



HIGHCOURTOFAUSTRALIA

EXPLANATORY STATEMENT

High Court of Australia (Building and Precincts—Regulating the Conduct of Persons) Directions 2021

Section 19(2) of the *High Court of Australia Act 1979* (Cth) provides:

The Chief Executive and Principal Registrar has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions and, in particular, has power, on behalf of the Court, to give directions, by legislative instrument, for the purpose of regulating the conduct of persons on any land or in any building referred to in paragraph 17(2)(d).

The purpose of these Directions is to regulate the conduct of persons in the building and precincts of the High Court in Canberra, and to update the Directions to reflect the provisions of the *Court Security Act 2013* (Cth) and *Court Security Regulation 2013* (Cth).

No consultation was undertaken as the Directions do not substantially alter existing arrangements and they are directed to the public at large and not a particular group or groups.

The *Court Security Act 2013* (Cth) and *Court Security Regulation 2013* (Cth) are incorporated by reference and can be found at

<https://www.legislation.gov.au/Details/C2018C00004>; and

<https://www.legislation.gov.au/Details/F2013L02112>.

Statement of Compatibility with Human Rights

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

High Court of Australia (Building and Precincts—Regulating the Conduct of Persons) Directions 2021

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*.

Overview of the Disallowable Legislative Instrument

Section 19(2) of the *High Court of Australia Act 1979 (Cth)* provides:

The Chief Executive and Principal Registrar has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions and, in particular, has power, on behalf of the Court, to give directions, by legislative instrument, for the purpose of regulating the conduct of persons on any land or in any building referred to in paragraph 17(2)(d).

The purpose of these Directions is to regulate the conduct of persons in the building and precincts of the High Court in Canberra, and to update the Directions to reflect the provisions of the *Court Security Act 2013 (Cth)* and *Court Security Regulation 2013 (Cth)*.

Human rights implications

This Disallowable Legislative Instrument engages the following rights contained in the International Covenant on Civil and Political Rights (ICCPR):

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

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.

Clause 5(xvii) which prohibits the display of any sign, poster or image within the building or precincts without the prior approval of the Chief Executive or a person authorised by the Chief Executive, restricts the right to freedom of expression contained in article 19 of the ICCPR. It is a permissible limitation of that right. Clause 5(xvii) is consistent with art 19(3) which permits freedom of expression to be limited only where provided for by law and when necessary to protect, *inter alia*, public order. It is important for the Court to retain the ability to regulate the display of signs, posters or images in order to preserve the appearance or substance of its independence and impartiality, and to prevent interference with the orderly conduct of proceedings. It is also proportionate in that there exists provision for the Chief Executive or a person authorised by the Chief Executive to authorise displays of signs, posters and images.

Clause 5(xviii) which prohibits a person from conducting or participating in any public protest or assembly within the building without the prior approval of the Chief Executive or a person authorised by the Chief Executive, restricts the rights to freedom of expression and freedom of assembly recognised in articles 19 and 21 of the ICCPR. The clause is consistent with art 19(3) which permits freedom of expression to be limited only where provided for by law and when necessary to protect, *inter alia*, public order. It is important for the Court to retain the ability to regulate public protests and assemblies in order to preserve the appearance or substance of its independence and impartiality, and to prevent interference with the orderly conduct of proceedings. The limitation on this right by clause 5(xviii) is proportionate. It does not prevent peaceful assembly in the precincts of the Court, only in the building. The clause also permits public protests and assemblies within the building with the prior approval of the Chief Executive or a person authorised by the Chief Executive.

Article 21 of the ICCPR provides that the right of peaceful assembly shall be recognised and that no restrictions may be placed on this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of, *inter alia*, public order or the protections of the rights and freedoms of others. The limitation on this right by clause 5(xviii) is proportionate. It does not prevent peaceful assembly in the precincts of the Court, only in the building. The clause also permits public protests and assemblies within the building with the prior approval of the Chief Executive or a person authorised by the Chief Executive.

Conclusion

The Disallowable Legislative Instrument is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

Note: The name of this instrument was amended on registration as the instrument as lodged did not have a unique name (see subsection 10(2), *Legislation Rule 2016*).