

1983-84

For the purposes of release under the FOI Act, the 'Draft-in-Confidence' block has been removed.

The Attorney-General has decided that the draft Australian Bill of Rights Bill will be made available under the Freedom of Information Act. In so making the document available, Mr Bowen has directed that copies of the Bill be endorsed with the following statement of his position in relation to the draft Bill:

"My predecessor prepared this draft Bill. The draft should not be taken as representing the Government's position on any of the issues it raises."

AUSTRALIAN BILL OF RIGHTS BILL 1984

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SCHEDULE

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

1983-84

DRAFT-IN-CONFIDENCE

This draft is supplied in confidence. It should be given appropriate protection and should not be copied. If necessary, further copies will be supplied by the Attorney-General's Department.

A BILL

FOR

**An Act relating to the human rights and fundamental freedoms
of all Australians and all people in Australia**

BE IT ENACTED by the Queen, and the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Australian Bill of Rights Act 1984*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Objects

3. The objects of this Act are—

- (a) to promote universal respect for, and observance of, human rights and fundamental freedoms for all persons without discrimination;
- (b) to that end, to give effect to certain provisions of the International Covenant on Civil and Political Rights by enacting an Australian Bill of Rights;
- (c) to ensure that any person whose rights or freedoms as set out in the Australian Bill of Rights are infringed by or under any law has an effective remedy; and

- (d) to promote, enhance and secure, as paramount objectives, the freedom and dignity of the human person and the conditions of full and free participation by all Australians in public affairs and public debate.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

“Australia” includes the external Territories;

“Bill of Rights” means the Australian Bill of Rights set out in section 8;

“cause” includes every civil or criminal proceeding;

“child” means a person who has not attained the age of 16 years;

“Commonwealth enactment” means an Act or an instrument (other than a Territory enactment) made under an Act, and includes any other legislation applied as a law of the Commonwealth, to the extent that it operates as such a law;

“Commission” means the Human Rights Commission established by the *Human Rights Commission Act 1981*;

“Covenant” means the International Covenant on Civil and Political Rights a copy of the English text of which is set out in the Schedule;

“enactment” means a Commonwealth enactment, a State enactment or a Territory enactment;

“Federal Court” means the Federal Court of Australia;

“infringe” includes abrogate and abridge;

“instrument” includes a rule, regulation or by-law;

“law” means a law of the Commonwealth, a law of a Territory or a law of a State;

“law of a State” means a State enactment or any other law in force in a State, other than a law of the Commonwealth;

“law of a Territory” means a Territory enactment or any other law in force in a Territory, other than a law of the Commonwealth;

“law of the Commonwealth” means a Commonwealth enactment or any other law in force throughout the Commonwealth, or any other law applied as a law of the Commonwealth to the extent that it operates as such a law;

“member” means a member of the Commission;

“member of the staff assisting the Commission” means a member of the staff referred to in section 27 of the *Human Rights Commission Act 1981*;

“State enactment” means a State Act or an instrument made under a State Act;

“Territory Act” means an Act passed by the legislature of a Territory and duly assented to;

“Territory enactment” means a Territory Act, an Ordinance of a Territory or an instrument made under such an Act or Ordinance.

(2) Subject to sub-section (3), a law shall, for the purposes of this Act, be taken to be in conflict with the Bill of Rights if it—

- (a) infringes, or authorizes the infringement of, a right or freedom set out in the Bill of Rights; or
- (b) makes, or authorizes the making of, a provision that, according to the Bill of Rights, is not to be made by any law.

(3) Where a law—

- (a) promotes, enhances or secures a right or freedom set out in the Bill of Rights, but infringes, or authorizes the infringement of, another right or freedom set out in the Bill of Rights; or
- (b) promotes, enhances or secures for a person a right or freedom set out in the Bill of Rights, but, in relation to another person, infringes, or authorizes the infringement of, a right or freedom set out in the Bill of Rights,

it is the intention of the Parliament that the law shall not be determined to be in conflict with the Bill of Rights unless such a determination would further the objects of this Act, and in particular the paramount objectives referred to in paragraph 3 (d), to a greater extent than a determination that the law is not in conflict with the Bill of Rights.

(4) A reference in this Act to a right of freedom set out in the Bill of Rights is a reference to such a right or freedom limited only as permitted by Article 3 of the Bill of Rights.

(5) A reference in this Act to the date on which an enactment came into force shall, in the case of an enactment different provisions of which came into force on different dates, be read as a reference to the date on which the provision concerned came into force.

(6) For the purposes of this Act, an Act shall be taken to have been enacted at the time when it receives the Royal Assent.

Interpretation of Bill of Rights

5. (1) For the purposes of the interpretation of the Bill of Rights, each Article of the Bill of Rights shall be taken to be a section of this Act.

(2) For the purposes of the interpretation of the Bill of Rights and the other provisions of this Act, consideration shall be given to—

- (a) the document, described as an Explanatory Memorandum, that was laid before the Senate by the Attorney-General when the Australian Bill of Rights Bill 1984 was presented to the Senate; and
- (b) the speech made to the Senate by the Attorney-General on the occasion of moving that the Australian Bill of Rights Bill 1984 be read a second time.

(3) Sub-section (2) is not intended to limit the operation of section 15AB of the *Acts Interpretation Act 1901* in relation to the interpretation of this Act, but nothing in sub-section 15AB (3) of that Act shall be taken to limit the

circumstances in which consideration may be given to the document and speech referred to in sub-section (2) of this section for the purposes of the interpretation of the Bill of Rights and the other provisions of this Act.

Extent to which Act binds the Crown

6. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State, of the Northern Territory or of Norfolk Island liable to be prosecuted for an offence.

Extension to external Territories

7. This Act extends to every external Territory.

PART II—THE AUSTRALIAN BILL OF RIGHTS

Australian Bill of Rights

8. The Australian Bill of Rights is as follows:

AUSTRALIAN BILL OF RIGHTS

Division 1—General

Article 1

Entitlement to rights and freedoms without distinction

Every person is entitled to equality before the law and to the human rights and fundamental freedoms set out in this Bill of Rights, irrespective of distinctions such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2

Effect of Bill of Rights on existing rights and freedoms

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

Article 3

Permissible limitations

1. The rights and freedoms set out in this Bill of Rights are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

2. A right or freedom set out in this Bill of Rights shall not be limited by any law to any greater extent than is permitted by the International Covenant on Civil and Political Rights.

Australian Bill of Rights No. ., 1984

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Division 2—Non-discrimination

Article 4

Equal protection of the law

1. Every person has the right without any discrimination to the equal protection of the law.
2. Nothing in Article 4.1 affects the operation of any earlier or later law by reason only of the fact that the law discriminates in favour of an identified class of persons for the purpose of redressing any disabilities particularly suffered by that class or arising from discrimination against that class.

