties ... should be made by Ordinance.

"The Committee recommends to the Senate that if the Committee on Regulations and Ordinances reports that an Ordinance is of this nature, then such Ordinance should be made the subject of a substantive debate in the Senate ...".

One of the purposes of presenting this Report is to enable debate to take place, in accordance with the recommendation of the Constitutional and Legal Affairs Committee, on a motion to take note of the Report.

9. The Committee is at present examining the implications of this recommendation, and has received advice from the former Deputy-Chairman, the Honourable J.L. Cavanagh, and the Committee's Legal Adviser in relation to it. At present it awaits receipt of the Attorney-General's views on this matter.
10. For the purpose of ensuring that the Minister's undertaking to make a general Ordinance in relation to public assemblies could be carried out, the Committee agreed that, in this case, legislation in the form of an Ordinance was the most appropriate way of proceeding.

PUBLIC ASSEMBLIES ORDINANCE

11. Following the Minister's undertakings, which were accepted by the Committee, the Committee wrote to the Minister on 27 August 1981 requesting advice of progress made in the preparation of the proposed Public Assemblies Ordinance. In a further letter of 24 September 1981, the Committee sought an assurance from the Minister that the proposed Ordinance would be made available to the Committee before the Parliament rose for the summer recess. On 14 October 1981, the Minister advised that "a substantial amount of work" had already been carried out within his Department on the proposed Ordinance. He also indicated that he had agreed in principle to the drafting of an Ordinance which essentially adopted the New South Wales codification system. During the following week he made available to the Committee a working paper prepared by the Department, and on 29 October 1981, officers of the Department appeared before the Committee to discuss the elements of the proposed Ordinance, as outlined in the working paper. The Committee found these discussions most fruitful, and also sought and received from the officers an undertaking that a paper would be prepared by the Department of the Capital Territory, in conjunction with the Attorney-General's Department, concerning the status of the proposed Ordinance, particularly vis-a-vis relevant Commonwealth enactments, in the light of the Minister's original undertaking to introduce the Code. (A copy of the advice

received is at Appendix B). The Committee also indicated its willingness to meet during recess, to consider the proposed Ordinance when drafted. However, the draft Ordinance was not available to the Committee before Parliament resumed on 16 February 1982. The Committee therefore did not have the opportunity to consider the draft until 18 February 1982.

12. Over the next few weeks the Committee considered five successive drafts of the proposed Ordinance, each draft including substantial amendments made following discussions with the Committee. The third draft was also made available to the A.C.T. House of Assembly, together with drafting instructions, sent by the Department of the Capital Territory to the Attorney-General's Department, following discussions with the Regulations and Ordinances Committee on 25 February 1982.
13. The House of Assembly resolved to establish a Select Committee on Public Assemblies to examine the draft Ordinance. That Committee considered the draft and proposed amendments, and reported to the House of Assembly on 23 March 1982. A copy of the Report is tabled with this Report. Both Committees met to discuss the draft Ordinance on 16 March 1982. (A summary of the discussions is attached at Appendix C.)
14. On 24 March 1982, a draft was made available to the Regulations and Ordinances Committee, incorporating all outstanding amendments on which the Committee had expressed strong views. The Committee considered the draft at

its meeting of 25 March. That draft represents the legislation which was presented to the Governor-General on 25 March and gazetted by the Minister on Friday, 26 March 1982.

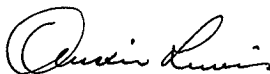
15. The general purpose of the Ordinance is summarised in the Explanatory Statement accompanying the Ordinance. The Ordinance and the Explanatory Statement are at Appendix D.
16. It is to be noted that the Traffic (Amendment) Ordinance 1981, which gave rise to the undertakings made by the Minister, has been separately repealed by the Traffic (Amendment) Ordinance 1982, contained in A.C.T. Ordinance No. 12 of 1982.

CONCLUSION

17. The procedures which have been followed in the consideration of the draft Public Assemblies Ordinance represent a unique participation by the Committee in the making of an Ordinance of notable social significance. In both its Seventieth and Seventy-first Reports, the Committee indicated to the Senate that it was still considering the desirability or otherwise of examining legislation in draft. This question still remains unresolved. The Committee's recent experience in relation to this Ordinance should not be regarded as a precedent for the Committee's future activities. In this case, the Committee's early

involvement in the consideration of far-reaching proposed legislation derived from a specific undertaking given by a Minister, to meet a particular set of circumstances.

