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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Australian Bill of Rights Bill 2017

No. , 2017

(Mr Wilkie)

**A Bill for an Act relating to the human rights and
fundamental freedoms of all Australians and all
people in Australia, and for related purposes**

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Objects	2
4 Definitions	3
5 Interpretation of Bill of Rights	10
6 Extension to external Territories	10
7 Extent to which Act binds the Crown	10
8 Act not to apply so as to exceed Commonwealth power	11
9 Acquisition of property	12
Part 2—Operation of Bill of Rights	13
10 Application of Bill of Rights	13
11 Interpretation of legislation	13
12 No civil or criminal liability under Bill of Rights	14
Part 3—Functions of the Australian Human Rights Commission	15
13 Additional powers and functions of Commission	15
14 Performance of Commission in relation to Bill of Rights	16
15 Complaints and redress for infringement of rights or freedoms	16
16 Reporting to Parliament	17
Part 4—Miscellaneous	19
17 Jurisdiction of Federal Court and Federal Circuit Court	19
18 Regulations	19
Part 5—Declaration of Rights	20
19 Australian Bill of Rights	20

1 **A Bill for an Act relating to the human rights and**
2 **fundamental freedoms of all Australians and all**
3 **people in Australia, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act is the *Australian Bill of Rights Act 2017*.

Section 2

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.
6

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day this Act receives the Royal Assent.	

7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.

13 **3 Objects**

14 The objects of this Act are:

- 15 (a) to promote universal respect for, and observance of, human
16 rights and fundamental freedoms for all persons without
17 discrimination; and
18 (b) to that end, to enact an Australian Bill of Rights giving effect
19 to certain provisions of:
20 (i) the International Covenant on Civil and Political Rights
21 done at New York on 16 December 1966; and
22 (ii) the International Covenant on Economic, Social and
23 Cultural Rights done at New York on 16 December
24 1966; and
25 (iii) the Convention on the Rights of the Child done at New
26 York on 20 November 1989;
27 being guided by:
28 (iv) the Declaration on the Rights of Mentally Retarded
29 Persons; and
-

- 1 (v) the Declaration on the Rights of Disabled Persons; and
 2 (vi) the Declaration on the Elimination of All Forms of
 3 Intolerance and of Discrimination based on Religion or
 4 Belief; and
 5 (c) to ensure that any person whose rights or freedoms as set out
 6 in the Australian Bill of Rights are infringed by or under any
 7 law in relation to which that Bill of Rights operates has an
 8 effective remedy; and
 9 (d) to promote, enhance and secure, as paramount objectives, the
 10 freedom and dignity of the human person, equality of
 11 opportunity for all persons and full and free participation by
 12 all Australians in public affairs and public debate.
- 13 Note 1: The International Covenant on Civil and Political Rights is in
 14 Australian Treaty Series 1980 No. 23 ([1980] ATS 23) and could in
 15 2017 be viewed in the Australian Treaties Library on the AustLII
 16 website (<http://www.austlii.edu.au>).
- 17 Note 2: The International Covenant on Economic, Social and Cultural Rights
 18 is in Australian Treaty Series 1976 No. 5 ([1976] ATS 5) and could in
 19 2017 be viewed in the Australian Treaties Library on the AustLII
 20 website (<http://www.austlii.edu.au>).
- 21 Note 3: The Convention on the Rights of the Child is in Australian Treaty
 22 Series 1991 No. 4 ([1991] ATS 4) and could in 2017 be viewed in the
 23 Australian Treaties Library on the AustLII website
 24 (<http://www.austlii.edu.au>).

25 4 Definitions

- 26 (1) In this Act:
- 27 *act* means an act done:
- 28 (a) by or on behalf of the Commonwealth, a State or a Territory;
 29 or
 30 (b) by or on behalf of an authority of the Commonwealth, of a
 31 State or of a Territory;
- 32 being an act done:
- 33 (c) in relation to an Australian citizen—within or outside
 34 Australia; or
 35 (d) in any other case—within Australia.

Section 4

1 **Australia**, when used in a geographical sense, includes the external
2 Territories.

3 **Australian Capital Territory enactment** means an enactment of the
4 Australian Capital Territory, within the meaning of the *Australian*
5 *Capital Territory (Self-Government) Act 1988*, or an instrument
6 made under such an enactment.

7 **authority** means:

8 (a) in relation to the Commonwealth:

- 9 (i) a body (whether incorporated or unincorporated)
10 established for a purpose of the Commonwealth by or
11 under a Commonwealth enactment; or
12 (ii) an incorporated company over which the
13 Commonwealth is in a position to exercise control; or
14 (iii) a person holding or performing the duties of an office or
15 appointment established or made under a
16 Commonwealth enactment or by the Governor-General
17 or a Minister of State of the Commonwealth (not being
18 an office or appointment referred to in subparagraph (c)
19 (iii)); or
20 (iv) a body, or a person holding or performing the duties of
21 an office or appointment, that is declared by the
22 regulations to be an authority of the Commonwealth for
23 the purposes of this Act; or

24 (b) in relation to a State:

- 25 (i) a body (whether incorporated or unincorporated)
26 established for a purpose of the State by or under an
27 enactment of the State; or
28 (ii) an incorporated company over which the State is in a
29 position to exercise control; or
30 (iii) a person holding or performing the duties of an office or
31 appointment established or made under an enactment, or
32 by the Governor or a Minister, of the State; or
33 (iv) a local government body in the State; or
34 (v) a body, or a person holding or performing the duties of
35 an office or appointment, that is declared by the

- 1 regulations to be an authority of the State for the
2 purposes of this Act; or
3 (c) in relation to a Territory:
4 (i) a body (whether incorporated or unincorporated)
5 established for a purpose of the Territory by or under a
6 Commonwealth enactment or an enactment of the
7 Territory; or
8 (ii) an incorporated company over which the Administration
9 of the Territory is in a position to exercise control; or
10 (iii) a person holding or performing the duties of an office or
11 appointment established or made under an enactment of
12 the Territory or by the Administrator of a Territory; or
13 (iv) a body, or a person holding or performing the duties of
14 an office or appointment, that is declared by the
15 regulations to be an authority of the Territory for the
16 purposes of this Act.

17 **Bill of Rights** means the Australian Bill of Rights set out in
18 section 19.

19 **Commission** means the Australian Human Rights Commission
20 established by the *Australian Human Rights Commission Act 1986*.

21 **Commonwealth enactment** means an Act or an instrument (other
22 than a Territory enactment) made under an Act, and includes any
23 other legislation or rule of the common law applied (otherwise than
24 by virtue of the *Commonwealth Places (Application of Laws) Act*
25 *1970*) as a law of the Commonwealth, to the extent that it operates
26 as such a law.

27 **enactment** means a Commonwealth enactment, a State enactment
28 or a Territory enactment.

29 **infringe** includes abrogate and abridge.

30 **instrument** includes a rule, regulation or by-law.

31 **law** means a law of the Commonwealth, a law of a Territory or a
32 law of a State.

Section 4

1 **law of a State** means any law in force in a State, including a rule of
2 the common law but not including a law of the Commonwealth.

3 **law of a Territory** means any law in force in a Territory, including
4 a rule of the common law but not including a law of the
5 Commonwealth.

6 **law of the Commonwealth** means:

- 7 (a) a Commonwealth enactment; or
8 (b) any other law (other than a rule of the common law) in force
9 throughout Australia; or
10 (c) any rule of the common law as it has effect in relation to or
11 for the purposes of the operation of a Commonwealth
12 enactment or a law referred to in paragraph (b).

13 **Minister** means:

- 14 (a) in relation to a State—a Minister of the Crown of the State;
15 or
16 (b) in relation to the Australian Capital Territory and the
17 Northern Territory—a Minister of that Territory.

18 **Northern Territory enactment** means an enactment of the
19 Northern Territory within the meaning of the *Northern Territory*
20 *(Self-Government) Act 1978* or an instrument made under such an
21 enactment.

22 **Parliament**, in relation to the Australian Capital Territory, means
23 the Legislative Assembly of the Australian Capital Territory, and
24 in relation to the Northern Territory, means the Legislative
25 Assembly of the Northern Territory.

26 **person** includes an individual or group of persons, depending on
27 the context.

28 **practice** means a practice engaged in:

- 29 (a) by or on behalf of the Commonwealth, a State or a Territory;
30 or
31 (b) by or on behalf of an authority of the Commonwealth, of a
32 State or of a Territory;

33 being a practice engaged in:

- 1 (c) in relation to an Australian citizen—within or outside
2 Australia; or
3 (d) in any other case—within Australia.

4 ***President*** means the President of the Commission.

5 ***proposed enactment*** means:

- 6 (a) a proposed law introduced into the Parliament of the
7 Commonwealth or the legislature of a Territory; or
8 (b) a proposed law prepared on behalf of:
9 (i) the Government of the Commonwealth or the
10 Administration of a Territory; or
11 (ii) a Minister of State of the Commonwealth; or
12 (iii) a body established by law that has the function of
13 recommending proposed laws of the Commonwealth or
14 of a Territory; or
15 (c) a proposed State enactment; or
16 (d) an instrument proposed to be made under a Commonwealth
17 enactment or under a Territory enactment.

18 ***proposed State enactment*** means:

- 19 (a) a proposed law introduced into the Parliament of a State; or
20 (b) a proposed law prepared on behalf of:
21 (i) the Government of a State; or
22 (ii) a Minister of the State; or
23 (iii) a body established by law that has the function of
24 recommending proposed laws of a State; or
25 (c) an instrument proposed to be made under a State enactment.