Article 5

Rights of minority groups

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

Division 3—Fundamental Political Rights

Article 6

Right of participation in public life

Every Australian citizen has the right and shall have the opportunity—

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

Article 7

Freedom of expression

Every person has the right to freedom of expression, including the freedom to seek, receive and impart ideas or information of any kind in any form, without interference and regardless of national boundaries.

Article 8

Freedom of thought and conscience

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

Article 9

Freedom to have or adopt a religion or belief

Every person has the right to have or adopt a religion or belief of that person's choice without coercion of any kind, and to manifest that religion or

belief in worship, observance, practice and teaching, whether individually or in community with others and whether in public or in private.

Article 10

Right of peaceful assembly

Every person has the right of peaceful assembly.

Article 11

Freedom of association

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

Division 4—Privacy and Family Rights

Article 12

Right to protection from arbitrary interference

1. Every person has the right to—
 - (a) protection of privacy, family, home and correspondence from arbitrary or unlawful interference; and
 - (b) protection from unlawful attacks on honour and reputation.
2. A search or seizure is unlawful unless made—
 - (a) pursuant to a warrant issued by a judge, justice or magistrate upon reasonable grounds, supported by oath or affirmation, particularly describing the purpose of the search, who or what is to be searched and what is to be seized;
 - (b) pursuant to a law authorizing search or seizure, where search or seizure as so authorized is a necessary element in the proper enforcement of revenue laws or the reasonable regulation of an activity; or
 - (c) pursuant to a law authorizing search or seizure where there is a compelling need for immediate action.

Article 13

Right to marry and to found a family

Recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State—

- (a) every person of marriageable age has the right to marry and to found a family; and
 - (b) no marriage shall be entered into without the free and full consent of the intending spouses.
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Article 14
Rights of the child

1. Every child is entitled to the fundamental rights and freedoms set out in this Bill of Rights to the greatest extent compatible with the age of the individual child.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.
4. The liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions is to be respected.

Division 5—Freedom of Movement

Article 15
Rights of persons in Australia

1. Every person lawfully in Australia has the right to freedom of movement and choice of residence.
2. A person who is lawfully in Australia but is not an Australian citizen shall not be required to leave Australia except on such grounds and in accordance with such procedures as are established by law.

Article 16
Right to enter Australia

Every Australian citizen has the right to enter Australia.

Article 17
Right to leave Australia

Every person has the right to leave Australia.

Division 6—Life, Liberty and Criminal Process

Article 18
Life and liberty

1. No person shall be deprived of life or liberty except on such grounds, and in accordance with such procedures, as are established by law.
 2. No law shall authorize the arbitrary arrest, detention or imprisonment of any person.
 3. No person shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.
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Article 19

Slavery and servitude

No person shall be held in slavery or servitude or be required, except in accordance with law, to perform forced or compulsory labour.

Article 20

Right to be informed of reasons for arrest and of charges

Any person who is arrested shall be informed at the time of the arrest of the reasons for the arrest, and shall be informed promptly and in detail of any charges in a language which that person understands.

Article 21

Right to consult with lawyer and not make statement

Any person detained in custody shall not be required to make any statement and has the right to consult with a lawyer.

Article 22

Hearings, bail and release

1. Any person arrested or detained on a criminal charge shall be brought promptly before a judge, justice or magistrate.
2. No person awaiting trial shall be unreasonably deprived of the right to release on bail.
3. Any person arrested or detained on a criminal charge has the right to be released on reasonable terms if the trial of that person is not to be held within a reasonable time.

Article 23

Right to test lawfulness of detention

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

Article 24

Presumption of innocence

Any person charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Article 25

Right to fair hearing

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

Article 26

Rights of the accused relating to trial

Every person who is charged with a criminal offence has the right—

- (a) to be informed of the right to obtain legal assistance;
- (b) to communicate with a lawyer;
- (c) to receive legal assistance without cost if the interests of justice so require and the person lacks sufficient means to pay for the assistance;
- (d) to have adequate time and facilities to prepare for the trial;
- (e) to be at the trial and to present a defence;
- (f) to examine the witnesses for the prosecution;
- (g) to obtain the attendance of and to examine witnesses for the defence;
- (h) to have the free assistance of an interpreter if the person cannot understand or speak the language used in court;
- (i) not to be compelled to testify or confess guilt; and
- (j) in the case of a child, to be dealt with in a manner which takes account of the child's age.

Article 27

No retrospective criminal offences or penalties

1. No person shall be convicted of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it occurred.
2. No person convicted of any criminal offence shall be liable to a heavier penalty than was applicable at the time the offence was committed.

Article 28

Right of review of conviction and sentence

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

Article 29

No trial or punishment for same offence

No person finally convicted or acquitted of a criminal offence shall be tried or punished again for the same offence.

Article 30

Rights when deprived of liberty

1. Every person deprived of liberty has the right to be treated with humanity and with respect for the inherent dignity of the human person.
 2. So far as is practicable—
 - (a) accused persons shall be segregated from convicted persons, and shall be treated in a manner appropriate to their status as unconvicted persons;
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- (b) accused children shall be segregated from accused adults; and
- (c) convicted children shall be segregated from convicted adults, and shall be treated in a manner appropriate to their age and legal status.

Article 31

No torture or inhuman treatment and no experimentation without consent

1. No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
2. No person shall be subjected to medical or scientific experimentation without that person's free consent.

PART III—OPERATION OF BILL OF RIGHTS

Operation of Bill of Rights

9. (1) Subject to this Act, the Bill of Rights operates and has effect as a law of the Commonwealth.

(2) Without limiting any operation that the Bill of Rights has by virtue of sub-section (1) in relation to, or in relation to the making of, laws of the Commonwealth, of a State or of a Territory, it is hereby declared that the rights and freedoms set out in the Bill of Rights apply for the benefit of all Australian citizens, and all people in Australia, in relation to acts done or practices engaged in—

- (a) by or on behalf of the Commonwealth, a State or a Territory or by or on behalf of an authority of the Commonwealth, of a State or of a Territory; or
- (b) in pursuance of a function, power or duty conferred or imposed by a law of the Commonwealth, of a State or of a Territory,

but do not apply in relation to other acts done or practices engaged in.

(3) The rights and freedoms set out in the Bill of Rights apply for the benefit of natural persons.

Interpretation of legislation

10. (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;
- (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 in conflict with the Bill of Rights, or that would further the objects of this Act, shall be preferred to any other construction.

(2) Without limiting the generality of sub-section (1), in the interpretation of—

- (a) an Act that authorizes the making of an instrument (including a Territory enactment);
- (b) a State Act that authorizes the making of an instrument; or
- (c) a Territory Act or an Ordinance of a Territory that authorizes the making of an instrument,

a construction that would result in the Act, State Act, Territory Act or Ordinance not authorizing the making of an instrument that would be in conflict with the Bill of Rights shall be preferred to any other construction.

Inconsistent prior Commonwealth Acts deemed to be repealed, &c.