18. The Committee has conveyed to the Minister for the Capital Territory, and his officers, its appreciation of the co-operation received in the course of these unusual deliberations.
19. The Committee has determined that the Ordinance does not offend against the principles under which it operates, and will take no action in relation to it.



(AUSTIN LEWIS)
Chairman

April 1982



ATTORNEY-GENERAL
 PARLIAMENT HOUSE
 CANBERRA A.C.T. 2600

1 JUN 1981

Dear Senator,

I refer again to your letter of 15 May 1981 concerning the Traffic (Amendment) Ordinance 1981 of the Australian Capital Territory. In that letter you said that your Committee had sought advice on the consequences for accused persons of the disallowance of an Ordinance in force at the time prosecutions are launched. The advice received by your Committee was that disallowance would not, in law, have the effect of halting such prosecutions. The Committee has asked for my opinion on this matter.

I would confirm the advice which your Committee has been given. The effect of a motion of disallowance of an Ordinance is dealt with in sub-section 12(6) of the Seat of Government (Administration) Act 1910. That sub-section provides, so far as relevant to the present purpose -

"Where an Ordinance or a part of an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance has the same effect as a repeal of the Ordinance or the part of the Ordinance, as the case may be".

The effect of the repeal of an Ordinance is dealt with by sections 37 and 38 of the Interpretation Ordinance 1967 of the Australian Capital Territory. Section 38 is as follows -

- "38. Where an Ordinance repeals an Ordinance or part of an Ordinance, then, unless the contrary intention appears, the repeal does not -
- (a) revive anything not in force or existing at the time at which the repeal takes effect;
 - (b) affect the previous operation of the Ordinance or the part of the Ordinance so repealed, or anything duly done or suffered under the Ordinance or the part of the Ordinance so repealed;

- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under the Ordinance or the part of the Ordinance so repealed, or an investigation, legal proceeding or remedy in respect of that right, privilege, obligation or liability; or
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the Ordinance or the part of the Ordinance so repealed, or an investigation, legal proceeding or remedy in respect of that penalty, forfeiture or punishment,

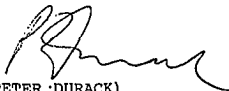
and the investigation, legal proceeding, or remedy may be instituted, continued or enforced, and a penalty, forfeiture or punishment may be imposed, as if the repealing Ordinance had not been made."

Paragraph 38(c) provides that the repeal of an Ordinance does not affect any liability incurred under the Ordinance or any investigation or legal proceeding in respect of that liability. Paragraph 38(d) provides that the repeal of an Ordinance does not affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the Ordinance. The effect of these provisions is that, where an offence has been committed under a provision of an Ordinance, the repeal of that Ordinance, or of that provision, does not affect any prosecution for that offence. Consequently, as a matter of law, a prosecution may proceed notwithstanding that the statutory provisions establishing the offence in respect of which the prosecution is brought have been repealed.

In R. v. Scarlett; ex parte McMillan (1972) 30 F.L.R. 349, Fox J., in the A.C.T. Supreme Court, held that, notwithstanding the repeal of the relevant provisions of the Motor Traffic Ordinance 1936 after an alleged offence had been committed, the prosecution might proceed.

Thus, since sub-section 12(6) of the Seat of Government (Administration) Act provides that the disallowance of an Ordinance has the same effect as a repeal of the Ordinance, the disallowance of the Traffic (Amendment) Ordinance 1981 would not have made any difference in law to the prosecution of those charged with offences under that Ordinance.

