

Explanatory Statement

National Library Act 1960

National Library Regulations 2018

Issued by the authority of the Minister for Communications and the Arts

Purpose

The purpose of the *National Library Regulations 2018* (the Regulations) is to repeal and remake the current *National Library Regulations 1994*, with some changes to reflect current drafting practice and ensure that the Regulations continue to be fit for purpose. In particular, the Regulations:

- increase the financial thresholds above which the National Library of Australia (National Library) requires the approval of the Minister to purchase and dispose of certain assets;
- provide for the Director-General of the National Library to authorise and place conditions on the sale, supply, disposal, possession and control of liquor on the National Library's premises;
- provide for the Director-General of the National Library to appoint authorised officers;
- provide for the Director-General to control access to and place conditions on access to or use of library material; and
- create certain offences relating to the protection of the collection, control of land and buildings and supply of liquor on the National Library's premises.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*. The Regulations commence the day after they are registered.

Authority

The *National Library Act 1960* (the Act) establishes the National Library with functions including to maintain and develop a national collection of library material, including a comprehensive collection of library material relating to Australia and the Australian people; and to make library material in the national collection available to such persons and institutions, and in such manner and subject to such conditions, as the Council determines with a view to the most advantageous use of that collection in the national interest.

Section 28 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters that are required or permitted by the Act to be prescribed, or are necessary or convenient to be prescribed for carrying out or giving effect to the Act and prescribe penalties (not exceeding 5 penalty units) for offences against the regulations.

Section 7A of the Act restricts the National Library's power to purchase and dispose of assets exceeding certain financial thresholds. It relevantly provides that the National Library must not, without the approval of the Minister: acquire any property, right or privilege; dispose of

any property, right or privilege; or enter into a contract for the construction of a building that exceeds the amount specified in the Act (or any higher amount that is prescribed by regulations).

Section 27A of the Act enables regulations to be made for and in relation to the sale, supply, disposal, possession or control of liquor on premises in the Australian Capital Territory owned by or under the control of the Library.

Section 27B of the Act enables regulations to be made for and in relation to:

- regulating, restricting or prohibiting the entry of persons on to any land or building owned by or under the control of the Library, including any part of a building;
- regulating the conduct of persons on any such land or building; or
- the removal of persons from any such land or building.

The notes on the provisions of the Regulations are set out in Attachment A.

Consultation

The National Library of Australia was consulted in advance of drafting the instrument to confirm the desired policy and operational outcomes that the remade Regulations will support.

The Office of Best Practice Regulation has confirmed that the preparation of a Regulation Impact Statement is not necessary, as the amendments have a nil or low impact on business or the economy or individuals.

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Attachment A

Notes on the National Library Regulations 2018

Part 1—Preliminary

Section 1 – Name

This section provides that the name of the Regulations is the *National Library Regulations 2018*.

Section 2 – Commencement

This section provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Regulations are made under the *National Library Act 1960*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 - Definitions

This section provides definitions of terms used in the Regulations.

The note in the section highlights that a number of terms used in the instrument are defined in the Act, including Council, Director-General, Library, and library material. These terms have the same meaning in the Regulations as under the Act, pursuant to section 13 of the *Legislation Act 2003*.

Act is defined to mean the *National Library Act 1960*

assistance animal is defined to have the same meaning as in the *Disability Discrimination Act 1992* which, at the time of preparation of the explanatory statement, is a dog or other animal that is:

- accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a persons with a disability to alleviate the effect of the disability; or
- accredited by an animal training organisation that are prescribed by regulations made under that Act; or
- trained:
 - to assist a person with a disability to alleviate the effect of the disability; and
 - to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.

authorised liquor supplier is defined to mean a person who is authorised under subsection 8(1) of the Regulations to sell or supply liquor.

authorised officer is defined to mean either the Director-General or a person appointed under subsection 12(1).

Classification Act is defined to mean the *Classification (Publications, Films and Computer Games) Act 1995*.

Director-General notice is defined to have the meaning given by subsection 19(1) of the Regulations. Section 19 provides for the Director-General to, by legislative instrument, issue a notice specifying prohibitions, conditions or restrictions relating to Library property or Library material.

electronic Library material is defined to mean library material that forms part of the Library collection and is in electronic form.

high classification is defined to mean:

- for a publication (within the meaning of the Classification Act)—a classification of Category 1 restricted, Category 2 restricted or RC; or
- for a film (within the meaning of that Act)—a classification of MA 15+, R 18+, X 18+ or RC; or
- for a computer game (within the meaning of that Act)—a classification of MA 15+, R 18+ or RC.

Library building is defined to mean a building owned by or under the control of the Library.

Library collection material is defined to mean library material that forms part of the Library collection and that is on or in Library property.

Library premises is defined to mean premises in the Australian Capital Territory owned by or under the control of the Library.

Library property is defined to mean land and buildings owned by or under the control of the Library.

liquor is defined to have the same meaning as in subsection 27A(3) of the Act, that is wine, spirits, ale, beer, porter, cider, perry or any liquid containing alcohol ordinarily used or fit for use as a beverage.

loan record is defined to mean, in relation to an item of library material, a record, held by the Library, of: the identity of the item; the full name and address of the person to whom the item has been lent; the date on which the item was lent; and the date on which the item is to be returned to the Library.

prohibited article is defined to mean:

- an implement, other than a pen or pencil, that could be used to damage or conceal library material; or
- a camera or associated equipment; or

- a bag, case, parcel or other container that cannot be wholly enclosed in either a cube each edge of which is 300 millimetres long or, a cube of a size determined by the Director General.

reading room is defined to mean an area in a Library building supervised by any or all of the following persons where library material forming part of the Library's collection is lent to, and used by, visitors to the Library:

- staff members;
- persons employed under contract with the Library;
- persons employed or engaged by persons who are employed under contract with the Library; or
- volunteers engaged by the Library to assist the Library.

staff member is defined to mean a member of staff of the Library.

vehicle is defined to include a motor vehicle, motorcycle, bicycle or a similar device for transportation.

Part 2—Purchase and disposal of assets

Section 6 – Power to purchase and dispose of assets

Paragraph 7A(1)(a) of the Act provides that the Library shall not, without the approval of the Minister, acquire any property, right or privilege for a consideration exceeding in amount or value \$250,000 or, if a higher amount is prescribed by regulation, that higher amount.

Paragraph 7A(1)(b) of the Act imposes equivalent restrictions in relation to the disposal of any property, right or privilege.

Paragraph 7A(1)(c) of the Act provides that the Library shall not, without the approval of the Minister, enter into a contract for the construction of a building for the Library, being a contract under which the Library is to pay an amount exceeding \$250,000, or, if a higher amount is prescribed, that higher amount.