11. Where, on its true construction, an Act that was enacted before the enactment of this Act is, in whole or in part, in conflict with the Bill of Rights—

- (a) that Act shall be deemed to be repealed, to the extent that it is so in conflict, by this Act; and
- (b) any instrument (including a Territory enactment) made under that Act, to the extent that the power to make that instrument derived from that Act in so far as that Act is so deemed to be repealed, ceases to operate.

Operation of later Commonwealth Acts

12. (1) This section applies to every Act enacted after the enactment of this Act that, on its true construction, is, in whole or in part, in conflict with the Bill of Rights.

(2) Where an Act to which this section applies provides, by express words of plain intendment, that its provisions, to the extent to which they are in conflict with the Bill of Rights, are to prevail over the Bill of Rights, then—

- (a) subject to sub-section (3), that Act operates as so provided; and
- (b) the Bill of Rights, to the extent only that that Act is in conflict with it, and for so long only as that Act is in conflict with it, does not have any operation in relation to the circumstances dealt with by that Act,

but nothing in this sub-section affects any other operation of the Bill of Rights under this Act.

(3) Where a provision of an Act to which sub-section (2) applies is in conflict with the Bill of Rights by reason that it authorizes—

- (a) the making of an instrument that infringes, or authorizes the infringement of, a right or freedom set out in the Bill of Rights; or
- (b) the making of an instrument containing a provision that, according to the Bill of Rights, is not to be made by any law,

sub-section (2) has effect in relation to the operation of the first-mentioned provision but does not have effect in relation to an instrument made pursuant to that provision.

(4) Where an Act to which this section applies does not provide, by express words of plain intendment, that its provisions, to the extent to which they are in conflict with the Bill of Rights, are to prevail over the Bill of Rights, then—

- (a) that Act, to the extent only that it is in conflict with the Bill of Rights, and for so long only as it is in conflict with the Bill of Rights, does not have any operation; and
- (b) any instrument (including a Territory enactment) made under that Act, to the extent that the power to make that instrument derived from that Act in so far as that Act does not have any operation, does not have any operation.

Operation of certain subordinate instruments

13. (1) In this section, "relevant instrument" means an instrument (including a Territory enactment) that—

- (a) is made under an Act after the enactment of this Act; and
- (b) on its true construction, is, in whole or in part, in conflict with the Bill of Rights.

(2) Where—

- (a) an Act to which section 12 applies contains a provision authorizing the making of instruments that are in conflict with the Bill of Rights;
- (b) by virtue of section 12, that provision operates notwithstanding that it is in conflict with the Bill of Rights; and
- (c) that provision provides, by express words of plain intendment, that such instruments, to the extent to which they are in conflict with the Bill of Rights, are to prevail over the Bill of Rights,

then—

- (d) a relevant instrument made pursuant to that provision operates notwithstanding that the instrument is in conflict with the Bill of Rights; and
- (e) the Bill of Rights, to the extent only that the instrument is in conflict with it, and for so long only as the instrument is in conflict with it, ceases to operate in relation to the circumstances dealt with by that instrument,

but nothing in this sub-section affects any other operation of the Bill of Rights under this Act.

Enactments deemed to be in force in certain cases

14. (1) The purpose of this section is to provide that—

- (a) where a court makes a finding one effect of which is that a Commonwealth enactment or a Territory enactment has not been in force during a period preceding the date of the finding—any grave public inconvenience or hardship that might follow that finding may be avoided by treating that enactment as having been in force during that period; and
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- (b) where a court makes a finding one effect of which is that a Commonwealth enactment or a Territory enactment will not be in force after the making of the finding—any grave public inconvenience or hardship that might follow that finding may be avoided by treating the enactment as being in force for a period that is sufficient to enable the legislature or other body that made the enactment to take appropriate legislative measures.

(2) Where—

- (a) a court finds that, on its true construction, an Act is, in whole or in part, in conflict with the Bill of Rights;

(b) the Act—

- (i) by virtue of section 11, is to be deemed to have been repealed, to the extent that it is in conflict with the Bill of Rights, by this Act; or

- (ii) by virtue of sub-section 12 (4), does not, to the extent that it is in conflict with the Bill of Rights, have any operation; and

- (c) the court is satisfied that grave public inconvenience or hardship would be caused by the operation of section 11 or sub-section 12 (4), as the case may be, unless sub-section (4) were to apply to that Act,

the court may, unless a court has already made a declaration under this sub-section in relation to the conflict, make a declaration that it is satisfied as mentioned in paragraph (c) and, where such a declaration is made, sub-section (4) applies to the Act to the extent that it has been so found to be in conflict with the Bill of Rights.

(3) Where—

- (a) a court finds that, on its true construction, a Territory Act or an Ordinance of a Territory is, in whole or in part, in conflict with the Bill of Rights;

- (b) sub-section 13 (2) does not apply to preserve the operation of the Territory Act or Ordinance; and

- (c) the court is satisfied that grave public inconvenience or hardship would be caused by the Territory Act or Ordinance having been inoperative unless sub-section (4) were to apply to that Territory Act or Ordinance,

the court may, unless a court has already made a declaration under this sub-section in relation to the conflict, make a declaration that it is satisfied as mentioned in paragraph (c) and, where such a declaration is made, sub-section (4) applies to that Territory Act or Ordinance to the extent that it has been so found to be in conflict with the Bill of Rights.

(4) An enactment to which this sub-section applies, to the extent to which this sub-section applies to it, shall, for all purposes except the purposes of the proceedings in which the declaration in relation to the enactment was made under sub-section (2) or (3), be deemed to have been in force during any part of the relevant period during which the enactment would, but for the operation

of another provision of this Part in relation to the enactment, have been in force.

(5) In sub-section (4)—

“relevant period”, in relation to a declaration made under sub-section (4) in relation to an enactment, means the period commencing at the relevant time in relation to the enactment and ending on the day on which the declaration was made;

“relevant time”, in relation to an enactment, means—

- (a) in the case of an enactment that came into force before the commencement of this Act—the commencement of this Act; and
- (b) in any other case—the time when the enactment came into force.

(6) Where, by virtue of sub-section (4), an enactment, to the extent to which that sub-section applies to it, is deemed to have been in force during a particular period, any instrument made under that enactment, to the extent to which that sub-section applies to that enactment, being an instrument that would, but for the operation of another provision of this Part in relation to that enactment, have been in force during that period or during any part of that period shall, for all purposes except the purposes of the proceedings in which the declaration in relation to the enactment was made under sub-section (2) or (3), be deemed to have been in force during that period, or that part of that period, as the case may be.

(7) Where a court makes a declaration under sub-section (2) or (3) in relation to an enactment that the court has found to be in conflict with the Bill of Rights, the court may, if it is satisfied that grave public inconvenience or hardship would be caused unless sub-section (8) were to apply to that enactment, make a declaration to that effect and, where such a declaration is made, sub-section (8) applies to that enactment to the extent that it has been so found to be in conflict with the Bill of Rights.