26 ***responsible Minister*** means:

- 27 (a) in relation to a Commonwealth enactment, a Territory
28 enactment or a proposed enactment (other than a proposed
29 State enactment)—the Minister of State of the
30 Commonwealth responsible for the administration of the
31 matter to which the enactment or proposed enactment relates;
32 or
33 (b) in relation to a State enactment or a proposed State
34 enactment—the Minister of the State responsible for the

Section 4

- 1 administration of the matter to which the enactment or
2 proposed enactment relates; or
3 (c) in relation to an act done or practice engaged in by or on
4 behalf of the Commonwealth or a Territory or by or on behalf
5 of an authority of the Commonwealth or of a Territory—the
6 Minister of State of the Commonwealth responsible for the
7 administration of the matter in connection with which the act
8 was done or the practice was engaged in; or
9 (d) in relation to an act done or practice engaged in by or on
10 behalf of a State or by or on behalf of an authority of a
11 State—the Minister of the State responsible for the
12 administration of the matter in connection with which the act
13 was done or the practice was engaged in.

14 **State** includes the Australian Capital Territory and the Northern
15 Territory.

16 **State enactment** means a State Act or an instrument made under a
17 State Act and includes an Australian Capital Territory enactment
18 and a Northern Territory enactment.

19 **suit** includes any action or original proceeding between parties.

20 **Territory** does not include the Australian Capital Territory or the
21 Northern Territory.

22 **Territory Act** means an Act passed by a legislature of a Territory
23 and duly assented to.

24 **Territory enactment** means:

- 25 (a) a Territory Act; or
26 (b) an Ordinance of a Territory; or
27 (c) an instrument made under such an Act or Ordinance; or
28 (d) any other legislation or rule of the common law applied as a
29 law of a Territory, to the extent that it operates as such a law;
30 or
31 (e) an instrument made under legislation referred to in
32 paragraph (d).

- 1 (2) In this Act, a reference to the Governor of a State, in relation to the
2 Northern Territory, means a reference to the Administrator of the
3 Northern Territory.
- 4 (3) In this Act:
- 5 (a) a reference to, or to the doing of, an act includes a reference
6 to a refusal or failure to do an act; and
- 7 (b) a reference, in relation to the doing of an act or the engaging
8 in of a practice, to the person who did the act or engaged in
9 the practice will, in the case of an act done or practice
10 engaged in by an unincorporated body of persons, be read as
11 a reference to that body.
- 12 (4) Subject to subsection (5), a law will, for the purposes of this Act,
13 be taken to be inconsistent with the Bill of Rights if it:
- 14 (a) infringes, or authorises the infringement of, a right or
15 freedom set out in the Bill of Rights; or
- 16 (b) makes, or authorises the making of, a provision that
17 according to the Bill of Rights, is not to be made by any law.
- 18 (5) Where a law:
- 19 (a) promotes, enhances or secures a right or freedom set out in
20 the Bill of Rights, but infringes, or authorises the
21 infringement of, another right or freedom set out in the Bill
22 of Rights; or
- 23 (b) promotes, enhances or secures for a person a right or freedom
24 set out in the Bill of Rights, but, in relation to another person,
25 infringes, or authorises the infringement of, a right or
26 freedom set out in the Bill of Rights;
- 27 it is the intention of the Parliament that the law will not be
28 determined to be inconsistent with the Bill of Rights unless such a
29 determination would further the objects of this Act, and in
30 particular the paramount objectives referred to in paragraph 3(d), to
31 a greater extent than a determination that the law is not inconsistent
32 with the Bill of Rights.
- 33 (6) A reference in this Act to a right or freedom set out in the Bill of
34 Rights is a reference to such a right or freedom limited only as
35 permitted by Article 3 of the Bill of Rights.

Section 5

- 1 (7) A reference in this Act to the date on which an enactment other
2 than this Act came into force will, in the case of an enactment
3 different provisions of which came into force on different dates, be
4 read as a reference to the date on which the provision concerned
5 came into force.
- 6 (8) For the purposes of this Act, an Act will be taken to have been
7 enacted at the time when it receives the Royal Assent.
- 8 (9) A reference in this Act to prejudice to the security, defence or
9 international relations of Australia includes a reference to any such
10 prejudice that might result from the divulging of information or
11 matters communicated in confidence by or on behalf of the
12 government of a foreign country, an authority of a government of a
13 foreign country or an international organisation to the Government
14 of the Commonwealth, to an authority of the Commonwealth or to
15 a person receiving the communication on behalf of the
16 Commonwealth or of an authority of the Commonwealth.

17 **5 Interpretation of Bill of Rights**

- 18 (1) For the purposes of the interpretation of the Bill of Rights, each
19 Article of the Bill of Rights is taken to be a section of this Act.
- 20 (2) Except as expressly provided in this Act, the Bill of Rights may not
21 be interpreted so as to limit or adversely affect the rights of any
22 person.
- 23 (3) The Bill of Rights may not be interpreted so as to adversely affect
24 the rights particular to Aboriginal and Torres Strait Islander people.

25 **6 Extension to external Territories**

26 The Act extends to every external Territory.

27 **7 Extent to which Act binds the Crown**

- 28 (1) This Act binds the Crown in each of its capacities.
- 29 (2) This Act does not make the Crown liable to be prosecuted for an
30 offence.