Section 6 of the Regulations prescribes a higher amount of \$2,000,000 for each of paragraphs 7A(1)(a), (b) and (c) of the Act. This is an increase from the amounts currently prescribed by Regulation 23 of the *National Library Regulations 1994*, which is \$1,000,000 for each of those paragraphs. The higher amount is intended to provide operational flexibility and reduce administrative burden on the National Library, while maintaining appropriate Ministerial oversight of Library expenditure for larger financial commitments. The increase is appropriate given the increase in costs since the previous limit was set, and brings the National Library into line with other national cultural institutions (such as the National Gallery of Australia and National Portrait Gallery of Australia).

Part 3—Supply of liquor

Section 7 – Purposes of this Part

This section provides that Part 3 is made for the purposes of subsection 27A(1) of the Act. Subsection 27A(1) of the Act provides that the regulations may make provision for and in relation to the sale, supply, disposal, possession or control of liquor on premises in the Australian Capital Territory owned by or under the control of the Library.

Section 8 – Authorisation to supply liquor

Section 8 relates to authorising the sale or supply of liquor on or in Library premises, and sets out what must be specified in an authorisation. This framework is required because, events may be held at the Library where alcohol may be served, for example.

Subsection 8(1) provides the Director-General may, in writing, authorise a person, or class of persons to sell or supply liquor on or in Library premises. Subsection 8(2) provides that the Director-General must specify in the authorisation the parts of the Library premises where liquor may be sold or supplied and the hours during which liquor may be sold or supplied. Subsection 8(3) provides that the Director-General may specify in the authorisation conditions to which the authorisation is subject.

The Regulations do not provide for merits review of a decision made under section 8, on the basis that the grant of a liquor authorisation relates to commercial decisions made by the Library. This is consistent with the position under the current *National Library Regulations 1994* and under similar regulations governing the supply of liquor in certain other national cultural institutions (such as the National Portrait Gallery of Australia and the National Gallery of Australia).

Section 9 – Supply of liquor

Authorisations

Section 9 creates several offences regarding the sale or supply of liquor on or in Library premises. These offences are required to ensure that the sale and supply of liquor is controlled, and safe (noting that subsection 27A(2) of the Act excludes the law of the Australian Capital Territory relating to the sale, supply and disposal of liquor for premises in respect of which regulations are in force).

Subsection 9(1) provides that it is an offence if a person sells or supplies liquor on or in Library premises. The penalty for this offence is 5 penalty units.

However, subsection 9(2) provides that the offence provision in subsection 9(1) does not apply to a person:

- selling or supplying liquor if they are authorised by the Director-General to sell or supply liquor under subsection 8(1) (paragraph 9(2)(a)); or
- supplying liquor (other than by selling it) that was sold or supplied to that person on or in Library premises, by an authorised liquor supplier (paragraph 9(2)(b)).

The note under subsection 9(2) provides that in any prosecution for an offence under subsection 9(1), a defendant intending to rely on an exception in subsection 9(2) bears an evidential burden in relation to the matters in subsection (2). This means the defendant must raise evidence that his or her conduct fell within the exception. If the defendant discharges this evidential burden, the prosecution must disprove the matter beyond reasonable doubt.

Placing the evidential burden on the defendant in this case is appropriate, having regard to the principles in the Attorney-General's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide).

In regard to paragraph 9(2)(a), it would be disproportionately more difficult and costly, taking into account the relatively low penalty, for the prosecution to prove that an accused person sold or supplied liquor without being authorised to do so than it would be for a person to raise evidence of the defence, that they held the appropriate authorisation. An accused could cheaply and readily raise evidence of the authorisation.

In regard to paragraph 9(2)(b), it is within the peculiar knowledge of a person supplying liquor (other than by selling) that they obtained the liquor on or in Library premises from an authorised liquor supplier. There may well be no way for staff members to know with certainty the origin of liquor supplied by a person, including the circumstances in which it was first supplied to that person by another party. It would be significantly and disproportionately (given the low penalty) more difficult for the prosecution to prove, for example, that relevant liquor was not supplied to a person on liquor controlled premises, than it would be for the person to raise evidence that his or her conduct fell within the defence. Once the evidential burden is discharged, the prosecution would then be required to disprove the matter beyond reasonable doubt.

In addition to the above matters, the offence carries a relatively low penalty of 5 penalty units and the conduct proscribed by the offence aims to achieve the important public health and safety objective of preventing unauthorised supply of liquor, including to minors.

Subsection 9(3) provides that it is an offence if a person is an authorised liquor supplier, and sells or supplies liquor on or in Library premises, and does not comply with the conditions to which their authority as an authorised liquor supplier is subject. This is because the intention is that an authorised liquor supplier only supply liquor in compliance with their authorisation. The penalty for this offence is 5 penalty units.

Adulterated liquor

Subsection 9(4) provides that it is an offence if a person on or in Library premises sells or supplies liquor and the liquor is adulterated. This is to ensure that the liquor being supplied is genuinely the product described. The penalty for this offence is 5 penalty units.

Intoxicated persons and minors

Subsection 9(5) provides that it is an offence if a person on or in Library premises, sells or supplies liquor to another person and the other person is intoxicated or under 18 years of age. This is consistent with laws of the Australian Capital Territory which prohibit the supply of alcohol to intoxicated persons and those under 18 years of age. The penalty for this offence is 5 penalty units.

Subsection 9(6) provides that a person may refuse to sell or supply liquor to another person on or in Library premises if the other person does not satisfy the first person of the other person's age. This provision puts it beyond doubt that a person supplying liquor may refuse service if they are not satisfied the person is 18 years of age or older.

Section 10 – Buying or obtaining liquor

Subsection 10(1) provides that it is an offence for a person who is under 18 to buy or obtain liquor on or in Library premises. The penalty for this offence is 5 penalty units.

Subsection 10(2) creates an offence for a person to send another person, who is under 18, to buy or obtain liquor on their behalf on or in Library premises. The penalty for this offence is 5 penalty units.

Part 4—Control of Library property

Division 1 – Purposes of this Part

Section 11 – Purposes of this Part

This section provides that Part 4 of the Regulations is made for the purposes of paragraphs 27B of the Act. Paragraphs 27B1(a), (b) and (c) of the Act provide that the regulations may make provision for and in relation to:

- regulating, restricting or prohibiting the entry of persons on to any land or building owned by or under the control of the Library; or
- regulating the conduct of persons on any such land or building; or
- the removal of persons from such land or building.