(8) An enactment to which this sub-section applies, to the extent to which this sub-section applies to it, shall, for all purposes except the purposes of the proceedings in which the declaration in relation to the enactment was made, be deemed to be in force until—

- (a) it is repealed or amended; or
- (b) the period of 3 months commencing when the declaration is made expires,

whichever happens first.

(9) Where, by virtue of sub-section (8), an enactment, to the extent to which that sub-section applies to it, is deemed to be in force during a particular period, any instrument made under that enactment, to the extent to which that sub-section applies to that enactment, being an instrument that would, but for the operation of another provision of this Part in relation to that enactment, have been in force during that period or during any part of that period shall, for

all purposes except the purposes of the proceedings in which the declaration in relation to the enactment was made, be deemed to be in force during that period, or that part of that period, as the case may be.

Operation of State laws

15. (1) Without limiting the generality of section 9, it is hereby declared to be the intention of the Parliament that, subject to this section, the Bill of Rights shall operate and have effect as a law of the Commonwealth in relation to the laws of the States.

(2) The purposes of the succeeding provisions of this section is to provide that—

- (a) where a court makes a finding that a State enactment is inconsistent with the Bill of Rights and one effect of the finding is that the enactment has not been in force during a period preceding the date of the finding—any grave public inconvenience or hardship that might follow that finding may be avoided by treating the Bill of Rights as not having been in force, for the purposes of the operation of that enactment, during that period; and
- (b) where a court makes a finding that a State enactment is inconsistent with the Bill of Rights and one effect of the finding is that the enactment will not be in force after the making of the finding—any grave public inconvenience or hardship that might follow that finding may be avoided by treating the Bill of Rights as not being in force, for the purposes of the operation of that enactment, for a period that is sufficient to enable the legislature or other body that made the enactment to take appropriate legislative measures.

(3) Where—

- (a) a court finds that, on its true construction, a State enactment is, in whole or in part, inconsistent with the Bill of Rights; and
- (b) the court is satisfied that grave public inconvenience or hardship would be caused if the enactment were invalid,

the court may, unless a court has already made a declaration under this sub-section in relation to the inconsistency, make a declaration that it is satisfied as mentioned in paragraph (b) and, where such a declaration is made, sub-section (4) applies to the Bill of Rights to the extent that that enactment has been so found to be inconsistent with it.

(4) The Bill of Rights, to the extent only to which this sub-section applies to it by virtue of a declaration made under sub-section (3) in relation to a State enactment, shall, for the purposes of the operation of the State enactment except in relation to the proceedings in which the declaration was made, be deemed not to have been in force, or to have operated or had effect as a law of the Commonwealth, during any part of the relevant period during which the State enactment would, but for the operation of section 109 of the Constitution in relation to the Bill of Rights, have been in force.

(5) In sub-section (4)—

“relevant period”, in relation to a declaration made under sub-section (4) in relation to a State enactment, means the period commencing at the relevant time in relation to the State enactment and ending on the day on which the declaration was made;

“relevant time”, in relation to a State enactment, means—

- (a) in the case of a State enactment that came into force before the commencement of this Act—the commencement of this Act; and
- (b) in the case of any other State enactment—the time when the enactment came into force.

(6) Where a court makes a declaration under sub-section (3) in relation to a State enactment, the court may, if it is satisfied that grave public inconvenience or hardship would be caused unless sub-section (7) were to apply to the Bill of Rights to the extent that that enactment has been found by the court to be inconsistent with the Bill of Rights, make a declaration to that effect and, where such a declaration is made, sub-section (7) applies to the Bill of Rights to that extent.

(7) The Bill of Rights, to the extent only to which this sub-section applies to it by virtue of a declaration made under sub-section (6) in relation to a State enactment, shall, for the purposes of the operation of the State enactment except in relation to the proceedings in which the declaration was made, be deemed not to be in force, or to operate or have effect as a law of the Commonwealth, until—

- (a) the State enactment is repealed or amended; or
- (b) the period of 3 months commencing when the declaration is made expires,

whichever happens first.

Operation of State and Territory laws that further objects of Covenant

16. Notwithstanding anything in this Part, this Act is not intended to exclude or limit the operation of a law of a State or Territory that furthers the objects of the Covenant and is capable of operating concurrently with this Act.

Right to apply for declaration as to effect of Bill of Rights

17. (1) Subject to sub-section (4), a person who believes that a right or freedom of that person, being a right or freedom set out in the Bill of Rights—

- (a) has been infringed; or
- (b) is likely to be infringed in the immediate future,

by or under a law of the Commonwealth may apply to the Federal Court for a declaration—

- (c) whether, on its true construction, the law is in conflict with the Bill of Rights; and
 - (d) if so, whether by virtue of this Act the law—
 - (i) is to be deemed to be repealed; or
-

(ii) does not have any operation,
to the extent that it is so in conflict with the Bill of Rights.

(2) Subject to sub-section (4), a person who believes that a right or freedom of that person, being a right or freedom set out in the Bill of Rights—

- (a) has been infringed; or
- (b) is likely to be infringed in the immediate future,

by or under a law of a Territory may apply to the Federal Court or to the Supreme Court of that Territory for a declaration—

- (c) whether, on its true construction, the law is in conflict with the Bill of Rights; and
- (d) if so, whether by virtue of this Act the law—
 - (i) has ceased to operate; or
 - (ii) was not validly made,

to the extent that it is so in conflict with the Bill of Rights.

(3) Subject to sub-section (4), a person who believes that a right or freedom of that person, being a right or freedom set out in the Bill of Rights—

- (a) has been infringed; or
- (b) is likely to be infringed in the immediate future,

by or under a law of a State may apply to the Federal Court or to the Supreme Court of that State for a declaration whether, on its true construction, the law is inconsistent with the Bill of Rights.

(4) Nothing in this section operates to permit a person to apply for a declaration in relation to an alleged infringement or possible infringement, by or under a law, of a right or freedom set out in the Bill of Rights if—

- (a) the person is a party to proceedings (whether civil or criminal) in any court in respect of a matter arising under that law; and
- (b) the alleged infringement or possible infringement of that right or freedom could be raised in the proceedings.

Powers of courts in criminal proceedings

18. (1) Where, in proceedings against a person for a criminal offence, the court is of the opinion that evidence tendered to the court was obtained in a manner that infringed a right or freedom of that person set out in Article 12 or Division 6 of the Bill of Rights, the court shall refuse to admit that evidence in the proceedings unless it is satisfied that the administration of justice would not be brought into disrepute by the admission of the evidence.

(2) Where, in proceedings against a person for a criminal offence, the court is of the opinion that a right or freedom of that person set out in Article 12 or Division 6 of the Bill of Rights has been infringed, the court may, subject to sub-section (1), make such order as it considers appropriate and just in all the circumstances to ensure that the administration of justice is not brought into disrepute by means of that infringement.