Yours sincerely,



(PETER DURACK)

Senator A.W.R. Lewis,
Chairman,
Standing Committee on Regulations and Ordinances,
Parliament House,
CANBERRA. A.C.T. 2600



ATTORNEY-GENERAL'S DEPARTMENT

TEL. 619111

CANBERRA, A.C.T. 2600

PLEASE QUOTE E/81/6801

YOUR REF:

18 March 1982

The Secretary,
Department of the Capital Territory,
CANBERRA CITY. A.C.T. 2601

Proposed Public Assemblies Ordinance

I understand that at their meeting on 29 October 1981 with Mr A.R. Hesley and Mr A. Lansley of your Department, members of the Senate Standing Committee on Regulations and Ordinances raised the question whether the proposed Ordinance could co-exist with existing Commonwealth laws. In your memorandum 81/1592 dated 10 November you sought advice on the question whether the proposed Ordinance would co-exist with the Public Order (Protection of Persons and Property) Act 1971, (which appears to be the only relevant Commonwealth legislation).

Omitting formal parts, the Advising Division of this Department has furnished the following advice -

"In my view the proposed Ordinance would not be repugnant to the Act.

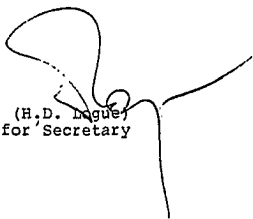
"Sub-section 25(4) of the Act provides that the Act is not intended to exclude the operation of a law of a Territory, among others, to the extent that that law is capable of operating concurrently with the express provisions of the Act. It is clear that, without specific authority, a Territory Ordinance cannot override an Act (Federal Capital Commission v. Laristan Building and Investment Co. Pty Ltd (1929) 42 C.L.R. 582 at 588). The proposed Ordinance does not purport to do this. It provides for a scheme under which approval may be granted for the holding of public assemblies. A person participating in an authorized assembly is not thereby to be guilty of offences against Territory laws of certain kinds - clause 15. That clause does not purport to exclude the operation of the Act, nor, I understand, is it intended to do so. I think that the proposed Ordinance is capable of operating concurrently with the Act as provided in sub-section 25(4)."

You subsequently sought advice on an article published in the Canberra Times on 14 March 1982, in which the author asserted that the immunity provision in the Ordinance would

not prevent a person being prosecuted for an offence against the Public Order Act, in particular the offence of unreasonable obstruction.

As mentioned above, it is clear that, without specific authority, a Territory Ordinance cannot override an Act. That part of the Canberra Times article is, therefore, correct. The offence of "unreasonable obstruction" as defined in s.3 of the Public Order Act is clearly meant to be cover conduct more aggravated than "mere" obstruction. At the same time, the proposed Ordinance provides that an authorised public assembly is, shortly, an assembly the holding of which has been authorised either by the Commissioner of Police or the Supreme Court of the A.C.T.. In my view, this factor would be paramount in a court's consideration whether an assembly was "unreasonable".

I am therefore of the view that where an authorised public assembly is held substantially in accordance with the particulars specified in the notification (as varied by relevant terms and conditions) participants would not be liable to be prosecuted for causing unreasonable obstruction.



(H.D. Legge)
for Secretary

APPENDIX C

SUMMARY OF DISCUSSIONS BETWEEN SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES AND A.C.T. HOUSE OF ASSEMBLY SELECT COMMITTEE ON PUBLIC ASSEMBLIES

The Deputy-Chairman (Senator Tate) welcomed the A.C.T. House of Assembly Select Committee on Public Assemblies - the Chairman (Mr Marc Robinson) and members (Ms Maureen Horder and Mr Gordon Walsh), accompanied by the Secretary, Mr Paul Rummery - to an informal meeting. He indicated that, whilst the Regulations and Ordinances Committee had played a part in refining the draft proposals, the draft Ordinance was not the Committee's document. He then invited the Select Committee to express its concerns to the Committee.

Mr Robinson indicated that the Select Committee had not resolved its "in-principle" attitude towards limited participation assemblies. Assuming that the concept is accepted, the Committee's tentative view was that all potential "special days" should be treated on the same basis as "days of special significance", i.e. that there should be no prescribed/declared days, so that all groups could have the right to seek a limited participation assembly. The Deputy-Chairman pointed out that the qualification on unlimited right of assembly provided by the concept of limited participation was intended to be minimised by the "days of special significance" provision, so as to accord more closely with the International Covenant on Civil and Political Rights.

Discussion of Clauses

Clause 3: Ms Horder pointed out that the specification of "days of special significance" did not, as drafted, cover the events they were intended to cover. For example, the Canberra Day March, just held, occurred on Saturday, rather than on "the third Monday in March in any year (Canberra Day)".