Part 4 regulates, restricts and prohibits the entry of persons on Library premises, regulates the conduct of persons on Library premises and provides for the removal of persons from Library premises.

Section 28 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Division 2 – Authorised officers

Section 12 – Authorised officers

Section 12 relates to the appointment and identification of authorised officers.

Subsection 12(1) enables the Director-General to appoint, by way of a written instrument, a staff member, a person employed under contract with the Library or a person employed or engaged by a person employed under contract with the Library, to be an authorised officer. The Director-General may only appoint persons as authorised officers if the Director-General is reasonably satisfied that they have received appropriate training.

Requiring authorised officers to be appointed by written instrument ensures that persons who are conferred powers under the instrument are appointed through a formal process which requires consideration by the Director-General.

Subsection 12(2) provides that the Director-General must issue an identity card to an authorised officer appointed under subsection (1). This is because authorised officers have special powers under the Regulations, for example, to direct people to leave the premises, or to grant access to specified library collection material. It is important in these circumstances that authorised officers are appropriately identified.

Subsection 12(3) provides that the identity card must contain a recent photograph of the person to whom it is issued and be in the approved form (if any). Subsection 12(4) provides that an authorised officer must carry the identity card at all times when performing functions

or exercising powers as an authorised officer. This is to ensure that they can be identified as such to members of the public.

Subsection 12(5) explains that a person commits an offence of strict liability if they cease to be an authorised officer, and do not return their identity card to the Director-General, within 14 days of so ceasing. The penalty for this offence is 1 penalty unit. This is a strict liability offence, as penalising persons for not returning identity cards is intended to encourage the prompt return of identity cards. This strict liability offence recognises that access to identity cards by individuals who are not appointed authorised officers weakens the security of the Library and its collection. This could have impacts on public safety, the safety of staff members, and the safety of the library collection.

Subsection 12(6) provides that an offence is not committed if the identity card was lost or destroyed.

The note under subsection 12(6) provides that in any prosecution for an offence under subsection 12(5), a defendant intending to rely on the exception in subsection 12(6) has the evidential burden of showing that the identity card was lost or destroyed. This could be discharged, for example, by providing evidence that the card was reported as lost or destroyed. It is appropriate that the defendant bear the evidential burden in this case as the matters required to be established — that the person's identity card was lost or destroyed — are matters peculiarly within the knowledge of the defendant. It would also be disproportionately more difficult and costly, taking into account the relatively low penalty, for the prosecution to prove that the person's identity card was not lost or destroyed than it would be for a person to raise evidence of the defence.

Section 13 – Powers of authorised officers – prohibiting entry

Section 13 provides that in certain circumstances, an authorised officer may prohibit a person or group of persons from entering Library property. These powers are required to ensure the safety and wellbeing of members of the public, staff members and Library material. It is intended that the decision to prohibit entry may continue for as long as the circumstances which led to the reasonable belief being formed by the authorised officer continues.

Subsection 13(1) sets out the grounds on which an authorised officer may exercise the power to prohibit entry. These are if the authorised officer has reasonable grounds for believing that:

- the person or the group has been directed to leave Library property under section 14 on one or more previous occasions; or
- the safety of another person will be, or is likely to be, endangered by the presence of the person or the group on or in Library property; or
- the conduct of the person or group on or in Library property will cause or is likely to cause offence to another person; or
- the person or group is likely to commit an offence against the Regulations.

Subsection 13(2) provides power for an authorised officer to prohibit entry to Library property to a person or group of people if they believe, on reasonable grounds, that the safety of the person or group on or in Library property will be or is likely to be endangered for any reason.

Decisions of authorised officers made under this section are reviewable by the Administrative Appeals Tribunal. This balances the need to ensure the safety of the public, staff members and Library material with the rights of individuals to access the material held on Library property.

Section 14 – Powers of authorised officers – directions to leave

Section 14 provides that in certain circumstances, an authorised officer may direct a person or group of people to leave Library property. These powers are required to ensure the safety and wellbeing of members of the public, staff members or Library material.

Subsection 14(1) sets out the grounds on which an authorised officer may issue a direction to leave. These are if the authorised officer has reasonable grounds for believing that:

- another person is or may be endangered by the continued presence of the person or group on or in Library property; or
- the conduct of the person or group on or in Library property is likely to cause offence to another person; or
- the person or group intends to commit, is committing, or has committed, an offence against the Regulations; or
- the person or group has engaged in conduct that obstructs, disturbs or annoys another person on or in Library property; or
- the person or group has engaged in conduct that destroys, alters or erases a computer program on a computer, computer system or part of a computer system that is owned by or under the control of the Library.

Subsection 14(2) provides power for an authorised officer to issue a direction to leave Library property to a person or group of people if they believe, on reasonable grounds, that the safety of the person or group is endangered for any reason.

Section 15 – Powers of authorised officers – vehicles

This section provides that an authorised officer may direct a person who is apparently in charge of a vehicle that is on or in Library property, to park the vehicle in a specified place on or in Library property, or not to park the vehicle on or in Library property, or not to park the vehicle in a specified place on or in Library property. A vehicle is defined in the Regulations to include a motor vehicle, motorcycle, bicycle or similar device for transportation. This power is required to ensure the safety of members of the public, staff members or Library material.

Section 16 – Powers of authorised officers – possible prohibited articles

This section enables an authorised officer to direct a person who is carrying an article that appears to be a prohibited article on or in Library property to submit the article for inspection or to leave the article in a designated area. Leaving an article that appears to be prohibited in a designated location ensures that the article is not taken into or onto Library property, and allows for the person to collect it upon exiting the Library.

Section 17 – Powers of authorised officers – taking photographs

This section provides that an authorised officer may direct a person who is on or in Library property not to take photographs while on or in Library property, or not to take photographs of specified Library collection material. This power is required to ensure the safety of Library premises (from possible terrorist risks) as well as the protection of Library material. It is also to prevent unauthorised copying and or commercial distribution of images of Library material or material on loan to the Library which is subject to loan contract conditions prohibiting photography.

Section 18 – Powers of authorised officers – deletion and destruction of photographs

This section provides that in certain circumstances an authorised officer may direct a person to delete or destroy photographs taken on or in Library property.

Subsection 18(1) sets out the grounds on which an authorised officer may direct a person to delete or destroy a photograph. Those grounds are if the authorised officer has reasonable grounds for believing that a person has taken a photograph on or in Library property and the photograph was taken in contravention of:

- any direction under Division 2 of the Regulations; or
- a prohibition, condition or restriction made in a Director-General notice;

in relation to the taking of photographs.