8 Act not to apply so as to exceed Commonwealth power

- 1
- 2 (1) Unless the contrary intention appears, if a provision of this Act:
- 3 (a) would, apart from this section, have an application (an
- 4 *invalid application*) in relation to:
- 5 (i) one or more particular persons, things, matters, places,
- 6 circumstances or cases; or
- 7 (ii) one or more classes (however defined or determined) of
- 8 persons, things, matters, places, circumstances or cases;
- 9 because of which the provision exceeds the Commonwealth's
- 10 legislative power; and
- 11 (b) also has at least one application (a *valid application*) in
- 12 relation to:
- 13 (i) one or more particular persons, things, matters, places,
- 14 circumstances or cases; or
- 15 (ii) one or more classes (however defined or determined) of
- 16 persons, things, matters, places, circumstances or cases;
- 17 that, if it were the provision's only application, would be
- 18 within the Commonwealth's legislative power;
- 19 it is the Parliament's intention that the provision is not to have the
- 20 invalid application, but is to have every valid application.
- 21 (2) Despite subsection (1), the provision is not to have a particular
- 22 valid application if:
- 23 (a) apart from this section, it is clear, taking into account the
- 24 provision's context and the purpose or object underlying this
- 25 Act, that the provision was intended to have that valid
- 26 application only if every invalid application, or a particular
- 27 invalid application, of the provision had also been within the
- 28 Commonwealth's legislative power; or
- 29 (b) the provision's operation in relation to that valid application
- 30 would be different in a substantial respect from what would
- 31 have been its operation in relation to that valid application if
- 32 every invalid application of the provision had been within the
- 33 Commonwealth's legislative power.
- 34 (3) Subsection (2) does not limit the cases where a contrary intention
- 35 may be taken to appear for the purposes of subsection (1).

Section 9

1 (4) This section applies to a provision of this Act, whether enacted
2 before, at or after the commencement of this section.

3 **9 Acquisition of property**

4 This Act, or any instrument made under this Act, does not apply to
5 the extent (if any) that the operation of this Act or the instrument
6 would result in an acquisition of property (within the meaning of
7 paragraph 51(xxxi) of the Constitution) from a person otherwise
8 than on just terms (within the meaning of that paragraph).

Part 2—Operation of Bill of Rights**10 Application of Bill of Rights**

- (1) Subject to subsection (2), any law, whether passed or made before, on or after the commencing day of this Act, that is inconsistent with this Act does not, to the extent of the inconsistency, have any force or effect.
- (2) Subsection (1) does not apply in relation to a Commonwealth, State or Territory law if an Act expressly declares that law operates notwithstanding this Act.
- (3) A declaration made under subsection (2) ceases to have effect 2 years after it comes into force or on such earlier date as may be specified in the declaration.
- (4) The Parliament of the Commonwealth, a State or a Territory may re-enact a declaration made under subsection (2).
- (5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

11 Interpretation of legislation

- (1) Notwithstanding anything in any other law relating to the construction or interpretation of legislation, in the interpretation of:
- (a) a provision of a Commonwealth enactment; or
 - (b) a provision of a State enactment; or
 - (c) a provision of a Territory enactment;
- a construction of the provision that would result in the enactment not being inconsistent with the Bill of Rights, or that would further the objects of this Act, will be preferred to any other construction.
- (2) Without limiting the generality of subsection (1), in the interpretation of:

Section 12

- 1 (a) an Act that authorises the making of an instrument (including
2 a Territory enactment but not including an enactment of the
3 Australian Capital Territory or of the Northern Territory); or
4 (b) a Territory enactment that authorises the making of an
5 instrument;
6 a construction that would result in the Act or Territory enactment
7 not authorising the making of an instrument that would be
8 inconsistent with the Bill of Rights will be preferred to any other
9 construction.

10 **12 No civil or criminal liability under Bill of Rights**

- 11 (1) Nothing in the Bill of Rights renders any individual liable to any
12 civil proceedings in respect of the doing of an act that infringes a
13 right or freedom set out in the Bill of Rights.
14 (2) Nothing in this Act renders any person liable to any criminal
15 proceedings in respect of the doing of an act that infringes a right
16 or freedom set out in the Bill of Rights.

Part 3—Functions of the Australian Human Rights Commission

13 Additional powers and functions of Commission

In addition to the powers and functions of the Commission under the *Australian Human Rights Commission Act 1986*, the Commission has the following powers and functions:

- (a) to inquire into any act or practice that may infringe a right or freedom set out in the Bill of Rights, and
 - (i) where the Commission considers it appropriate to do so—to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and
 - (ii) where the Commission is of the opinion that the act or practice infringes a right or freedom set out in the Bill of Rights, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement—to report to the Minister in relation to the inquiry;
- (b) to promote an understanding and acceptance in Australia of the rights and freedoms set out in the Bill of Rights and of the objects of this Act, and to promote the protection of those rights and freedoms in Australia;
- (c) to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting the rights and freedoms set out in the Bill of Rights and the objects of this Act;
- (d) to examine enactments and, when requested by the Minister, proposed enactments for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with the Bill of Rights, and to report to the Minister the results of any such examination;
- (e) on its own initiative or when requested by the Minister, to report to the Minister as to the enactments that should be made by the Parliament, or action that should be taken by the

Section 14

- 1 Commonwealth, on matters relating to the rights and
2 freedoms set out in the Bill of Rights; and
3 (f) to do anything incidental or conducive to the performance of
4 any of the preceding functions.