No other rights of action or criminal liability under Bill of Rights

19. (1) Except as provided by this Act, nothing in the Bill of Rights confers on a person any right of action in respect of the doing of an act that infringes a right or freedom set out in the Bill of Rights.

(2) Nothing in this Act renders any person liable to any criminal proceedings in respect of the doing of an act that infringes a right or freedom set out in the Bill of Rights.

PART IV—REMOVAL OF CAUSES AND INTERVENTION

Removal to the Federal Court

20. (1) Any cause or part of a cause involving a matter arising under the Bill of Rights that is at any time pending in—

(a) a federal court, other than the High Court or the Full Court of the Federal Court; or

(b) in a court of a State or Territory, being a cause or part of a cause that is before the court in the exercise of appellate jurisdiction, may, at any stage of the proceedings before final judgment, be removed into the Full Court of the Federal Court under an order of the Federal Court, which may, upon application of a party for sufficient cause shown, be made on such terms as the Federal Court thinks fit, and shall be made as of course upon application by or on behalf of the Attorney-General of the Commonwealth or the Attorney-General of a State or of the Northern Territory.

(2) Subject to the Constitution, jurisdiction to hear and determine a matter to which a cause or part of a cause removed into the Federal Court by an order under sub-section (1) relates, to the extent that that jurisdiction is not otherwise conferred on the Federal Court, is conferred on the Federal Court by this section.

(3) Where an order for removal is made under sub-section (1) the proceedings in the cause and such documents, if any, relating to the cause as are filed of record in the court in which the cause was pending, or, if part only of a cause is removed, a certified copy of those proceedings and documents, shall be transmitted by the Registrar or other proper officer of that court to a Registry of the Federal Court.

Proceedings after removal

21. Where a cause or part of a cause is removed into the Federal Court under section 20, further proceedings in that cause or part of a cause shall be as directed by the Federal Court.

Remittal of causes

22. (1) Where a cause or part of a cause is removed into the Federal Court under section 20, the Federal Court may, at any stage of the proceedings, remit

the whole or a part of that cause or part of a cause to the court from which it was removed, with such directions to that court as the Federal Court thinks fit.

(2) Where it appears to the Federal Court that the Federal Court does not have jurisdiction, whether by virtue of sub-section 20 (2) or otherwise, in a cause or part of a cause that has been removed into the Federal Court under section 20, the Federal Court shall proceed no further in the cause or part of a cause but shall remit it to the court from which it was removed.

Effect of interlocutory orders, &c., before removal of cause

23. Where a cause is removed in whole or in part into the Federal Court from another court—

- (a) every order relating to the custody or preservation of any property the subject-matter of the cause that has been made before the removal remains in force until it is discharged or varied by the Federal Court;
- (b) any attachment or sequestration of the goods or estate of a defendant had in the cause before the removal holds the goods or estate so attached or sequestered to answer the final judgment of the Federal Court in the same manner as by law they would have been held to answer the final judgment of the court in which the cause was commenced;
- (c) all undertakings or security given by any party in the cause before the removal remain valid and effectual; and
- (d) all injunctions, orders and other proceedings granted, made or taken in the cause before the removal remain in full force and effect until the Federal Court otherwise orders.

Defence in causes removed to Federal Court

24. Where a cause is removed in whole or in part from any court into the Federal Court, the defendant may set up by way of defence any matter that he might have set up if the cause had been commenced in the Federal Court, notwithstanding that the court from which the cause was removed did not have jurisdiction to entertain the matter of defence or could not entertain it in the same cause.

Intervention by Attorneys-General

25. (1) The Attorney-General of the Commonwealth may, on behalf of the Commonwealth, and the Attorney-General of a State or of the Northern Territory may, on behalf of the State or of the Northern Territory, as the case may be, intervene in proceedings before the High Court or any other federal court or any court of a State or Territory, being proceedings that relate to a matter arising under the Bill of Rights.

(2) Where the Attorney-General of the Commonwealth, of a State or of the Northern Territory intervenes in proceedings in a court under this section, the court may, in the proceedings, make such order as to costs against the Commonwealth, the State, or the Northern Territory, as the case may be, as the court thinks fit.

Notice to Attorneys-General

26. (1) Where a cause pending in a federal court (other than the High Court or the Full Court of the Federal Court) or in a court of a State or Territory involves a matter arising under the Bill of Rights, it is the duty of the court not to proceed in the cause unless and until the court is satisfied that notice of the cause specifying the nature of the matter has been given to the Attorney-General of the Commonwealth and—

- (a) if the cause is pending in a court of a State or of the Northern Territory—to the Attorney-General of that State or of the Northern Territory, as the case may be; or
- (b) if the cause is pending in a federal court and was instituted in a State or in the Northern Territory—to the Attorney-General of that State or of the Northern Territory, as the case may be,

and a reasonable time has elapsed since the giving of the notice for consideration by that Attorney-General or by those Attorneys-General, of—

- (c) the question of intervention in the proceedings; and
- (d) where the cause may, under sub-section 20 (1), be removed from that court into the Full Court of the Federal Court—the question of removal of the cause to the Full Court of the Federal Court.

(2) For the purposes of sub-section (1), a court in which a cause referred to in that sub-section is pending—

- (a) may adjourn the proceedings in the cause for such time as it thinks necessary and may make such order as to costs in relation to such an adjournment as it thinks fit; and
- (b) may direct a party to give notice in accordance with that sub-section.

(3) For the purposes of sub-section (1), a notice in respect of a cause—

- (a) shall be taken to have been given to an Attorney-General if steps have been taken that, in the opinion of the court, could reasonably be expected to cause the matters to be notified to be brought to the attention of that Attorney-General; and
- (b) is not required to be given to the Attorney-General of the Commonwealth if that Attorney-General or the Commonwealth is a party to the cause and is not required to be given to the Attorney-General of a State or of the Northern Territory if that Attorney-General or the State or the Northern Territory, as the case may be, is a party to the cause.

(4) The Attorney-General may authorize the payment by the Commonwealth to a party of an amount in respect of costs arising out of the adjournment of a cause by reason of this section.

(5) Nothing in sub-section (1) prevents a court from proceeding without delay to hear and determine proceedings, so far as they relate to the grant of urgent relief of an interlocutory nature, where the court thinks it necessary in the interests of justice to do so.