This power is required to ensure the safety of Library premises (from possible terrorist risks) as well as the protection of Library material. It is also to prevent unauthorised copying and or commercial distribution of images of Library material or material on loan to the Library which is subject to loan contract conditions prohibiting photography.

Section 19 – Powers of authorised officers – offence

This section provides that a person commits an offence if the person is on or in Library property and they do not comply with a direction from an authorised officer under Division 2 of the Regulations. The purpose of this offence is to enhance the effectiveness of the directions given by authorised officers. Encouraging compliance with directions helps to ensure that Library property is safe and secure. The penalty for this offence is 5 penalty units.

Division 3 – Director-General notices

Section 20 – Director-General notices

Section 20 sets out the power for the Director-General to issue a Director-General notice, sets out what such a notice must contain, and provides for an offence for contravention of the notice.

Subsection 20(1) enables the Director-General to, by legislative instrument, issue a notice that specifies a prohibition, condition or restriction relating to Library property or library material that is owned by or under the control of the Library. In accordance with other similar collecting institutions and international standards of library management, the control of persons at the Library will be necessary on such issues as the safety of the national collection, the conduct of the public and the control of food, liquid and animals in the building. This

section enables the Library flexible control over its land, buildings, collection and exhibitions to accommodate changing standards of library management, appropriate function and event management and technological advances. A notice issued under this subsection is not intended to target particular classes of persons and will apply to all patrons of the Library equally.

Subsection 20(2) provides that the notice must be set out in the legislative instrument, must state that it has been issued by the authority of the Director-General and must specify a prohibition, condition or restriction relating to Library property or Library material.

Subsection 20(3) provides that a person commits an offence if they are on or in Library property, a copy of a Director-General notice is displayed in accordance with subsection (4), a prohibition, condition or restriction specified in a Director-General notice applies to the person, and the person does not comply with the prohibition, condition or restriction. The penalty for contravening a notice is 5 penalty units.

Subsection 20(4) provides that for the purposes of paragraph (3)(b) a notice must be clearly displayed in a way that gives adequate notice to the public of the prohibition, condition or restriction and must be displayed at either or both of the entrance to the area of the Library property to which it relates, and the location to which it relates.

Division 4 – Access to, and use of, certain Library material

Section 21 – Director-General may prohibit or restrict access to, and use of, certain Library material

Section 21 enables the Director-General, by way of written instrument, to prohibit or place conditions on access to, or use of certain Library material in certain circumstances.

Subsection 21(1) sets out that the Director-General may, in writing, prohibit or place conditions on access to, or use of Library collection material or electronic library material, if subsections (2), (3) or (5) applies in relation to the item.

Subsection 21(2) enables the Director-General to prohibit or place conditions of access on access to Library collection material if they have reasonable grounds to believe that access to, or use of the item could result in damage to the item or would be in breach of an agreement that applies to use of the item.

Subsection 21(3) enables the Director-General to prohibit or place conditions on access to or use of Library collection material and electronic Library material that:

- has been classified under the *Classification (Publications, Films and Computer Games) Act 1995* by the Classification Board with a high classification; or
- if the item has not been classified by the Classification Board, the Director-General is reasonably satisfied that if the item would be classified by the Classification Board with a high classification if the item were to be classified by the Classification Board.

Subsection 21(4) provides that for the purposes of paragraph 21(3)(b) the Director-General must consider

- the National Classification Code (within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*); and

- any classification guidelines made under section 12 of the *Classification (Publications, Films and Computer Games) Act 1995* that apply in relation to the item.

The National Classification Code and relevant classification guidelines are available on the Federal Register of Legislation.

The purpose of these sections is to allow the Director-General to prohibit or place conditions on access to, or use of material that may not be suitable for a particular library user, for example a minor. The sections do so, in line with the National Classification Code, by balancing the competing tensions of: allowing adults to access material they want; protecting minors from material likely to harm or disturb them; protecting people from exposure to unsolicited material that they may find offensive; and taking into account community concerns about depictions that condone or incite violence, particularly sexual violence and the portrayal of persons in a demeaning manner.

The National Classification Code sets out principles for the Code (at section 1) and guidelines for the classification of Publications, Films and Computer Games (at sections 2 – 4). The Director-General is required to form a view as to the classification which the material would receive if it were to be classified by reference to the Guidelines at sections 2 – 4 of the Code.

These provisions allow the Director-General the necessary discretion to restrict access to material of a high classification. However, importantly they prevent the Director-General from restricting access to all material that does not reach the high classification definition.

The classification scheme is well understood and accepted. These provisions allow the library to retain items in the collection which may not be appropriate for public access. This is important to ensure that such items are able to remain part of the national collection and do not need to be disposed.

Subsection 21(5) enables the Director-General to prohibit or place conditions of access to or use of an item that is, or is likely to be connected with legal proceedings (including the outcome of legal proceedings). The purpose of this section is to allow the Director-General to prohibit or place conditions on access to, or use of, material which is or is likely to be connected with legal proceedings, for example to ensure that material alleged to be defaming someone is not circulated for the duration of legal proceedings.

An application may be made to the Administrative Appeals Tribunal for review of a decision made under this section. This balances the responsibilities of the Library to ensure that collection material is safeguarded and that material is restricted in a manner consistent with the reasons for their restriction explained above, with the right of adults to make decisions about the type of material which they wish to view.

Section 22 – Authorised officers may prohibit or restrict access to, and use of, certain Library material

This section provides that an authorised officer may refuse to allow access to, or use of, an item of Library collection material or electronic material.

An authorised officer may only refuse to allow access to, or use of, an item of Library collection material if they have a reasonable ground to believe that access or use could result in damage to the item.

In relation to Library collection material and electronic material an authorised officer may refuse to allow access to, or use of, an item if the officer has reasonable grounds to believe that access or use would be in breach of an agreement that applies to use of the item, or would contravene a direction issued under subsection 21(1) or 23.

The purpose of this provision is to ensure that the Library is able to protect delicate and damaged items of Library collection material, allow donors to donate items to the library subject to conditions they determine, and to allow the library to ensure copyright conditions are complied with by library users.

Section 23 – Conditions on reproduction of an item of certain Library material

Section 23 is intended to allow the Council or an authorised officer to be able to place conditions on the reproduction of certain Library material.

Subsection 23(1) enables the Council or an authorised officer, in writing, to direct a person not to make a facsimile of a rare or unique item of Library collection material or electronic Library material. It also enables the Council or an authorised officer to direct a person to give notice in writing of their intention to publish matter from the item in any form. This allows for the protection of unique and rare Library collection material and electronic library material, by ensuring that its use and dissemination is appropriately monitored by the Library.