5 **14 Performance of Commission in relation to Bill of Rights**

- 6 (1) Subject to subsection (2), the powers and duties of the Commission
7 set out in Division 2 of Part II of the *Australian Human Rights*
8 *Commission Act 1986* are extended to apply also to rights and
9 freedoms set out in the Bill of Rights.
- 10 (2) Before inquiring, under this Act, into an act or practice, the
11 Commission must tell the responsible Minister that the
12 Commission proposes to inquire into the act or practice.

13 **15 Complaints and redress for infringement of rights or freedoms**

- 14 (1) A written complaint may be lodged with the Commission, alleging
15 that an act or practice infringes a right or freedom set out in the Bill
16 of Rights.
- 17 (2) After a complaint is lodged with the Commission, a complainant, a
18 respondent, an affected person or the Commission may apply for
19 an interim injunction to the Federal Court or the Federal Circuit
20 Court. The Courts may grant an interim injunction to maintain the
21 status quo or maintain the rights of any complainant, respondent or
22 affected person.
- 23 (3) Except as provided by this Part, Part IIB of the *Australian Human*
24 *Rights Commission Act 1986* applies in relation to a complaint
25 under subsection (1) to the extent necessary to enable the
26 complaint to be dealt with as applicable, through:
27 (a) conciliation by the President; and
28 (b) proceedings in the Federal Court and the Federal Circuit
29 Court.
- 30 (4) For the purposes of subsection (2), reference to *unlawful*
31 *discrimination* in Part IIB of the *Australian Human Rights*

1 *Commission Act 1986* is read as including an act or practice that
2 infringes a right or freedom set out in the Bill of Rights.

3 **16 Reporting to Parliament**

- 4 (1) The Minister must cause a copy of every report given to the
5 Minister by the Commission under paragraphs 13(a), (d) or (e) to
6 be laid before each House of the Parliament within 15 sitting days
7 of that House after the report is received by the Minister.
- 8 (2) Where the Commission gives to the Minister under
9 paragraph 13(a), (d) or (e) a report that relates to:
10 (a) a State enactment, or proposed State enactment; or
11 (b) an act done or practice engaged in:
12 (i) by or on behalf of a State; or
13 (ii) by or on behalf of an authority of a State;
14 the Minister must immediately give a copy of the report to the
15 Attorney-General of that State.
- 16 (3) The Minister:
17 (a) must not cause a copy of a report of the kind referred to in
18 subsection (2) to be laid before either House of the
19 Parliament until:
20 (i) the expiration of 30 days after a copy of the report was
21 given to the Attorney-General of the State concerned
22 under subsection (2); or
23 (ii) the Minister receives from the Attorney-General of the
24 State concerned a statement relating to the enactment,
25 act or practice to which the report related, whichever
26 happens first; and
27 (b) must cause a copy of the report to be laid before each House
28 of the Parliament within 15 sitting days after the happening
29 of the first of the events referred to in subparagraphs (a) (i)
30 and (ii); and
31 (c) if the event referred to in subparagraph (a) (ii) is the first to
32 happen, or if, before the report is laid before either House of
33 the Parliament pursuant to paragraph (b), the Minister
34 receives from the Attorney-General concerned a statement of
35 the kind referred to in subparagraph (a) (ii)—must cause a

Section 16

1 copy of the statement to be attached to each copy of the
2 report that is laid before a House of the Parliament pursuant
3 to paragraph (b).

1 **Part 4—Miscellaneous**
2

3 **17 Jurisdiction of Federal Court and Federal Circuit Court**

4 The Federal Court and the Federal Circuit Court have concurrent
5 jurisdiction with respect to civil matters arising under Part 3.

6 **18 Regulations**

7 The Governor-General may make regulations prescribing matters:

- 8 (a) required or permitted by this Act to be prescribed; or
9 (b) necessary or convenient to be prescribed for carrying out or
10 giving effect to this Act.

1 **Part 5—Declaration of Rights**
2

3 **19 Australian Bill of Rights**

4 The Australian Bill of Rights is as follows:

5
6 **Australian Bill of Rights**

7 **Division 1—Guarantee of rights and freedoms**

8 **Article 1**

9 **Entitlement to rights and freedoms without distinction**

10 Every person is entitled to equality before the law and to the
11 human rights and fundamental freedoms set out in this Bill of
12 Rights irrespective of distinctions such as race, colour, sex,
13 intersex status, sexual orientation, gender identity, language,
14 religion, political or other opinion, national or social origin,
15 property, birth, mental or physical disability or other status.

16 **Article 2**

17 **Effect of Bill of Rights on existing rights and freedoms**

18 A right or freedom existing under, or recognised by, any other law
19 may not be taken to have been diminished or derogated from by
20 reason only that the right or freedom is not set out in this Bill of
21 Rights.