Clause 8: Mr Robinson suggested that the period of 4 days provided under paragraph (a) gave insufficient

time for receipt and consideration of applications to join a limited participation assembly. A period of 7 days was suggested in lieu.

Clause 9: Mr Robinson also put to the Committee that an organiser of a limited participation assembly could so define the purpose of an assembly under clause 6(c)(viii) that the Commissioner considering an application to join a limited participation assembly, and subsequently the court, could be constrained by the purposes defined by the organiser. The Committee pointed out, however, that, under paragraph 9(4)(a), the Commissioner "shall have regard to - whether the purpose for which the person or persons for whose participation in the assembly approval is sought wishes or wish to participate in the assembly is consistent with the purpose for which the assembly is to be held". An identity of purpose was not required.

Mr Robinson also suggested that the words in clauses 9(4)(b)(ii), 12(2)(a)(ii) and 17(2)(a)(ii) - that the Commissioner (and the court) shall have regard to any likelihood that "the safety of any person would be placed in jeopardy" - might place undue weight on this, and other considerations mentioned in the sub-clauses, when the Commissioner (and the court) were making a decision. The Select Committee agreed with the new context indicated by the drafting instructions, but feared that, even under the proposed new provisions, irrational responses might be given too much weight.

Clause 12: Mr Walsh pointed out that the Commissioner is not required to consult with any persons before forming an opinion under sub-section 12(1) that it would not be in the public interest for an assembly to be held.

Clause 15: The Select Committee expressed concern at the potential cost of the proceedings, on the ground that appeal to a court could disadvantage community groups. The question whether a provision, similar to that contained in South Australian legislation, allowing the court to hear an appeal "without formality" was also raised.

Mr Robinson indicated the Select Committee's support for proposed amendments, suggested by the Regulations and Ordinances Committee, which were incorporated in drafting instructions by the Department of the Capital Territory and made available to both Committees by the Department.

Senator Tate indicated that the Regulations and Ordinances Committee would value any submission by the A.C.T. House of Assembly on the Ordinance after it has been made, so that consideration might be given to any matters raised relating to the Ordinance in the course of the Committee's normal assessment of such laws by reference to its principles.

AUSTRALIAN CAPITAL TERRITORY

Public Assemblies Ordinance 1982

No. 10 of 1982

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 25 March 1982.

ZELMAN COWEN
Governor-General

By His Excellency's Command,
MICHAEL HODGMAN
Minister of State for the Capital Territory

An Ordinance relating to assemblies in public places

Short title

1. This Ordinance may be cited as the *Public Assemblies Ordinance 1982*.¹

Commencement

2. This Ordinance shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice in the *Gazette*.

Objects

3. The objects of this Ordinance are—

- (a) to recognize the right of peaceful assembly in accordance with Article 21 of the Covenant, a copy of the English text of which is set out in the Schedule; and
- (b) in conformity with that Article, to ensure, to the greatest extent that is practicable, that persons in the Territory 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,

and this Ordinance shall be construed accordingly.

Interpretation

4. In this Ordinance, unless the contrary intention appears—

"authorized public assembly" means a public assembly that is, in pursuance of section 8, to be taken to be authorized for the purposes of this Ordinance;

"Commissioner" means the Commissioner of Police of the Australian Federal Police;

"court" means the Supreme Court;

"Covenant" means the International Covenant on Civil and Political Rights a copy of the English text of which is set out in Schedule 1 to the *Human Rights Commission Act 1981*;

"day of special significance" means—

- (a) the Saturday preceding the third Monday in March in any year (Canberra Day);
- (b) 25 April in any year (Anzac Day); or
- (c) a day declared under section 5 to be a day of special significance for the purposes of this Ordinance;

"limited participation assembly" means a prescribed public assembly the notification of which contains particulars indicating that it is proposed that only particular persons, or only persons included in particular classes of persons, participate in the assembly;

"notification" means a notification of a proposed public assembly referred to in section 9;

"organizer", in relation to a public assembly, means the person designated in the relevant notification as the organizer of that assembly;

"police officer" means a member of the Australian Federal Police;

"prescribed public assembly" means a public assembly held on a day of special significance, being an assembly the common purpose of the participants in which is significantly related to the reason for which the day is a day of special significance;

"public assembly" means an assembly of not less than 3 persons who are assembled for a common purpose in a public place, whether or not other persons are assembled with them and whether the assembly is at a particular place or moving;

"public place" means any street, road, public park within the meaning of the *Public Parks Ordinance 1928*, reserve or other place which the public are entitled to use or which is open to, or used by, the public, whether on payment of money or otherwise.