Subsection 23(2) provides that a person commits an offence if they are given a direction by the Council or an authorised officer under subsection (1) and they do not comply with that direction. The penalty for committing such an offence is 5 penalty units.

Subsection 23(3) enables the Council or an authorised officer to, in writing, direct a person publishing matter from unique or rare Library collection material or electronic library material to acknowledge the source of the matter in manner approved, in writing, by the Council or authorised person. The purpose of this provision is to ensure that rare and unique material held by the Library is credited in an appropriate manner.

Subsection 23(4) provides that a person commits an offence if they are given a direction by the Council or an authorised officer under subsection (3) and do not comply with that direction. The penalty for committing such an offence is 5 penalty units.

This section relies on the necessary and convenient power in section 28 of the Act.

Section 24 - Offences relating to use of library material

Subsection 24(1) provides that it is an offence for a person to remove an item of Library collection material from a storage area or reading room, or to place anything on an item of Library collection material to copy or trace it. The purpose of this offence is to safeguard library collection material. The penalty for committing such an offence is 5 penalty units.

Subsection 24(2) provides that subsection 24(1) does not apply if the person has written permission from an authorised officer for the relevant conduct. The note under subsection 24(2) explains that in any prosecution for an offence under subsection 24(1), a defendant intending to rely on the exception in subsection 24(2) bears an evidential burden of showing that they had written permission from an authorised officer. This means the defendant must raise evidence that his or her conduct fell within the exception. If the defendant discharges this evidential burden, the prosecution must disprove the matter beyond reasonable doubt. It

is appropriate that the defendant bear the evidential burden in this case having regard the Guide. It would be disproportionately more difficult and costly, taking into account the relatively low penalty, for the prosecution to prove that an accused person removed an item of Library collection material from a storage area or reading room or places something on an item of library collection material to copy or trace it without written authorisation from an authorised officer than it would be for a person to raise evidence of the defence, that they had written authorisation. An accused could cheaply and readily raise evidence of the authorisation.

Subsection 24(3) provides that it is an offence for a person to remove an item of Library collection material from Library property. The purpose of this offence is to safeguard library collection material and ensure that the collection can be tracked and managed appropriately. The penalty for committing such an offence is 5 penalty units.

Subsection 24(4) provides that subsection 24(3) does not apply if the person has written permission from an authorised officer for the relevant conduct or a loan record for the item approved by an authorised officer. The note under subsection 24(4) provides that in any prosecution for an offence under subsection 24(3), a defendant intending to rely on the exception in subsection 24(4) bears an evidential burden of showing that they had written permission from an authorised officer or a loan record for the item approved by an authorised officer. It is appropriate that the defendant bears the evidential burden as it would be disproportionately difficult and costly, taking into account the low penalty, for the prosecution to prove that an authorised officer had approved in writing for a person to engage in the relevant conduct. It would be similarly disproportionately difficult and costly for the prosecution to prove that a person did not have a loan record for the item approved by an authorised officer.

Any accused could cheaply and readily raise evidence of their written approval or loan record. Once the evidential burden is discharged, the prosecution would then be required to disprove the matter beyond reasonable doubt.

Subsection 24(5) provides that it is an offence for a person to handle an item of Library collection material in a manner likely to damage it. The purpose of this offence is to safeguard library collection material. The penalty for committing such an offence is 5 penalty units.

Subsection 24(6) provides that subsection 24(5) does not apply to a person approved in writing by the Director-General to undertake work for the purposes of maintaining and developing Library collection material. The note under subsection 24(6) explains that in any prosecution for an offence under subsection 24(5), a defendant intending to rely on the exception in subsection 24(6) bears an evidential burden of showing that they had written approval from the Director-General.

It is appropriate that the defendant bear the evidential burden as it would be disproportionately difficult and costly, taking into account the low penalty, for the prosecution to prove that the Director-General approved in writing for a person to undertake work for the purposes of maintaining and developing Library collection material.

Any accused could cheaply and readily raise evidence of their written approval. Once the evidential burden is discharged, the prosecution would then be required to disprove the matter beyond reasonable doubt.

Division 5 – Miscellaneous offences

Section 25 – Damaging Library material and property

Subsection 25(1) provides that it is an offence for a person who is on or in Library property to interfere with library material owned by or under the control of the Library. The purpose of this offence is to protect library material. The penalty for committing such an offence is 5 penalty units.

Subsection 25(2) provides that it is an offence to engage in conduct that damages Library material that is owned by or under the control of the Library while on or in Library property. The purpose of this offence is to act as a deterrent to conduct which may damage Library material. The penalty for committing such an offence is 5 penalty units.

Subsection 25(3) provides that recklessness or negligence is the fault element under paragraph (2)(c). Where recklessness is a fault element for a physical element of an offence, proof of intention, knowledge or recklessness will satisfy that fault element, in accordance with clause 5.4 of the Criminal Code.

Subsection 25(4) provides that it is an offence to:

- attach an article to a Library building or wall or fence; or
- write on a building, fixture, fitting, wall or fence;

where the building is a Library building, or the wall, fence, fixture or fitting is on or in Library property. The purpose of the provision is to act as a deterrent for attaching articles to or writing on a Library building, fixture, fitting, wall or fence. The penalty for committing such an offence is 5 penalty units.

Subsection 25(5) provides that it is an offence to engage in conduct that damages a building, fixture, fitting, wall, fence, plant or garden, where that building is a Library building, or the wall, fence, fixture, fitting, plant or garden is on or in Library property. The purpose of the offence is to act as a deterrent to such conduct. The penalty for committing such an offence is 5 penalty units.

Subsection 25(6) provides that the fault element under paragraph (5)(b) is recklessness or negligence. As noted above, proof of intention, knowledge or recklessness will be sufficient to satisfy the fault element of recklessness.

Subsection 25(7) provides that section 25 does not limit section 132.8A of the *Crimes Code* which concerns destroying or damaging Commonwealth property.

Section 26 – Dangerous items on Library property

Subsection 26(1) provides that it is an offence for a person to bring onto Library property, or to have in their possession while on Library property, a projectile or an inflammable or explosive article or substance. The purpose of this offence is to ensure the safety of persons on Library property and the protection of Library collection material. The penalty for committing such an offence is 5 penalty units.

Subsection 26(2) provides that subsection 26(1) does not apply if the person has written permission from an authorised officer for the relevant conduct. The note under subsection 26(2) explains that in any prosecution for an offence under subsection 26(1), a defendant intending to rely on the exception in subsection 26(2) bears an evidential burden of showing that they had written permission from an authorised officer.