PART V—FUNCTIONS OF HUMAN RIGHTS COMMISSION

Interpretation

27. (1) In this Part, unless the contrary intention appears—

“act or practice” means an act done or practice engaged in—

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

“authority” means—

(a) in relation to the Commonwealth—

- (i) a body (whether incorporated or unincorporated) established for a purpose of the Commonwealth by or under a Commonwealth enactment;
- (ii) an incorporated company over which the Commonwealth is in a position to exercise control;
- (iii) a person holding or performing the duties of an office or appointment established or made under a Commonwealth enactment or by the Governor-General or a Minister of the Commonwealth (not being an office or appointment referred to in sub-paragraph (c) (iii)); or
- (iv) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the Commonwealth for the purposes of this Part;

(b) in relation to a State—

- (i) a body (whether incorporated or unincorporated) established for a purpose of the State by or under an enactment of the State;
- (ii) an incorporated company over which the State is in a position to exercise control;
- (iii) a person holding or performing the duties of an office or appointment established or made under an enactment, or by the Governor or a Minister, of the State;
- (iv) a local government body in the State; or
- (v) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the State for the purposes of this Part; and

(c) in relation to a Territory—

- (i) a body (whether incorporated or unincorporated) established for a purpose of the Territory by or under a Commonwealth enactment or an enactment of the Territory;
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- (ii) an incorporated company over which the Administration of the Territory is in a position to exercise control;
- (iii) a person holding or performing the duties of an office or appointment established or made under an enactment of the Territory or by the Administrator of a Territory; or
- (iv) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the Territory for the purposes of this Part;

“instrumentality”, in relation to a State, includes—

- (a) a person holding or performing the duties of an office established by or under an enactment of that State;
- (b) a person employed in the public service of that State; and
- (c) a person employed by a body established for a purpose of that State by or under an enactment of that State;

“Minister” means—

- (a) in relation to a State—a Minister of the Crown of the State; and
- (b) in relation to the Northern Territory—a person holding Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978*;

“Northern Territory enactment” means an enactment of the Northern Territory within the meaning of the *Northern Territory (Self-Government) Act 1978* or an instrument made under such an enactment;

“Parliament”, in relation to the Northern Territory, means the Legislative Assembly of the Northern Territory;

“prescribed person” means—

- (a) a member;
- (b) a member of the staff assisting the Commission;
- (c) if an arrangement in force under section 46 provides for a State or an instrumentality of a State to perform functions of the Commission referred to in paragraph 28 (a)—an instrumentality of that State; or
- (d) a person included in a class of persons declared by the regulations to be prescribed persons for the purposes of this Act;

“proposed enactment” means—

- (a) a proposed law introduced into the Parliament of the Commonwealth or the legislature of a Territory;
 - (b) a proposed law prepared on behalf of—
 - (i) the Government of the Commonwealth or the Administration of a Territory;
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- (ii) a Minister of State of the Commonwealth; or
- (iii) a body established by law that has the function of recommending proposed laws of the Commonwealth or of a Territory; or

(c) a proposed State enactment;

“proposed State enactment” means—

- (a) a proposed law introduced into the Parliament of a State; or
- (b) a proposed law prepared on behalf of—
 - (i) the Government of a State;
 - (ii) a Minister of the State;
 - (iii) a body established by a law that has the function of recommending proposed laws of a State;

“responsible Minister” means—

- (a) in relation to a Commonwealth enactment, a Territory enactment or a proposed enactment (other than a proposed enactment of a State)—the Minister of the Commonwealth responsible for the administration of the matter to which the enactment or proposed enactment relates;
- (b) in relation to a State enactment or a proposed enactment of a State—the Minister of the State responsible for the administration of the matter to which the enactment or proposed enactment relates;
- (c) in relation to an act done or practice engaged in by or on behalf of the Commonwealth or of a Territory or by or on behalf of an authority of the Commonwealth or of a Territory—the Minister of the Commonwealth responsible for the administration of the matter in connection with which the act was done or the practice was engaged in; and
- (d) in relation to an act done or practice engaged in by or on behalf of a State or by or on behalf of an authority of a State—the Minister of the State responsible for the administration of the matter in connection with which the act was done or the practice was engaged in;

“State” includes the Northern Territory;

“State enactment” includes a Northern Territory enactment;

“Territory” does not include the Northern Territory;

“Territory enactment” does not include a Northern Territory enactment.

(2) In this Part a reference to the Governor of a State shall, in relation to the Northern Territory, be construed as a reference to the Administrator of the Northern Territory.

(3) A reference, in relation to the doing of an act or the engaging in of a practice, to the person who did the act or engaged in the practice shall, in the case of an act done or practice engaged in by an unincorporated body, be read as a reference to that body.

Functions of Human Rights Commission

28. In addition to the functions of the Commission under the *Human Rights Commission Act 1981*, the Commission has the following 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) 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 proposed enactments for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, in conflict 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 Commonwealth, on matters relating to the rights and freedoms set out in the Bill of Rights;
- (f) to do anything incidental or conducive to the performance of any of the preceding functions.

Complaints

29. (1) Where a complaint in writing is made to the Commission that a person has done an act, or engaged in a practice, that infringes a right or freedom set out in the Bill of Rights, the Commission shall, subject to section 30, inquire into the act or practice and, unless the Commission does not consider it appropriate to do so, endeavour to effect a settlement of the matter to which the act or practice relates.

- (2) Where it appears to a prescribed person that—
 - (a) a person wishes to make a complaint to the effect that another person has done an act, or engaged in a practice, that infringes a right or freedom set out in the Bill of Rights; and
-

- (b) that person requires assistance to formulate the complaint or to reduce it to writing,

it is the duty of the prescribed person to take reasonable steps to provide appropriate assistance to that person.

Powers of Commission

30. (1) The Commission shall perform the functions referred to in paragraph 28 (a)—

- (a) when the Commission is requested to do so by the Minister;
- (b) subject to sub-sections (3) and (4), when a complaint is made to the Commission under section 29; or
- (c) when it appears to the Commission to be desirable to do so.

(2) Before commencing to inquire, under this Act, into an act or practice, the Commission shall inform the person who appears to the Commission to be the responsible Minister in relation to the act or practice that the Commission proposes to inquire into the act or practice.

(3) The Commission may decide not to inquire into an act or practice, or, if the Commission has commenced to inquire into an act or practice, may decide not to continue to inquire into the act or practice, if—

- (a) the Commission is satisfied that the act or practice does not infringe a right or freedom set out in the Bill of Rights;
- (b) the Commission is of the opinion that the person whose rights or freedoms under the Bill of Rights are alleged to have been infringed does not desire, or that none of the persons whose rights or freedoms under the Bill of Rights are alleged to have been infringed desires, that the inquiry be made or continued; or
- (c) in a case where a complaint has been made to the Commission in relation to the act or practice—
 - (i) a period of more than 12 months has elapsed since the act was done or since the last occasion when an act was done in pursuance of the practice;
 - (ii) the Commission is of the opinion that the complaint was frivolous, vexatious, misconceived or lacking in substance;
 - (iii) the Commission is of the opinion that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the complainant; or
 - (iv) the Commission is of the opinion that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.

(4) Where the Commission decides not to inquire into, or not to continue to inquire into, an act or practice in respect of which a complaint was made to the Commission, the Commission shall give notice in writing to the complainant or each of the complainants of that decision and of the reasons for that decision.

