

Chapter 1¹

New and continuing matters

1.1 In this chapter the committee has examined the following bills and legislative instruments for compatibility with human rights:

- bills introduced into the Parliament between 15 to 18 March 2021;
- legislative instruments registered on the Federal Register of Legislation between 19 February to 2 March 2021.²

1.2 Bills and legislative instruments from this period that the committee has determined not to comment on are set out at the end of the chapter.

1.3 The committee comments on the following bill and seeks a response from the relevant minister.

1 This section can be cited as Parliamentary Joint Committee on Human Rights, *New and continuing matters, Report 4 of 2021*; [2021] AUPJCHR 35.

2 The committee examines all legislative instruments registered in the relevant period, as listed on the Federal Register of Legislation. To identify all of the legislative instruments scrutinised by the committee during this period, select 'legislative instruments' as the relevant type of legislation, select the event as 'assent/making', and input the relevant registration date range in the Federal Register of Legislation's advanced search function, available at: <https://www.legislation.gov.au/AdvancedSearch>.

Bills

Sydney Harbour Federation Trust Amendment Bill 2021¹

Purpose	This bill seeks to amend the <i>Sydney Harbour Federation Trust Act 2001</i> to establish the Sydney Harbour Federation Trust as an ongoing entity, and amend its operational powers
Portfolio	Agriculture, Water and the Environment
Introduced	House of Representatives, 18 March 2021
Rights	Freedom of expression; freedom of assembly

Prohibition on public assembly

1.4 This bill would establish the Sydney Harbour Federation Trust (the Trust) as an ongoing entity.² It would also establish powers under the *Sydney Harbour Federation Trust Act 2001* (the Act) for the Trust to order that any person engaged in promoting, conducting or carrying out certain activity on Trust land must cease doing so, or must do (or not do) such things in relation to the activity as are specified in the order, and in the manner specified.³ The Trust could make such an order if the Trust reasonably believes that the activity contravenes a range of matters, including that the activity contravenes the regulations. A person would commit a strict liability offence if the person does not comply with the order, punishable by up to 10 penalty units (or \$2,220).⁴

1.5 Section 11 of the current Sydney Harbour Federation Trust Regulations 2001 (the regulations) provides that it is an offence for a person to 'organise or participate in a public assembly on Trust land'.⁵ A 'public assembly' is defined in section 11(3) to include an organised assembly of persons for the purpose of holding a meeting, demonstration, procession or performance. The activity that would otherwise be an offence under section 11 is not an offence if it 'is authorised by a licence or permit' granted by the Trust.⁶

1 This entry can be cited as: Parliamentary Joint Committee on Human Rights, Sydney Harbour Federation Trust Amendment Bill 2021, *Report 4 of 2021*; [2021] AUPJCHR 36.

2 Schedule 1, Part 1, items 1–3, and 9.

3 Schedule 1, Part 3, item 13, proposed subsection 65B(1).

4 Schedule 1, Part 3, item 13, proposed section 65D.

5 'Trust land' is defined in section 3 and listed in Schedules 1 and 2 of the Act. It includes a number of Lots in Middle Head, Georges Heights, Woolwich, and Cockatoo Island..

6 Sydney Harbour Federation Trust Regulations 2001 [F2010C0026], subsection 23(d).

Preliminary international human rights legal advice

Rights to freedom of expression and assembly

1.6 By providing for the enforcement of a prohibition against organising or participating in organised assemblies, this bill engages and appears to limit the rights to freedom of expression and assembly. The right to freedom of expression extends to the communication of information or ideas through any medium, including public protest.⁷ The right to freedom of assembly protects the freedom of individuals and groups to meet and engage in peaceful protest and other forms of collective activity in public.⁸ These rights may be permissibly limited where a measure seeks to achieve a legitimate objective, is rationally connected to (that is, effective to achieve) that objective, and is a proportionate means by which to achieve it. In order for a measure to be directed towards a legitimate objective for the purposes of these two rights, a limitation must be demonstrated to be necessary to protect: the rights or reputations of others; national security; public order; or public health or morals.⁹ Further, in determining whether limitations on the freedom of expression are proportionate, the UN Human Rights Committee has previously noted that restrictions on the freedom of expression must not be overly broad.¹⁰

1.7 The statement of compatibility does not identify that this bill engages the rights to freedom of expression and assembly. The committee previously considered the Legislation (Deferral of Sunsetting—Sydney Harbour Federation Trust Regulations) Certificate 2019,¹¹ which deferred the sunsetting of the regulations. At that time, the Attorney-General advised that the regulations were being considered as part of a broader independent review of the work of the Trust, and that consideration of whether the approach taken under section 11 with respect to public assemblies remains appropriate would be undertaken during that review, and with respect to the development of replacement regulations.¹² However, the explanatory memorandum accompanying this bill states that the regulations are anticipated to be 'remade with minor changes to their operation'.¹³ Further, the *Independent Review of the Sydney Harbour Federation Trust 2020* does not appear to discuss proposed

7 International Covenant on Civil and Political Rights (ICCPR), article 19.

8 ICCPR, article 21.

9 UN Human Rights Committee, *General Comment No.34: Article 19: Freedoms of Opinion and Expression* (2011) [21]-[36].

10 UN Human Rights Committee, *General Comment No.34: Article 19: Freedoms of Opinion and Expression* (2011) [34]-[35].

11 See, Parliamentary Joint Committee on Human Rights, *Report 1 of 2020*, pp. 35–37; and *Report 4 of 2020*, pp. 98–102.