It is appropriate that the defendant bears the evidential burden as it would be disproportionately difficult and costly, taking into account the low penalty, for the prosecution to prove that an authorised officer provided permission in writing to the person for the relevant conduct.

Any accused could cheaply and readily raise evidence of their written permission. Once the evidential burden is discharged, the prosecution would then be required to disprove the matter beyond reasonable doubt.

Section 27 - Selling articles

This section establishes that it is an offence for a person on or in Library property to engage in conduct that exposes or causes to be exposed for show, sale or hire any article for use or consumption by a member of the public. The penalty for committing such an offence is 5 penalty units.

Section 28 – Animals

Section 28 provides that in certain circumstances, a person will commit an offence if the person allows an animal that belongs to the person or is in their charge to enter or remain in a Library building. This is to ensure that Library buildings are both hygienic and safe for members of the public and staff members as well as reducing the potential for damage to Library collection material, while still providing access to the Library to people who require an assistance animal, or police force members performing their duties.

Subsection 28(1) establishes it as an offence for a person to allow an animal belonging to them, or in their charge, to enter or remain in a Library building. However, subsection 28(2) provides that subsection 28(1) does not apply if the person is a person with a disability and the animal is an assistance animal (defined in section 5 above), or the person is a member of a police force acting in accordance with their duties.

There is a note under subsection 28(2) explains that in any prosecution for an offence under subsection 28(1), a defendant intending to rely on the exception in subsection 28(2) has the evidential burden of showing that an exception applies. This could be discharged, for example, by providing evidence to show that the animal is an assistance animal. It is appropriate that the defendant bear the evidential burden because the matters specified in that subsection are likely to be within the peculiar knowledge of the person involved. These matters are whether the person has a disability (within the meaning of the *Disability Discrimination Act 1992*) and whether an animal belonging to that person or in their charge is

an assistance animal; whether the person is a member of a police force acting in accordance with their duties.

It would be significantly and disproportionately more difficult for the prosecution to prove that a person is not a person with a disability and that their animal is not an assistance animal, than it would be for any accused to raise the relevant defence by providing evidence of their own status (and that of their assistance animal). This is similarly the case in relation to proving that a person is not a police officer acting in accordance with their duties. Once the evidential burden is discharged, the prosecution would then be required to disprove the matter beyond reasonable doubt.

Subsection 28(3) creates an offence if a person allows an assistance animal belonging to them, or in their charge, to enter or remain in a Library building, and the animal is not restrained on a lead or by other reasonable means. The penalty for these offences is 5 penalty units.

Section 29 – Food and liquids

Subsection 29(1) provides that a person commits an offence if they bring food or liquid into a Library building, or consume food or liquid in a Library building.

However, subsection 29(2) provides that subsection 29(1) does not apply:

- if the food or liquid is medication; or
- to bringing water into a Library building if the water is in a sealed and transparent container; or
- to bringing food or liquid into, or consuming food or liquid in, an area designated for consuming food or liquid.

The note under subsection 29(2) explains that in any prosecution for an offence under subsection 29(1), a defendant intending to rely on the exception in subsection 29(2) bears an evidential burden of showing that an exception applies. This could be discharged, for example, by providing evidence such as a medical certificate stating that the food or liquid is medication. It is appropriate that the defendant bear the evidential burden as the matters required to be established are peculiarly within the knowledge of the person.

Section 30 – Smoking

This section provides that it is an offence if a person smokes on or in Library property that is not an area designated for smoking. This offence is required for the health of members of the public and staff members, and to prevent damage to Library material. The penalty is 5 penalty units.

Section 31 – Prohibited articles

Subsection 31(1) provides that it is an offence if a person brings a prohibited article into a Library building, or if a person uses a prohibited article in a Library building. A prohibited article is defined in the Regulations as:

- an implement, other than a pen or pencil, that could be used to damage or conceal library material; or
- a camera or associated equipment; or

- a bag, case, parcel or other container that cannot be wholly enclosed in either a cube each edge of which is 300 millimetres long or, a cube of a size determined by the Director General

The penalty for committing this offence is 5 penalty units. The purpose of this provision is to protect Library collection material from damage.

However, subsection 31(2) provides that subsection (1) does not apply to:

- bringing a prohibited article into a Library building if the person deposits the item, as soon as practicable, at the place in the Library building designated by the Director-General for that purpose; or
- bringing a camera or camera bag into a Library building, or using a camera, for non-commercial purposes.

The note under subsection 31(2) explains that in any prosecution for an offence under subsection 31(1), a defendant intending to rely on the exception in subsection 31(2) has the evidential burden of showing that an exception applies. This could be discharged, for example, by providing evidence that the prohibited article was deposited at the place in the Library building designated for prohibited articles. It is appropriate that the defendant bear the evidential burden as the matters required to be established – such as whether an item has been deposited as soon as practicable or that a camera was used for non-commercial purposes - are peculiarly within the knowledge of the person.

Division 6 – Defences

Section 32 – Defences

Section 32 provides for certain defences to prosecutions under Parts 3 or 4 of the Regulations, being essentially that the Director-General has consented in writing to the conduct or that the person was acting in accordance with their duties as a member of the Council, the Director-General, a staff member, or a consultant, contractor or volunteer engaged by the Library. These defences are required to ensure that where a person is acting in accordance with their duties, or in accordance with written consent from the Director-General, they are not prosecuted for an action that would otherwise constitute an offence under the instrument.

Subsection 32(1) provides that it is a defence to a prosecution under Part 3 or Part 4 of the Regulations if, when the relevant conduct was engaged in by the person, the Director-General had consented, in writing, to the conduct.

Subsection 32(2) provides that it is a defence to a prosecution under Part 3 or Part 4 of the Regulations if the person accused of the offence is a member of the Council, the Director-General, a staff member, consultant, contractor, a person employed or engaged by a person employed under contract with the Library, or volunteer engaged by the Library and that person is acting in accordance with their duties.

The note under subsection 32(2) explains that in any prosecution for an offence under Part 3 or Part 4, a defendant intending to rely on the exception in subsection 32(2) has the evidential burden of showing that an exception applies. This could be discharged, for example, by providing evidence that they were acting in accordance with their duties as a staff member of the Library. It is appropriate that the defendant bear the evidential burden as it would be disproportionately difficult and costly, taking into account the low penalty, for the prosecution to prove that the Director-General had not consented in writing to a person engaging in conduct that contravenes Part 3 or 4 of the Regulations, than for the person to raise evidence of the written consent.

It would be similarly disproportionately difficult and costly for the prosecution to prove that a person is not one of the categories of persons listed in subsection 32(2) and was not acting in accordance with their duties, than for the person to raise evidence of their appointment or employment and associated duties.

