



HIGH COURT OF AUSTRALIA

EXPLANATORY STATEMENT

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 this Amendment to the *High Court of Australia (Building and Precincts-Regulating the Conduct of Persons) Directions 2021* is to make clear that the proscriptions in paragraph 5(i) (a person shall not behave in a disorderly or offensive manner within the building or precincts) and paragraph 5(xii) (a person shall not light any fire or deposit any litter or create any nuisance within the building or precincts) do not apply to public protest or other assembly (including for the purposes of industrial action, dissent, celebration or ceremony) and which is not reasonably likely to:

- (i) put the health or safety of any person within the building or the precincts at risk; or
- (ii) interfere with, damage or destroy any tree, plant, grass, building or other property within the building or precincts; or
- (iii) impede a person's access to the building or precincts; or
- (iv) interrupt Court proceedings.

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 Amendment also removes a redundant reference in the Table of directions.

Statement of Compatibility with Human Rights

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

High Court of Australia (Building and Precincts-Directions for 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*.

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 this Amendment to the *High Court of Australia (Building and Precincts-Directions for Regulating the Conduct of Persons) 2021* is to make clear that the proscriptions in paragraph 5(i) (a person shall not behave in a disorderly or offensive manner within the building or precincts) and paragraph 5(xii) (a person shall not light any fire or deposit any litter or create any nuisance within the building or precincts) do not apply to public protest or other assembly (including for the purpose of industrial action, dissent, celebration or ceremony) and which is not reasonably likely to:

- (i) put the health or safety of any person within the building or the precincts at risk; or
- (ii) interfere with, damage or destroy, any tree, plant, grass, building or other property within the building or precincts; or
- (iii) impede a person's access to the building or precincts; or
- (iv) interrupt Court proceedings.

Human rights implications

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

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 5A makes clear that the paragraphs 5(i) and 5(xii) are consistent with article 19(3) which permits freedom of expression and the right of peaceful assembly to be limited only where provided for by law and when necessary to protect, inter alia, public order. To avoid doubt, clause 5A confirms that those paragraphs are not intended to apply to protest or other assembly (including for the purposes of industrial action, dissent, celebration or ceremony) and which is not reasonably likely to:

- (i) put the health or safety of any person within the building or the precincts at risk; or
- (ii) interfere with, damage or destroy any tree, plant, grass, building or other property within the building or precincts; or
- (iii) impede a person's access to the building or precincts; or
- (iv) interrupt Court proceedings.

The Court's ability to prevent interference with the orderly conduct of proceedings, to protect the public from risks to health and safety, and to protect the building from damage is necessary for the protection of public order.

Clause 5A is also consistent with the right of peaceful assembly in article 21 in that the restrictions placed on the right are in conformity with the law and are intended to protect public safety, public order and the rights and freedoms of others to have access to the Court.

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.