12 Parliamentary Joint committee on Human Rights, *Report 4 of 2020* (9 April 2020) Sydney Harbour Federation Trust Regulations 2001 [F2010C0026], p. 101.

13 Explanatory memorandum, p. 13.

amendments to the regulations relating to these matters.¹⁴ Noting that these regulations are due to sunset on 1 October 2021, it is not clear whether section 11 of the regulations is intended to be retained when the regulations are remade.

1.8 Consequently, in order to assess the extent to which this bill engages and may limit the rights to freedom of expression and assembly, further information is required, and in particular:

- (a) whether it is intended that section 11 of the Sydney Harbour Federation Trust Regulations 2001 will be retained as drafted, retained subject to amendments, or removed;
- (b) how the organisation of, or participation in, a public assembly (including a meeting, demonstration, procession, performance, or sporting event) on Trust land would constitute a threat to public order or public health;
- (c) what safeguards exist to protect the rights to freedom of expression and assembly, noting that the regulations establish a broadly defined prohibition on a public assembly which would appear to include assemblies which may pose no threat to public order on public lands (including how often has the Trust issued or refused to issue a permit for the carrying out of assemblies, and on what basis); and
- (d) why other, less rights restrictive alternatives (such as only prohibiting activities contravening regulations which constitute a public hazard or a risk to public health) would not be effective to achieve the objective of this measure.

Committee view

1.9 The committee notes that the bill seeks to establish the Sydney Harbour Federation Trust as an ongoing entity, and empower it to enforce compliance with a range of matters related to Trust lands, including matters provided for under the regulations, which currently makes it an offence for a person to organise or participate in a public assembly on Trust land.

1.10 The committee notes that this constitutes a prohibition on public assemblies in these areas, unless the Trust otherwise grants a permit to allow an assembly to take place. The committee notes that this engages and appears to limit the rights to freedom of expression and assembly. The committee notes that these rights may be permissibly limited where a limitation is reasonable, necessary and proportionate.

14 See, <https://www.environment.gov.au/system/files/consultations/65d51c8f-27e6-4c72-b1b2-e7fe8f0764fb/files/shft-review-final-report.pdf> [Accessed 22 March 2021].

1.11 The committee notes that the Attorney-General has previously advised the committee that the regulations are being considered as part of a broader independent review of the work of the Trust, and that consideration of whether the approach taken with respect to public assemblies remains appropriate would be undertaken during that review, and with respect to the development of replacement regulations.¹⁵ However, the committee notes that the explanatory memorandum accompanying this bill states that the regulations are anticipated to be 'remade with minor changes to their operation',¹⁶ and that the *Independent Review of the Sydney Harbour Federation Trust 2020* does not appear to discuss proposed amendments to the regulations relating to these matters.¹⁷ As such, the committee considers that it is not clear whether it is intended that this aspect of the regulations will be retained. The committee notes that this is the chief consideration in its assessment of the extent to which this bill engages and may limit the rights to freedom of expression and assembly.

1.12 The committee has not yet formed a concluded view in relation to this matter. It considers further information is required to assess the human rights implications of this bill, and as such seeks the minister's advice as to the matters set out at paragraph [1.8].

15 Parliamentary Joint committee on Human Rights, *Report 4 of 2020* (9 April 2020) Sydney Harbour Federation Trust Regulations 2001 [F2010C0026], p. 101.

16 Explanatory memorandum, p. 13.

17 See, <https://www.environment.gov.au/system/files/consultations/65d51c8f-27e6-4c72-b1b2-e7fe8f0764fb/files/shft-review-final-report.pdf> [Accessed 22 March 2021].

Bills and instruments with no committee comment¹

1.13 The committee has no comment in relation to the following bills which were introduced into the Parliament between 15 to 18 March 2021. This is on the basis that the bills do not engage, or only marginally engage, human rights; promote human rights; and/or permissibly limit human rights:²

- Archives and Other Legislation Amendment Bill 2021;
- Biosecurity Amendment (Clarifying Conditionally Non-prohibited Goods) Bill 2021
- Education Legislation Amendment (2021 Measures No. 2) Bill 2021;
- Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 2021;
- Mutual Recognition Amendment Bill 2021;
- National Health Amendment (Pharmaceutical Benefits Transparency and Cost Recovery) Bill 2021;
- Royal Commissions Amendment (Protection of Information) Bill 2021;
- Sex Discrimination Amendment (Prohibiting All Sexual Harassment) Bill 2021;
- Treasury Laws Amendment (2021 Measures No. 2) Bill 2021.

1.14 The committee has examined the legislative instruments registered on the Federal Register of Legislation between 19 February and 2 March 2021.³ The committee has reported on one legislative instrument from this period in chapter 2. The committee has determined not to comment on the remaining instruments from this period on the basis that the instruments do not engage, or only marginally engage, human rights; promote human rights; and/or permissibly limit human rights.

1 This section can be cited as Parliamentary Joint Committee on Human Rights, Bills and instruments with no committee comment, *Report 4 of 2021*; [2021] AUPJCHR 37.

2 Inclusion in the list is based on an assessment of the bill and relevant information provided in the statement of compatibility accompanying the bill. The committee may have determined not to comment on a bill notwithstanding that the statement of compatibility accompanying the bill may be inadequate.

3 The committee examines all legislative instruments registered in the relevant period, as listed on the Federal Register of Legislation. To identify all of the legislative instruments scrutinised by the committee during this period, select 'legislative instruments' as the relevant type of legislation, select the event as 'assent/making', and input the relevant registration date range in the Federal Register of Legislation's advanced search function, available at: <https://www.legislation.gov.au/AdvancedSearch>.