Any accused could cheaply and readily raise evidence of their written consent, or of their appointment or employment and associated duties. Once the evidential burden is discharged, the prosecution would then be required to disprove the matter beyond reasonable doubt.

Division 7 – Delegations

Section 33 – Delegation by the Director General

Subsection 33(1) provides that the Director-General may, in writing, delegate any or all of their powers under this instrument to Senior Executive Service employees or acting Senior Executive Service employees in the Library. This provides for the practical use of powers beyond a single individual, but still maintains a sufficient level of seniority for the exercise of powers.

Subsection 33(2) provides that a person exercising powers under a delegation under subsection (1) must comply with any directions of the Director-General.

Division 8 – Review of decisions

Section 34 – Review by Administrative Appeals Tribunal

This section provides for the review of the following decisions by the Administrative Appeals Tribunal:

- decisions of an authorised officer to prohibit entry under section 13;
- decisions of the Director-General to prohibit access to items of Library collection material under section 21; and
- Decisions of an authorised officer to prohibit access to items of Library collection material under section 22.

The purpose of this section is to ensure that decisions that affect the rights and interests of individuals are reviewable.

Part 5 – Transitional provisions

Section 35 – Definitions

This section provides that *old regulations* is defined to mean the *National Library Regulations 1994* as in force immediately before the commencement of this section.

Section 36 – Authorisation to supply liquor

This section provides that an authority given under subregulation 13(1) of the old regulations and in force immediately before the commencement of this section has effect, from that commencement, as if it were an authorisation given under section 8 of this instrument. This is to ensure that existing authorisations in force continue to exist under the new regulations.

Section 37 – Authorised officers

This section provides that a person who was an authorised person for the purposes of the old regulations is upon commencement of these regulations taken to be an authorised officer.

Section 38 – Director-General notices

This section provides that a notice issued by the authority of the Director-General under the old regulations, and in force immediately before the commencement of this section has effect, from that commencement, as if it had been issued under subsection 20(1) of this instrument. This is to ensure that existing Director-General notices in force continue to exist under the new regulations.

Section 39 – Directions prohibiting access or imposing conditions etc.

This section provides that directions issued under subregulation 19(1) of the old regulations and in force immediately before the commencement of this section has effect, from that commencement, as if it had been issued as a direction under subsection 21(1) of this instrument.

Section 40 – Directions on reproduction of unique or rare items of library material

This section provides that directions issued under regulation 20 of the old regulations and in force immediately before the commencement of this section has effect, from that commencement, as if it had been issued as a direction under section 23 of this instrument.

Section 41 – Consent of Director-General

This section provides that, for the purposes of subsection 32(1), it does not matter whether consent was given before, on or after the commencement of this section. Subsection 32(1) provides that it is a defence to a prosecution under Part 3 or Part 4 of the Regulations if, when the relevant conduct was engaged in by the person, the Director-General had consented, in writing, to the conduct.

Schedule 1 – Repeals

Schedule 1 repeals the *National Library Regulations 1994*, which is due to sunset on 1 October 2018, so it can be replaced with this new instrument.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

National Library Regulations 2018

Overview of the Regulations

The *National Library Act 1960* (the Act) establishes the National Library of Australia (National Library) with functions including to maintain and develop a national collection of library material, including a comprehensive collection of library material relating to Australia and the Australian people; and to make library material in the national collection available to such persons and institutions, and in such manner and subject to such conditions, as its Council determines with a view to the most advantageous use of that collection in the national interest.

The purpose of the *National Library Regulations 2018* (the Regulations) is to repeal and remake the *National Library Regulations 1994*, with some changes to reflect current drafting practice and ensure that the Regulations continue to be fit for purpose. In particular, the Regulations would:

- increase the financial thresholds above which the National Library requires the approval of the Minister to purchase and dispose of certain assets;
- provide for the Director-General of the National Library to authorise and place conditions on the sale, supply, disposal, possession and control of liquor on the National Library's premises;
- provide for the Director-General of the National Library to appoint authorised officers;
- provide for the Director-General to control access to and place conditions on access to or use of library material; and
- create certain offences relating to the protection of the collection, control of land and buildings and supply of liquor on the National Library's premises.

Human rights implications

The Regulations are compatible with the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

The instrument engages the following rights:

- the right to freedom of expression in Article 19 of the *International Covenant on Civil and Political Rights* (the ICCPR)
- the right to take part in cultural life under Article 15(1)(a) of the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR)
- the presumption of innocence in Article 14(2) of the ICCPR.

Right to freedom of expression

Article 19 of the ICCPR protects the right of all persons to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds. The Regulations regulate access to Library collection material, and as such engages the right to freedom of expression.

The UN Human Rights Committee has defined the freedom of expression as including the expression and receipt of communications of every form of idea and opinion capable of transmission to others. It includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse. It may also include commercial advertising. It embraces even expression that may be regarded as deeply offensive, although such expression may be restricted.

The exercise of the right to freedom of expression carries with it special duties and responsibilities. Some areas of restriction are permitted; lawful restrictions relating either to the rights or reputations of others, the protection of national security, public order, public health or morals. These restrictions must be strictly necessary and proportionate, and may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. The UN Human Right Committee observed that "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected... The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law".

The collection of the National Library is extraordinarily broad and encompasses all material published in Australia (collected under the legal deposit scheme set out in the *Copyright Act 1968*), unpublished material (including the personal papers of many significant Australians) as well as unfiltered online content collected through Web Archiving.

Section 21 relates to the power of the Director-General to direct that access to, or use of, an item of certain Library material is prohibited or subject to conditions in certain circumstances. This power may only be exercised if the Director-General has reasonable grounds to believe that access or use:

- could result in damage to the item; or
- would be in breach of an agreement that applies to use of the item; or
- would result in access to material which is or is likely to be classified as high classification, by individuals who would be otherwise be restricted from accessing such material; or
- would result in access to material which is connected to legal proceedings.

The first ground provides for restrictions to be placed in order to safeguard items within the collection. This includes material which is rare, unique and fragile, and may include limitations on how many times an object can be accessed within a set time period, or specific circumstances in which it may be accessed (for example, in a humidity-controlled room,

under specific lighting conditions or only while wearing gloves). This restriction is necessary to ensure that fragile Library collection material is appropriately cared for and preserved for future generations, and falls within the limitative grounds of the rights of others.