Nature of settlements

31. In endeavouring to effect a settlement of a matter relating to the infringement, or an alleged infringement, of a right or freedom set out in the Bill of Rights, the Commission shall have regard to the need to ensure that any settlement of the matter reflects a recognition of the right or freedom and of the need to protect that right or freedom.

Power to obtain information and documents

32. (1) Where the Commission has reason to believe that a person is capable of furnishing information or producing documents relevant to a matter under examination or inquiry under this Act, a member may, by notice in writing served on that person, require that person at such place, and within such period or on such date and at such time, as are specified in the notice—

- (a) to furnish to the Commission or to a prescribed person, by writing signed by that person or, in the case of a body corporate, on behalf of the body corporate any such information; or
- (b) to produce to the Commission or to a prescribed person any such documents.

(2) Where documents are produced to the Commission in accordance with a requirement under sub-section (1), the Commission—

- (a) may take possession of, and may make copies of, or take extracts from, the documents;
- (b) may retain possession of the documents for such period as is necessary for the purposes of the examination or inquiry to which the documents relate; and
- (c) during that period shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Commission to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.

(3) Where the Commission has reason to believe that a person is able to give information relevant to an inquiry under this Act, a member may, by notice in writing served on the person, require the person to attend before him, on such date and at such time and place as are specified in the notice, to answer questions relevant to the inquiry.

Power to examine witnesses

33. A member may administer an oath or affirmation to a person required to attend before him in pursuance of section 32 and may examine the person on oath or affirmation.

Directions to persons to attend compulsory conference

34. (1) For the purpose of inquiring into an act or practice, and endeavouring to effect, by conciliation, a settlement of the matters that gave rise to the inquiry, the Commission may, by notice in writing, direct the persons

referred to in sub-section (3) to attend, at a time and place specified in the notice, a conference presided over by a prescribed person.

(2) A person who has been given a direction under sub-section (1) to attend a conference shall not, without reasonable excuse—

- (a) fail to attend as required by the direction; or
- (b) fail to attend and report from day to day unless excused, or released from further attendance, by the person presiding at the conference.

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 3 months; or
- (b) in the case of a body corporate—\$5,000.

(3) Directions under sub-section (1) to attend a conference in relation to an act or practice shall be given to—

- (a) where a complaint was made to the Commission in relation to that act or practice—the complainant, or each of the complainants, as the case requires;
- (b) the person who is, or each of the persons who are, alleged to have done the act or engaged in the practice; and
- (c) any other person who, in the opinion of the Commission, is likely to be able to provide information relevant to the inquiry or whose presence at the conference is, in the opinion of the Commission, likely to be conducive to the settlement of the matters that gave rise to the inquiry.

(4) A person who has been given a direction under sub-section (1) to attend a conference is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at the conference.

(5) The Commission may, in a notice given to a person under sub-section (1), require the person to produce such documents at the conference as are specified in the notice.

Compulsory conference

35. (1) The person presiding at a conference held under this Part may require a person attending the conference to produce a document.

(2) A conference under this Part shall be held in private and, subject to this Act, shall be conducted in such manner as the person presiding at the conference thinks fit.

(3) Subject to sub-section (4), a body of persons, whether corporate or unincorporate, that is directed under section 34 to attend a conference shall be deemed to attend if an officer or employee of that body attends on behalf of that body.

(4) Except with the consent of the person presiding at a conference under this Part—

- (a) a natural person is not entitled to be represented at the conference by another person; and

- (b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than an officer or employee of that body.

Failure to comply with requirement

36. (1) A person served with a notice under sub-section 32(3) shall not, without reasonable excuse, refuse or fail to comply with the notice.

(2) A person shall not refuse or fail, without reasonable excuse—

(a) to be sworn or make an affirmation; or

(b) to furnish information, answer a question or produce a document,

when so required in pursuance of this Act.

Penalty:

(a) in the case of a natural person—\$1,000 or imprisonment for 3 months; or

(b) in the case of a body corporate—\$5,000.

Disclosure of information or contents of documents

37. (1) Where the Attorney-General furnishes to the Commission a certificate certifying that the disclosure to the Commission or to a prescribed person of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure to the Commission or to a prescribed person of the contents of a specified document would be contrary to the public interest—

(a) by reason that it would prejudice the security, defence or international relations of the Commonwealth;

(b) by reason that it would involve the disclosure of communications between a Minister of the Commonwealth and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State;

(c) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or

(d) by reason that it would involve the disclosure of deliberations or advice of the Executive Council,

neither the Commission nor a prescribed person is entitled, pursuant to this Act, to require a person to furnish any information concerning the matter or to produce the document.

(2) Where the Attorney-General of a State furnishes to the Commission a certificate certifying that the disclosure to the Commission or to a prescribed person of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure to the Commission or to a prescribed person of the contents of a specified document would be contrary to the public interest—

(a) by reason that it would involve the disclosure of communications between a Minister of the State and a Minister of the Commonwealth or of another State, being a disclosure that would prejudice relations

between the Government of the first-mentioned State and the Commonwealth Government or the Government of another State;

- (b) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet, of the State; or
- (c) by reason that it would involve the disclosure of deliberations or advice of the Executive Council of the State,

neither the Commission nor a prescribed person is entitled, pursuant to this Act, to require a person to furnish any information concerning the matter or to produce the document.

(3) Notwithstanding the provisions of any law, a person is not excused from furnishing any information, producing a document or answering a question when required to do so under this Act on the ground that the furnishing of the information, the production of the document or the answer to the question—

- (a) would contravene the provisions of any other Act, would be contrary to the public interest or might tend to incriminate him or make him liable to a penalty; or
- (b) would disclose legal advice furnished to a Minister, to a person or body that acts on behalf of the Commonwealth, a State or a Territory or to an authority,

but the information, the production of the document or the answer to the question is not admissible in evidence against him in proceedings other than proceedings for an offence against section 38.

(4) Sub-section (3) does not apply where the offence in respect of which information, the production of a document or the answer to a question might tend to incriminate a person is an offence with which the person has been charged and the charge has not been finally dealt with by a court or otherwise disposed of.

(5) A person is not liable to any penalty under the provisions of any other law by reason of his furnishing information, producing a document or answering a question when required to do so under this Act.

False or misleading information

38. A person shall not furnish information or make a statement to the Commission or to any other person exercising powers or performing functions under this Act, knowing that the information or statement is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person—\$1,000 or imprisonment for 3 months; or
- (b) in the case of a body corporate—\$5,000.

Obstructing or hindering Commission

39. A person shall not obstruct or hinder the Commission or a prescribed person in the exercise of a power or the performance of a function under this Act.

Penalty: \$1,000 or imprisonment for 3 months.