1 **Article 3**

2 **Permissible limitations**

- 3 (1) The rights and freedoms set out in this Bill of Rights are subject
4 only to such reasonable limitations prescribed by law as can be
5 demonstrably justified in a free and democratic society.
- 6 (2) A right or freedom set out in this Bill of Rights may not be limited
7 by any law to any greater extent than is permitted by the
8 International Covenant on Civil and Political Rights and the
9 International Covenant on Economic, Social and Cultural Rights.

10 **Division 2—Fundamental freedoms**

11 **Article 4**

12 **Freedom of expression**

- 13 (1) Every person has the right to freedom of expression, including the
14 freedom of the press and other media of communication, and the
15 freedom to seek, receive and impart ideas or information of any
16 kind in any form, without interference and regardless of frontiers.
- 17 (2) A law may not authorise a person or group to express information
18 that advocates national, racial or religious hatred and incites
19 discrimination, hostility or violence.

20 **Article 5**

21 **Freedom of thought and conscience**

- 22 Every person has the right to freedom of thought and conscience,
23 including the right to hold opinions without interference.

Section 19

1 **Article 6**

2 **Freedom to have or adopt a religion or belief**

3 Every person has the right to have or adopt a religion or belief of
4 that person's choice without coercion of any kind, and to manifest
5 that religion or belief in worship, observance, practice and
6 teaching, whether individually or in community with others and
7 whether in public or in private.

8 **Article 7**

9 **Right of peaceful assembly**

10 Every person has the right of peaceful assembly.

11 **Article 8**

12 **Freedom of association**

13 Every person has the right to freedom of association with others,
14 including the right to form and join trade unions for the protection
15 of that person's interests.

16 **Division 3—Equality rights**

17 **Article 9**

18 **Equal protection of the law**

- 19 (1) Every person has the right without any discrimination to the equal
20 protection of the law.
- 21 (2) Nothing in this Bill of Rights affects the operation of any earlier or
22 later law by reason only of the fact that the law discriminates in
23 favour of a class of persons for the purpose of redressing any
24 disabilities particularly suffered by that class or arising from
25 discrimination against that class.

1 Article 10**2 Rights of Indigenous peoples**

3 Aboriginal and Torres Strait Islander people have the following
4 individual and collective rights and responsibilities:

- 5 (a) the right to revive, maintain and develop their ethnic and
6 cultural characteristics and identities, including:
7 (i) their religion and spiritual development; and
8 (ii) their language and educational institutions;
9 (b) the right to claim native title for Indigenous lands and natural
10 resources based on the recognition of their prior ownership;
11 (c) the right to manage their own affairs to the greatest possible
12 extent while enjoying all the rights that other Australian
13 citizens have in the political, economic, social and cultural
14 life of Australia;
15 (d) the right to obtain reasonable financial and technical
16 assistance from the Government to pursue their political,
17 economic, social and cultural development in a spirit of
18 co-existence with other Australian citizens and in conditions
19 of freedom and dignity;
20 (e) the responsibility to respect their laws and customs and to
21 promote Indigenous culture.

22 Article 11**23 Rights of minority groups**

24 Persons who belong to an ethnic, religious or linguistic minority
25 have the right, in community with other members of their own
26 group, to enjoy their own culture, to profess and practise their own
27 religion, or to use their own language.

28 Division 4—Civil and democratic rights

Section 19

1 **Article 12**

2 **Right to life**

- 3 (1) From birth, every human being has the inherent right to life and no
4 person may be arbitrarily deprived of life.
- 5 (2) Every person has the right to bodily and psychological integrity.
- 6 (3) Every person has the right to end his or her life.

7 **Article 13**

8 **Liberty and security of person**

- 9 (1) Every person has the right to liberty and security of person.
- 10 (2) No law may authorise the arbitrary arrest, detention or
11 imprisonment of any person.
- 12 (3) No person may be deprived of liberty except on such grounds, and
13 in accordance with such procedures, as are established by law.
- 14 (4) No person may be imprisoned merely on the ground of inability to
15 fulfil a contractual obligation.

16 **Article 14**

17 **No torture or inhuman treatment and no experimentation without**
18 **consent**

- 19 (1) No person may be subjected to torture or to cruel, inhuman or
20 degrading treatment or punishment.
- 21 (2) No person may be subjected to medical or scientific
22 experimentation without that person's free consent.
- 23 (3) Every person has the right to refuse any medical treatment for
24 themselves.

1 **Article 15**

2 **Slavery and servitude**

3 No person may be held in slavery or servitude or be required to
4 perform forced or compulsory labour.

5 **Article 16**

6 **Right of participation in public life**

7 Every Australian citizen has the right and will have the
8 opportunity:

- 9 (a) to take part in the conduct of public affairs, directly or
10 through freely chosen representatives; and
11 (b) to vote and to be elected at genuine periodic elections, which
12 will be by universal and equal suffrage and by secret ballot,
13 guaranteeing the free expression of the will of the electors;
14 and
15 (c) to have access on general terms of equality to public
16 employment.