The second ground acknowledges that the Library collection holds the personal papers of significant Australians, and that access to these papers may be subject to legal agreements made between the donor and the Library. For example, a donor may request that papers not be made available until after their death or that of their spouse; or that papers which contain legally confidential information not be released until all relevant actions have concluded. This restriction encourages donors to lodge their papers with the Library, making them available to researchers and historians, while giving donors the ability to stipulate how their personal papers are used. The restriction also ensures that the Library is not open to legal action for breaches of donor agreements. This falls within the limitative grounds of the rights of others

The third ground acknowledges that the Library collection includes material which may not be generally available, or be ordinarily restricted, including material which is pornographic, explicitly violent or which promotes terrorism. This restriction operates with reference to the National Classification Code, as a well-understood system for restricting access in line with public expectations. Classification decisions give effect to the following principles as far as possible:

- adults should be able to read, hear, see and play what they want;
- minors should be protected from material likely to harm or disturb them;
- everyone should be protected from exposure to unsolicited material that they find offensive; and
- the need to take account of community concerns about:
 - depictions that condone or incite violence, particularly sexual violence; and
 - the portrayal of persons in a demeaning manner.

This will, for example, allow the Director-General to restrict access to film items of Library collection material which have been rated as R to only be accessed by people over the age of 18. Where the Library collection material includes items which have not been classified, the Director-General will exercise the power to prohibit or place conditions on access or use with reference to these principles. This falls within the limitative grounds of protection of public morals.

The fourth ground allows the Director-General to restrict access to material which is, or is likely to be, connected with legal proceedings, including the outcome of such proceedings. For example, this will allow the Director-General to restrict access to material which is alleged to be defamatory. This falls within the limitative grounds of the rights of others.

These grounds are proportionate, targeted and fall within the limitative areas of the Article. Decisions made under this section are reviewable by the Administrative Appeals Tribunal, which provides for independent merits review of decisions.

Right to take part in cultural life

Article 15 of the ICESCR protects the right of all persons to take part in cultural life. The Regulations regulate access to the National Library, and as such engages the right to take part in cultural life.

The UN Committee on Economic, Social and Cultural Rights has stated culture encompasses: ways of life, language, oral and written literature, music and song, non-verbal communication, religion or belief systems, rites and ceremonies, sport and games, methods of production or technology, natural and man-made environments, food, clothing and shelter and the arts, customs and traditions. The same Committee has stated that in order to assure enjoyment of the right to take part in cultural life, countries should provide cultural services that are open for everyone to enjoy and benefit from, including libraries, museums, theatres, cinemas and sports stadiums.

Section 13 relates to the power of an authorised officer to prohibit entry to a person or group of people. This decision may be made if the authorised officer has reasonable grounds for believing that:

- the person or the group has been directed to leave Library property under section 14 on one or more previous occasions; or
- public safety or the safety of staff members is, or may be, endangered by the continued presence of the person or the group on Library property; or
- the conduct of the person or group on Library property is likely to cause offence to another person; or
- the person or group intends to commit, is committing, or has committed, an offence against the Regulations.

As an institution that is established to develop and maintain a national collection of library material, the National Library has promoted participation in cultural life for decades. The National Library is a place where Australians can access a comprehensive collection of library material relating to Australia and the Australian people. To prohibit entry to a person or group of people would limit their ability to participate in cultural life as represented by the physical collection of the National Library.

This power balances the right of an individual to take part in cultural life with the rights of other Library users to also enjoy this right in safety. It also provides a necessary and proportionate safeguard for the Library collection, allowing it to be preserved for current and future use.

Decisions made under this section are reviewable by the Administrative Appeals Tribunal, which provides for independent merits review of decisions.

Presumption of innocence

Article 14 of the ICCPR protects the right to be presumed innocent until proven guilty according to law. It provides that the presumption of innocence imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond a reasonable doubt. Article 14 of the ICCPR is engaged because the Regulations contain a strict liability offence which limits the presumption of innocence.

Subsection 12(5) of the Regulations provide that a person commits an offence of strict liability if they cease to be an authorised officer, and do not return their identity card to the Director-General, within 14 days of it ceasing. This offence is a strict liability offence, recognising that access to identity cards by individuals who are not appointed authorised officers weakens the security of the Library. The offence is intended to significantly enhance the prompt return of identity cards from persons who are no longer authorised officers, in order promote the safety of the public, staff members, and the safety of Library collection material. The penalty for conviction of the offence is 1 penalty unit.

Subsection 12(6) creates an exception to the offence in subsection 12(5), which provides that the offence does not apply if the identity card was lost or destroyed. The evidential burden on proving that the identity card was lost or destroyed is on the defendant. That is, in order for the exception to apply, the defendant must prove that there was a reasonable possibility that the card was lost or destroyed.

While subsection 12(5) limits the presumption of innocence, it does so for legitimate reasons. In particular the strict liability nature of the offence is necessary to ensure individuals who are not appointed authorised officers do not have access to identity cards and hold themselves out as such, particularly given the significant powers authorised officers can exercise under the Regulations. Making the offence strict liability will act as a strong incentive for persons to return their identity cards to the Director-General within the 14 day period.

While an offence of strict liability, it is open to the defendant to prove the exception to the offence if they can show that there was a reasonable possibility that the card was lost or destroyed. This could be discharged, for example, by providing evidence that the card was reported as being lost or destroyed. The existence of this exception to the offence is important, as it means that the person can prove they did not commit the offence.

It is also important to note that the penalty should a person be convicted of this offence is on the low end of the spectrum, being 1 penalty unit. This is another factor that goes to the reasonableness of the strict liability nature of the offence, that as a maximum, only 1 penalty unit can be imposed on a person.

Finally, it is noted that subsections 9(2), 24(2), 24(4), 24(6), 26(2), 28(2), 29(2), 31(2) and 32(2) of the Regulations provide for exceptions to various offences. For the exceptions to apply, the defendant has the evidential burden of proof to prove the matters mentioned in the subsections. However, these exceptions do not relate to offences of strict liability which limit the presumption of innocence. That is, the prosecution is still required to prove the offences beyond reasonable doubt. Only once an offence has been established beyond a reasonable doubt, the defendant can prove an exception to the offence. As such, the offences to which these exceptions relate, and the reversal of the evidential burden onto the defendant to prove an exception to the offence, do not limit the presumption of innocence.

For the reasons discussed above, to the extent that the strict liability offence in subsection 12(5) is a limitation on the presumption of innocence, it is reasonable, necessary and proportionate and in pursuit of a legitimate object. Accordingly, to the extent the Regulation engages the right to the presumption of innocence, it is compatible with that right.

Conclusion

The Regulations are compatible with human rights. To the extent that they limit any human rights, those impacts are reasonable, necessary and proportionate.