Declaration of day of special significance

5. (1) Where the Minister is of the opinion that a day 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, he may, by notice published in the *Gazette* not later than 21 days before that day,

declare that day to be a day of special significance for the purposes of this Ordinance.

(2) The Minister shall cause a copy of a notice published under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the notice was published.

(3) If either House of the Parliament, within 15 sitting days of that House after a copy of a notice has been laid before that House in pursuance of sub-section (2), passes a resolution disapproving the declaration contained in the notice, the declaration shall not have any force or effect on or after the day on which the resolution was passed.

Legal immunity for participant in authorized public assembly

6. Where an authorized public assembly is held substantially in accordance with the particulars specified in the relevant notification (except insofar as any of those particulars are inconsistent with any of the terms and conditions referred to in whichever of paragraphs (a), (b) and (c) is applicable) and—

- (a) the terms and conditions, if any, specified in the notice in writing from the Commissioner informing the organizer that the Commissioner does not oppose the holding of the assembly;
- (b) the terms and conditions referred to in paragraph (a) as varied by the court by an order made under sub-section 15 (4); or
- (c) the terms and conditions specified in an order of the court under this Ordinance as applicable to the holding of the assembly,

as the case requires, a person who participates in the assembly is not, by reason only of that participation, guilty of an offence against this Ordinance or against 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.

Lawfulness of participation in public assemblies

7. (1) Subject to sub-section (2), it shall be lawful for a person to participate in a public assembly that is not an authorized public assembly.

(2) Sub-section (1) does not operate so as to constitute a defence to a prosecution of a person for an offence against any law in force in the Territory consisting of an act or omission occurring in the course of participation by that person in a public assembly that is not an authorized public assembly.

Authorized public assembly

8. (1) Subject to sub-section (2), a public assembly shall be taken to be authorized for the purposes of this Ordinance if a notification in relation to that assembly, being a notification that complies with the requirements specified in section 9, was served on the Commissioner in accordance with section 11 and—

- (a) the Commissioner has, by notice in writing, informed the organizer of the assembly that he does not oppose the holding of the assembly;

- (b) if the notification was served on the Commissioner not less than 7 days before the date on which the assembly is held—the Commissioner did not—
 - (i) in the case of a limited participation assembly—within 7 days; or
 - (ii) in any other case—within 3 days,after the date on which the notification was served on him, inform the organizer of the assembly in writing that he opposed the holding of the assembly;
 - (c) if the notification was served on the Commissioner not less than 7 days before the date on which the assembly is held—the court has not made an order under section 18 prohibiting the holding of the assembly; or
 - (d) if the notification was served on the Commissioner less than 7 days before the date on which the assembly is held—the court has made an order under section 19 authorizing the holding of the assembly and that order has not been revoked by an order made under section 20.
- (2) A limited participation assembly shall not be taken to be authorized for the purposes of this Ordinance if—
- (a) the notification in relation to that assembly was served on the Commissioner less than 14 days before the date on which the assembly is held; or
 - (b) a copy of the notification in relation to that assembly was not, on the day on which that notification was served on the Commissioner, published in a daily newspaper circulating in the Territory.

Requirements for notification

9. A notification shall—

- (a) be in writing;
- (b) be signed by the person designated in it as the organizer of the relevant public assembly; and
- (c) contain the following particulars:
 - (i) the name and residential or business address of the organizer;
 - (ii) the name of the organization or body, if any, on behalf of which the notification is served;
 - (iii) the date on which it is proposed that the assembly be held;
 - (iv) the time and place at which it is anticipated that persons will assemble to participate in the assembly and the time at which it is estimated that the assembly will disband;
 - (v) the proposed route, if any, to be taken by the assembly, and details of any proposed stoppages;
 - (vi) the anticipated number of participants;
 - (vii) in the case of a prescribed public assembly—whether it is proposed that only particular persons, or only persons included in particular classes of persons, participate in the assembly and,

- if so, the names of those persons or descriptions of those classes sufficient to enable those persons to be identified;
- (viii) the purpose for which the assembly is to be held;
 - (ix) such other particulars as are prescribed.