17 **Article 17**

18 **Right to marry and to found a family**

19 Recognising that the family is the natural and fundamental group
20 unit of society and is entitled to protection by society and the
21 Commonwealth or State Government:

- 22 (a) every person of marriageable age has the right to marry and
23 to found a family; and
24 (b) no marriage may be entered into without the free and full
25 consent of the intending spouses.

Section 19

1 **Article 18**

2 **Rights of the child**

- 3 Recognising that every child has the right to such measures of
4 protection as are required by the child's age:
- 5 (a) every child has the fundamental rights and freedoms set out
6 in this Bill of Rights to the greatest extent compatible with
7 the age of the individual child; and
 - 8 (b) every child will be registered immediately after birth and will
9 have a name; and
 - 10 (c) every child has the right to acquire a nationality; and
 - 11 (d) every child will be protected from economic and social
12 exploitation. Their employment under set age limits, or in
13 work harmful to their morals or health, dangerous to life or
14 likely to hamper their normal development should be
15 prohibited and punishable by law.

16 **Article 19**

17 **Rights of movement within Australia**

- 18 (1) Every person lawfully in Australia has the right to freedom of
19 movement and choice of residence.
- 20 (2) A person who is lawfully in Australia but is not an Australian
21 citizen may not be required to leave Australia except on such
22 grounds and in accordance with such procedures as are established
23 by law.

24 **Article 20**

25 **Right to enter Australia**

- 26 (1) Every Australian citizen has the right to enter Australia.
- 27 (2) A law may restrict a citizen's right to enter if that person is under
28 legal investigation or sentence in another country.

1 **Article 21**

2 **Right to leave Australia**

- 3 (1) Every person has the right to leave Australia.
- 4 (2) A law may restrict a person's right to leave if that person is under
5 legal investigation or sentence in Australia.

6 **Division 5—Economic and social rights**

7 **Article 22**

8 **Property**

- 9 (1) Every natural or legal person has the right to peacefully enjoy the
10 person's possessions. No person may be deprived of the person's
11 possessions except in the public interest and subject to the
12 conditions provided for by law and by the general principles of
13 international law.
- 14 (2) This right does not impair the right of the Commonwealth or State
15 Government to enforce laws it considers necessary to control the
16 use of property in accordance with the general interest or to secure
17 the payment of taxes or other contributions or penalties.

18 **Article 23**

19 **Standard of living**

- 20 (1) Every person has the right to an adequate standard of living,
21 including:
- 22 (a) sufficient food and water; and
23 (b) clothing and housing; and
24 (c) access to health care services; and
25 (d) access to social security, including if they are unable to
26 support themselves and their dependants, appropriate social
27 assistance.
- 28 (2) No one may be refused emergency medical treatment.
-

Section 19

- 1 (3) The Commonwealth or State Government will take reasonable
2 legislative and other measures to provide for the progressive
3 realisation of each of these rights.

4 **Article 24**

5 **Right to live in a safe society**

6 Every person has the individual and collective right to live in a safe
7 society and the collective and individual responsibility to act in a
8 peaceful and non violent way.

9 **Article 25**

10 **Right to adequate child care**

11 A parent or other person responsible for the care of a child has the
12 right of reasonable access to adequate child care facilities and the
13 responsibility to ensure that the child is properly cared for.

14 **Article 26**

15 **Right to education**

16 No person may be denied the right to education. In the exercise of
17 any functions which it assumes in relation to education and to
18 teaching, the Commonwealth or State Government will respect the
19 right of parents to ensure such education and teaching in
20 conformity with their own religious and philosophical convictions.

21 **Article 27**

22 **Work**

- 23 (1) Every person has the right to work including the right to the
24 opportunity to gain reasonable payment for work the person freely
25 chooses or accepts.
- 26 (2) Every person has the right to just and favourable conditions of
27 work including:

- 1 (a) fair and reasonable payment for work so as to provide a
2 decent living as a minimum; and
3 (b) safe and healthy working conditions; and
4 (c) rest, leisure and reasonable limitation of working hours and
5 periodic and public holidays with pay.

6 **Article 28**

7 **Individual and collective development**

- 8 Every person has the right to participate in and contribute to
9 individual and collective economic, social and cultural
10 development including:
11 (a) taking part in cultural life; and
12 (b) enjoying the benefits of scientific progress and its
13 applications; and
14 (c) benefiting from the protection of the moral and material
15 interests resulting from any scientific, literary or artistic
16 production of which the person is the author.

17 **Article 29**

18 **Environment**

- 19 (1) Every person has the right to an environment that is not harmful to
20 their health or well-being.
21 (2) The Commonwealth or State Government will take appropriate
22 steps to protect the environment for the benefit of present and
23 future generations, through reasonable legislative and other
24 measures that:
25 (a) prevent pollution and ecological degradation; and
26 (b) promote conservation; and
27 (c) secure ecologically sustainable development and use of
28 natural resources while promoting justifiable economic and
29 social development.

