

AN OUTLINE OF THE PROPOSED A.C.T. PUBLIC
ASSEMBLIES ORDINANCE

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AN OUTLINE OF THE PROPOSED ACT PUBLIC ASSEMBLIES ORDINANCE

The proposed Public Assemblies Ordinance was prepared in order to meet a need which became apparent upon the repeal of the Public Assemblies Ordinance 1982. The intention of the proposed Ordinance is to widen the right of public assembly not to 'limit it.

The text of the proposed ordinance was made public and comment was invited from certain interested bodies in 1984,

The Ordinance was also referred to the ACT House of Assembly for Consideration and that body proposed certain amendments. Two other changes to the Ordinance are proposed as a result of comments received but at this time they have not been finally settled.

A text of the proposed Ordinance is printed as an appendix to the Human Rights Commission Occasional Paper No.8. I shall indicate proposed changes as I come to them.

The Ordinance, basically, provides for a system of voluntary notification of public assemblies with immunity from prosecution for breaches of Territory law relating to the movement or passage of traffic or pedestrians where authorisation is granted.

I shall now deal with some specific provisions of the proposed Ordinance .

A. THE IMMUNITY

People participating in assemblies held in accordance with a permit are effectively exempted from Territory laws relating to obstruction on roads or in public places. This is provided for in clause 4 of the Ordinance,.,

As drafted the immunity does not apply to a person participating in an assembly which is not held substantially in compliance with the Particular's specified in the relevant notification.

Consideration AS being given to altering this provision so that where persons are participating in an authorised public assembly the immunity will extend unless they themselves are not acting substantially in accordance with the particulars. If this is to be done it will be done before the Ordinance is made.

The immunity would not extend to the offence of unreasonable obstruction under section 9 of the Public Order (Protection of persons and Property Act 1971). However, in order to establish that offence it is necessary to demonstrate that the degree of obstruction is unreasonable. We have been advised that the fact that an assembly has been authorised by the Commissioner of Police or the Supreme Court would be paramount in a Court's consideration of whether an assembly was "unreasonable".

B THE PROCEDURE FOR AUTHORISATION

In order for an assembly to become authorised advance notification is required to be given to the Commissioner of Police. If notification is given at least Seven days in advance the assembly will be authorised unless the Commissioner obtains a Supreme Court Order to the contrary. -Where notification is given less than seven days in advance the assembly will be authorised if the Commissioner indicates that he does not oppose the holding of the assembly or the organizer of the assembly obtains a court order authorising the holding of the assembly'. -

The requirement for notification are set out in clause 7. A valid notification' must contain, among other things, details of the time and place at which it is expected that participants will assemble and disband, the proposed route and the places and times

at which it is proposed to stop, the expected number of participants and the purpose of the assembly. There is a power to make regulations prescribing other particulars. It is an offence to knowingly furnish false or misleading particulars.

C APPLICATION BY THE COMMISSIONER OF POLICE FOR AN ORDER THAT AN ASSEMBLY IS NOT AUTHORISED

Where the Commissioner has received notification of an assembly at least 7 days in advance and he wishes to oppose the holding of the assembly he can only do so by application to the Supreme Court.

In order to make such an application the Commissioner must have notified the organizer of his opposition to the holding of the assembly within 3 days of having received notification of the Assembly.

Where the Commissioner notifies his opposition he must give reasons for his decision and invite the organizer to a conference or to make written representations about the assembly.

Where the Commissioner seeks such a Court order the Court may make an order prohibiting the assembly or specifying terms and conditions for the holding of the assembly. The House of Assembly has recommended an amendment to clause 13 to amend the description of the Court order so as to make it clear that the assembly will not be prohibited by the court but merely not approved. This is in line with the philosophy of the Ordinance and obviates the risk of persons participating in an unauthorised assembly being charged with contempt of court.

The Commissioner may not oppose the holding of an assembly unless he is of the opinion that the assembly is not in the public interest.

In forming such an opinion the Commissioner is to have regard to the following matters:

(0 The objects of the Ordinance and, in particular, the right of peaceful assembly provided for in the International Covenant on Civil and Political Rights; and

(ii) the likelihood of:

) serious public disorder;

(b) personal injury;

(c) damage to property; or

(d) unreasonable obstruction.

D IMPOSITION OF TERMS AND CONDITIONS BY THE COMMISSIONER OF POLICE

Where the Commissioner notifies the organiser that he does not oppose the holding of an assembly he may impose: Conditions on his consent. The Commissioner may not impose conditions which would have the effect of substantially altering the nature of the assembly and the organiser may apply to the Courts for a review of the conditions.

E BREACH OF THE PEACE - NEW OFFENCES

Clause 19 of the Ordinance creates two new offences applicable to all public assemblies whether authorised or not.

It is to be an offence to engage in behaviour that causes or provokes or is intended to cause or provoke a breach of the peace.

Additionally police officers (of or above the rank of sergeant) will be able to direct persons engaging in offensive or insulting conduct to leave the vicinity of an assembly. It is an offence to disobey such a direction.

It is expected that the first of these offences will be changed before the Ordinance is made so that it will apply only to persons who intentionally cause or provoke a breach of the peace.

F. CONSULTATION

The views of the Human Rights Commission, the Society of Labor Lawyers, the ACT House of Assembly the Federal Police and other interested Commonwealth departments were sought and, where appropriate, these and other comments received (such as those of Mr Seddon and Dr O'Connor of the ANU) were taken into account.

G. THE FUTURE OF THE PROPOSED ORDINANCE

In conclusion I have to say that while there are plans to make the Ordinance in the not too distant future I am not able to indicate exactly when the Ordinance will be made.

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