False or misleading information

10. A person shall not, in a notification, knowingly furnish information that is false or misleading in a material particular.

Penalty: \$200.

Service of document on Commissioner

11. A document to be served on the Commissioner under this Ordinance may be served by delivering it to him personally or by leaving it at—

- (a) the office of the Commissioner; or
 - (b) any police station in the Territory,
- with any police officer of or above the rank of Sergeant.

Restriction on approval of limited participation assembly

12. The Commissioner shall not inform the organizer of a limited participation assembly in writing that he opposes or does not oppose the holding of the assembly until—

- (a) the expiration of a period of 4 days after the date on which a copy of the relevant notification was published in a daily newspaper circulating in the Territory; and
- (b) he has considered any applications referred to in sub-section 13 (1) served on him within that period.

Joining limited participation assembly

13. (1) On receiving an application for approval of the participation of a particular person or particular persons in a limited participation assembly (being an application that complies with the requirements specified in sub-section (2) and was served within the period of 4 days referred to in section 12), the Commissioner shall determine that application in conjunction with his consideration of the relevant notification.

(2) An application referred to in sub-section (1) shall—

- (a) be in writing;
- (b) be signed by the applicant; and
- (c) contain the following particulars:
 - (i) the name and residential or business address of the applicant;
 - (ii) the name of the organization or body, if any, on behalf of which the application is made;
 - (iii) the name or names of the person or persons for whose participation approval is sought or, if approval is sought for the participation of persons included in a particular class of

persons, a description of that class sufficient to enable those persons to be identified;

- (iv) where approval is sought for the participation of persons included in a particular class of persons—an estimate of the number of persons for whose participation approval is sought;
- (v) the purpose for which the person or persons for whose participation approval is sought wishes or wish to participate in the assembly.

(3) Where the Commissioner—

- (a) does not oppose the holding of a limited participation assembly; and
- (b) has received an application referred to in sub-section (1) in relation to that assembly,

the Commissioner shall approve the participation in the assembly of the relevant person or persons unless he is of the opinion that that participation would not be in the public interest.

(4) In forming an opinion for the purposes of sub-section (3), the Commissioner shall have regard to—

- (a) the objects of this Ordinance specified in section 3 and, in particular, the right of peaceful assembly referred to in paragraph (a) of that section;
- (b) whether the purpose for which the person or persons for whose participation in the assembly approval is sought wishes or wish to participate in the assembly is consistent with the purpose for which the assembly is to be held; and
- (c) any likelihood that if that person or those persons were to participate in that assembly—
 - (i) serious public disorder would be occasioned;
 - (ii) the safety of any person would be placed in jeopardy;
 - (iii) damage to property would be occasioned; or
 - (iv) the assembly would cause an obstruction that would, in the circumstances, be of unreasonable size or duration.

(5) Where the Commissioner determines an application referred to in sub-section (1), he shall—

- (a) in the notice in writing informing the organizer of the relevant assembly that he does not oppose the holding of the assembly, inform the organizer; and
- (b) inform the applicant in writing, of his decision and of the reasons for that decision.

Review of decision of Commissioner on application under section 13

14. (1) An organizer of a limited participation assembly or an applicant under section 13 in relation to such an assembly who is aggrieved by a decision of the Commissioner under that section approving or refusing to approve the

participation of a particular person or particular persons in the assembly may apply to the court for a review of the decision.

(2) On an application under sub-section (1), the court may, in its discretion, by order, affirm or set aside the decision of the Commissioner, and may make such other orders as it considers just.

Imposition of terms and conditions by Commissioner

15. (1) Subject to sub-section (2), the Commissioner may, in a notice in writing informing the organizer of a public assembly that he does not oppose the holding of the assembly, specify terms and conditions subject to compliance with which he does not oppose the holding of the assembly.

(2) The Commissioner is not entitled to specify, in a notice referred to in sub-section (1), terms and conditions compliance with which would have the effect of altering substantially the nature of the assembly to which the notice relates.