30 **Division 6—Legal rights**

Section 19

1 **Article 30**

2 **Right to protection from arbitrary interference**

- 3 Every person has the right to:
- 4 (a) protection of privacy, family, home and correspondence from
 - 5 arbitrary or unlawful interference; and
 - 6 (b) protection from unlawful attacks on honour and reputation.

7 **Article 31**

8 **Right to procedural fairness**

- 9 (1) Every person has the right to have a decision by a tribunal or other
- 10 public authority that may affect the person's rights made in a way
- 11 that observes the rules of procedural fairness.
- 12 (2) The rules of procedural fairness include:
- 13 (a) the rule that a person whose interests may be adversely
 - 14 affected by a decision will be given a reasonable opportunity
 - 15 to present a case; and
 - 16 (b) the rule that the tribunal or authority will be impartial in the
 - 17 matter to be decided.

18 **Article 32**

19 **Right to legal assistance**

20 Every person has the right to reasonable access to legal aid and the

21 responsibility to accept assistance from a suitably qualified

22 representative appointed by a court.

23 **Article 33**

24 **Right to be informed of reasons for detention or arrest and of**

25 **charges**

26 Any person who is detained or arrested will be informed at the time

27 of detention or arrest of the reasons for it, and will be informed

1 promptly and in detail of any charges in a language which that
2 person understands.

3 **Article 34**

4 **Right to consult with lawyer and to remain silent**

5 Any person detained in custody has the right to remain silent and
6 the right to consult with a lawyer.

7 **Article 35**

8 **Hearings, release and trial**

9 (1) Any person detained or arrested on a criminal charge will be
10 brought promptly before a judge, magistrate or justice of the peace.

11 (2) No person awaiting trial may be unreasonably deprived of the right
12 to release on giving a guarantee to appear for trial.

13 (3) Any person detained or arrested on a criminal charge has the right
14 to be tried within a reasonable time.

15 **Article 36**

16 **Right to test lawfulness of detention**

17 Any person deprived of liberty has the right to take proceedings
18 before a court for the determination of the lawfulness of the
19 detention and to be released if the court finds that the detention is
20 not lawful.

21 **Article 37**

22 **Presumption of innocence**

23 Any person charged with a criminal offence is presumed innocent
24 until proved guilty according to law.

Section 19

1 **Article 38**

2 **Right to fair hearing**

3 In the determination of any criminal charge, or of any rights or
4 obligations in a suit at law, every person has the right to a fair and
5 public hearing by a competent, independent and impartial tribunal.

6 **Article 39**

7 **Right to reasonable standard of criminal procedure**

- 8 (1) Every person charged with a criminal offence has the following
9 rights:
- 10 (a) the right to have the principles of due process applied to
11 matters arising from the charge;
 - 12 (b) the right to obtain legal assistance;
 - 13 (c) the right to communicate with a lawyer;
 - 14 (d) the right to legal assistance without cost, if the interests of
15 justice so require and the person lacks sufficient means to
16 pay for the assistance;
 - 17 (e) the right to have adequate time and facilities to prepare a
18 defence;
 - 19 (f) the right to trial by jury if the person may be imprisoned for 3
20 or more years for the offence;
 - 21 (g) the right to be present at any trial relating to the offence and
22 to present a defence;
 - 23 (h) the right to examine the witnesses against the person;
 - 24 (i) the right to obtain the attendance of, and to examine,
25 witnesses for the person;
 - 26 (j) the right to have the free assistance of an interpreter if the
27 person cannot understand or speak the language used in
28 court;
 - 29 (k) the right not to be compelled to testify or confess guilt;
 - 30 (l) in the case of a child, the right to be dealt with in a manner
31 which takes account of the child's age.

- 1 (2) Every person who is found guilty to an offence has the right to be
2 sentenced within a reasonable time and to be informed in a
3 language that the person understands of the reasons for the
4 sentence.

5 **Article 40**

6 **No retrospective criminal offences or penalties**

- 7 (1) No person may be convicted of any criminal offence on account of
8 any act or omission which did not constitute a criminal offence at
9 the time when it occurred.
- 10 (2) No person convicted of any criminal offence is liable to a heavier
11 penalty than was applicable at the time the offence was committed.

12 **Article 41**

13 **Right of review of conviction and sentence**

14 Every person convicted of a criminal offence has the right to have
15 the conviction or sentence reviewed by a higher tribunal according
16 to law.

17 **Article 42**

18 **No trial or punishment for same offence**

19 No person finally convicted or acquitted of a criminal offence may
20 be tried or punished again for the same offence or for substantially
21 the same offence arising out of the same facts.

22 **Article 43**

23 **Rights when deprived of liberty**

- 24 (1) Every person deprived of liberty has the right to be treated with
25 humanity and with respect for the inherent dignity of the human
26 person.

Section 19

- 1 (2) So far as is practicable:
2 (a) accused persons will be segregated from convicted persons,
3 and will be treated in a manner appropriate to their status as
4 unconvicted persons; and
5 (b) accused children will be segregated from accused adults; and
6 (c) convicted children will be segregated from convicted adults,
7 and will be treated in a manner appropriate to their age and
8 legal status.