(3) An organizer of a public assembly may apply to the court for a review of any terms and conditions specified in a notice referred to in sub-section (1) in relation to the assembly.

(4) On an application under sub-section (3), the court may, in its discretion, by order, affirm, vary or set aside the terms and conditions under review, and the court may, in an order setting aside terms and conditions, specify other terms and conditions as applicable to the holding of the relevant assembly in substitution for the terms and conditions set aside.

Matters to be taken into consideration by Commissioner

16. (1) The Commissioner shall not oppose the holding of a public assembly unless he is of the opinion that it would not be in the public interest for the assembly to be held.

(2) In forming an opinion for the purposes of sub-section (1), the Commissioner shall have regard to—

- (a) the objects of this Ordinance specified in section 3 and, in particular, the right of peaceful assembly referred to in paragraph (a) of that section; and
- (b) any likelihood that if the relevant assembly were to be held—
 - (i) serious public disorder would be occasioned;
 - (ii) the safety of any person would be placed in jeopardy;
 - (iii) damage to property would be occasioned; or
 - (iv) the assembly would cause an obstruction that would, in the circumstances, be of unreasonable size or duration.

Withdrawal of objection by Commissioner

17. Where—

- (a) the Commissioner has informed the organizer of a public assembly in writing that he opposes the holding of the assembly; and

- (b) at any time before the date specified in the relevant notification as the date on which it is proposed that the assembly be held, the Commissioner, having taken into consideration any matters put by the organizer at a conference held in pursuance of paragraph 18 (2) (c) or in any written representations made to him by the organizer or for any other reason, ceases to oppose the holding of the assembly,

the Commissioner shall forthwith, by notice in writing, inform the organizer that he does not oppose the holding of the assembly.

Application to court by Commissioner

18. (1) Subject to sub-section (2), where a notification was served on the Commissioner not less than 7 days before the date specified in the notification as the date on which it is proposed that the relevant public assembly be held, the Commissioner may apply to the court for an order prohibiting the holding of the assembly.

(2) The Commissioner is not entitled to apply for an order referred to in sub-section (1) in relation to a proposed public assembly unless—

(a) within—

- (i) in the case of a limited participation assembly—7 days; or
(ii) in any other case—3 days,

after the date on which the relevant notification was served on him, by notice in writing served on the organizer of the assembly in accordance with sub-section (3), he informed the organizer that he opposes the holding of the assembly;

(b) in the notice referred to in paragraph (a), he—

- (i) furnished the reasons for his opposition to the holding of the assembly; and
(ii) invited the organizer to confer at a specified time and place with him or with a police officer nominated by him with respect to the proposed assembly or to make written representations to him with respect to the proposed assembly within a specified time;

(c) he, or the nominated police officer, made himself available so to confer at the time and place so specified; and

(d) he has taken into consideration any matters put by the organizer at a conference held in pursuance of paragraph (c) or in any written representations made to him by the organizer.

(3) A notice referred to in paragraph 2 (a) may be served on an organizer of a public assembly by delivering it to him personally or by leaving it at the address of the organizer specified in the notification with a person apparently resident or employed at that place and apparently over the age of 16 years.

(4) On an application under sub-section (1), the court may, in its discretion, by order—

- (a) prohibit the holding of the public assembly to which the application relates; or
- (b) specify terms and conditions as applicable to the holding of the public assembly to which the application relates.

(5) Where—

- (a) the court refuses to make an order under sub-section (4) prohibiting the holding of a public assembly (being a limited participation assembly); and
 - (b) an application referred to in sub-section 13 (1) in relation to that public assembly has been received by the Commissioner,
- sub-section 14 (2) applies in relation to that application as if the Commissioner had determined that application under section 13 and the applicant had applied to the court under sub-section 14 (1) for a review of the decision of the Commissioner determining that application.

Application to court by organizer

19. (1) Where—

- (a) a notification was served on the Commissioner less than 7 days before the date specified in the notification as the date on which it is proposed that the relevant public assembly be held; and
- (b) the Commissioner has informed the organizer in writing that he opposes, or has not informed the organizer in writing that he does not oppose, the holding of the assembly,

the organizer may apply to the court for an order authorizing the holding of the assembly.

(2) On an application under this section, the court may, in its discretion, by order, authorize the holding of the public assembly to which the application relates subject to such terms and conditions, if any, as are specified in the order.

Revocation of order authorizing assembly

20. (1) Where the court has made an order under sub-section 19 (2) authorizing the holding of a public assembly, the Commissioner may apply to the court for an order revoking the first-mentioned order on the ground that—

- (a) further information in relation to the proposed assembly has come into his possession after the date on which the first-mentioned order was made; and
- (b) having regard to that information, he is of the opinion that it would not be in the public interest for the assembly to be held.

(2) On an application under sub-section (1), the court may, in its discretion, by order—

- (a) revoke the previous order to which the application relates; or

- (b) specify terms and conditions (including terms and conditions varying, in addition to or in substitution for any terms and conditions specified in the previous order to which the application relates) as applicable to the holding of the assembly to which the application relates.

Regard for public interest

21. (1) In determining an application under section 18, 19 or 20, the court shall consider whether it would not be in the public interest for the public assembly to which the application relates to be held.

(2) For the purposes of sub-section (1), the court shall have regard to—

- (a) the objects of this Ordinance specified in section 3 and, in particular, the right of peaceful assembly referred to in paragraph (a) of that section; and
- (b) any likelihood that if the relevant assembly were to be held—
- (i) serious public disorder would be occasioned;
 - (ii) the safety of any person would be placed in jeopardy;
 - (iii) damage to property would be occasioned; or
 - (iv) the assembly would cause an obstruction that would, in the circumstances, be of unreasonable size or duration.

Jurisdiction of court

22. Jurisdiction to hear and determine applications under this Ordinance is vested in the court.

Parties to applications

23. (1) The Commissioner shall be the respondent to an application to the court under this Ordinance made by an organizer of a public assembly.

(2) The organizer of a public assembly shall be the respondent to an application to the court under this Ordinance in relation to that assembly made by the Commissioner.

(3) The Commissioner and the organizer of a public assembly (being a limited participation assembly) shall each be a respondent to an application to the court under sub-section 14 (1) by an applicant under section 13 in relation to that assembly.

Breaches of the peace

24. (1) A person shall not, in or near a public assembly, engage in conduct that causes or provokes or is intended to cause or provoke a breach of the peace by any person.

Penalty: \$200.

(2) When a police officer of or above the rank of Sergeant has reasonable grounds for believing that the conduct of a person in or near a public assembly

is likely to cause or provoke a breach of the peace by any person, he may direct the first-mentioned person to leave the vicinity of the public assembly.

(3) A person who contravenes a direction given to him under sub-section (2) is guilty of an offence and punishable, on conviction, by a fine not exceeding \$200.

(4) Nothing in this section affects the power of any court to require a person to enter into a recognizance, with or without sureties, to keep the peace or to be of good behaviour.

Unauthorized participation in limited participation assemblies

25. (1) Where a person other than a person who is an entitled person in relation to an authorized public assembly that is a limited participation assembly participates or attempts to participate in that assembly, a police officer of or above the rank of Sergeant may direct that person not to participate in the assembly.

(2) A person who contravenes a direction given to him under sub-section (1) is guilty of an offence and punishable, on conviction, by a fine not exceeding \$200.

(3) In sub-section (1), "entitled person", in relation to an authorized public assembly that is a limited participation assembly, means—

- (a) a person who is specified, or who is included in a class of persons described, in the relevant notification in pursuance of sub-paragraph 9 (c) (vii); or
- (b) a person whose participation in that assembly is approved by the Commissioner under sub-section 13 (3) or by order of the court under sub-section 14 (2).

Delegation

26. (1) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a police officer of or above the rank of Sergeant any of his powers under this Ordinance, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Ordinance, be deemed to have been exercised by the Commissioner.

(3) A delegation under this section does not prevent the exercise of a power by the Commissioner.

Regulations

27. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

SCHEDULE

Section 3

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 26 March 1982.

Explanatory Statement

AUSTRALIAN CAPITAL TERRITORY
PUBLIC ASSEMBLIES ORDINANCE 1982 No.10 of 1982
TRAFFIC (AMENDMENT) ORDINANCE 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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