Commission to give opportunity for making of submissions

40. Where it appears to the Commission as a result of an inquiry into an act or practice that the act or practice infringes a right or freedom set out in the Bill of Rights, the Commission shall not furnish a report to the Minister in relation to the act or practice until it has given a reasonable opportunity to—

- (a) the person, or each of the persons, who did the act or engaged in the practice; and
- (b) the Minister who appears to the Commission to be the responsible Minister in relation to the act or practice, or a person nominated by that Minister for the purpose,

to do, at the option of the person concerned, either or both of the following:

- (c) to appear before the Commission, whether in person or by a representative, and make oral submissions in relation to the act or practice;
- (d) to make written submissions to the Commission in relation to the act or practice.

Complainant to be notified of results of inquiries

41. Where—

- (a) a complaint is made to the Commission in relation to an act or practice; and
- (b) after an inquiry into the act or practice, the Commission finds that the act or practice does not infringe a right or freedom set out in the Bill of Rights,

the Commission shall give to the complainant a notice setting out its findings and the reasons for those findings.

Reports to contain recommendations

42. (1) Where, after an examination of an enactment or proposed enactment, the Commission finds that the enactment is, or the proposed enactment would be, in conflict with the Bill of Rights, the Commission shall—

- (a) include in its report to the Minister relating to the results of the examination any recommendations by the Commission for amendment of the enactment or proposed enactment to ensure that the enactment is not, or the proposed enactment would not be, in conflict with the Bill of Rights; and
 - (b) furnish a copy of the report referred to in sub-section (1) to the Minister who appears to the Commission to be the responsible Minister in relation to that enactment or proposed enactment.
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(2) Where, after an inquiry into an act done or practice engaged in by a person—

- (a) the Commission finds that the act or practice infringes a right or freedom set out in the Bill of Rights; and
- (b) the Commission—
 - (i) has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry; or
 - (ii) has endeavoured without success to effect such a settlement,

the Commission—

- (c) shall prepare a report setting out its findings and the reasons for those findings;
- (d) may include in the report any recommendations by the Commission for the purpose of preventing a repetition of the act or a continuation of the practice;
- (e) shall furnish a copy of the report to the Minister and to the Minister who appears to the Commission to be the responsible Minister in relation to the act or practice; and
- (f) where a complaint was made to the Commission in relation to the act or practice—may furnish a copy of the report to the person who made the complaint.

(3) Where, at the expiration of 60 days after a copy of a report relating to an act or practice was furnished to the Minister who appeared to the Commission to be the responsible Minister in relation to the act or practice, the Commission—

- (a) is still of the opinion that the act or practice infringes a right or freedom set out in the Bill of Rights; and
- (b) is not satisfied that reasonable steps have been taken to prevent a repetition of the act or a continuation of the practice,

the Commission shall—

- (c) prepare a further report incorporating the first-mentioned report and any document that the Commission has received, in response to the first-mentioned report, from that Minister or from any person on behalf of that Minister, and stating—
 - (i) whether, to the knowledge of the Commission, any action has been or is being taken as a result of the findings set out in the first-mentioned report and, if so, the nature of that action; and
 - (ii) why the Commission is not satisfied that reasonable steps have been taken to prevent a repetition of the act or a continuation of the practice; and
- (d) furnish to the Minister a copy of the further report.

Reports to be tabled in the Parliament

43. (1) Subject to this section, the Minister shall cause a copy of every report furnished to the Minister by the Commission under paragraph 28 (d) or

sub-section 42 (3) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

(2) Where the Commission furnishes to the Minister under paragraph 28 (d) or sub-section 42 (3) a report that relates to—

- (a) a State enactment, or proposed State enactment; or
- (b) an act done or practice engaged in—
 - (i) by or on behalf of a State; or
 - (ii) by or on behalf of an authority of a State,

the Minister shall forthwith furnish a copy of the report to the Attorney-General of that State.

(3) The Minister—

- (a) shall not cause a copy of a report of the kind referred to in sub-section (2) to be laid before either House of the Parliament until—
 - (i) the expiration of 60 days after a copy of the report was furnished to the Attorney-General of the State concerned under sub-section (2); or
 - (ii) the Minister receives from the Attorney-General of the State concerned a statement relating to the enactment, act or practice to which the report related,

whichever happens first;

- (b) shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days after the happening of the first of the events referred to in sub-paragraphs (a) (i) and (ii); and
- (c) if the event referred to in sub-paragraph (a) (ii) is the first to happen, or if, before the report is laid before either House of the Parliament pursuant to paragraph (b), the Minister receives from the Attorney-General concerned a statement of the kind referred to in sub-paragraph (a) (ii)—shall cause a copy of the statement to be attached to each copy of the report that is laid before a House of the Parliament pursuant to paragraph (b).

Delegation

44. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its seal, delegate to a member, a member of the staff assisting the Commission or a person included in a class of persons prescribed for the purposes of this section all or any of the powers conferred on the Commission under this Act, other than this power of delegation.

(2) A member may, for the purposes of a particular inquiry or for the purposes of inquiries included in a class of inquiries, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person, or a person included in a class of persons, prescribed for the purposes of this section all or any of the powers conferred under this Act on

members for the purposes of inquiries under this Act, other than this power of delegation.

(3) A power delegated by the Commission under sub-section (1), or by a member under sub-section (2), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commission or by the member, as the case may be.

(4) A delegation under this section by the Commission, or by a member, does not prevent the exercise of a power by the Commission, or by the member, as the case may be.

Non-disclosure of private information

45. (1) A person who is, or has at any time been, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission, being a function or power conferred on the Commission under this Act, shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act or in the performance or exercise of such a function or power—

- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized;
- (b) make use of any such information as is mentioned in paragraph (a); or
- (c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$1,000 or imprisonment for 3 months.

(2) A person who is, or has at any time been, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission, being a function or power conferred on the Commission under this Act, shall not be required—

- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized; or
- (b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized,

except where it is necessary to do so for the purposes of this Act.

(3) Nothing in this section prohibits a person from—

- (a) divulging or communicating information, or producing a document, to an authority of a State in accordance with an arrangement in force under section 46; or
- (b) divulging or communicating information, or producing a document, that is, or is included in a class of information that is or class of documents that are, required or permitted by an Act to be divulged, communicated or produced, as the case may be.

(4) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to.

Arrangements with the States

46. (1) The Minister may make an arrangement with a Minister of a State for or in relation to the performance or exercise, by that State or by a State instrumentality, on behalf of the Commonwealth, of—

- (a) functions and powers of the Commission, and of members, under this Act relating to inquiries into acts or practices that may infringe a right or freedom set out in the Bill of Rights; or
- (b) functions and powers of the Commission under this Act relating to enactments or proposed enactments of that State.

(2) An arrangement under this section may contain such incidental or supplementary provisions as the Minister and the Minister of the State with whom the arrangement is made think necessary.

(3) The Minister may arrange with the Minister of a State with whom an arrangement is in force under this section for the variation or revocation of the arrangement.

(4) An arrangement under this section, or the variation or revocation of such an arrangement, shall be in writing and a copy of each instrument by which an arrangement under this section has been made, varied or revoked shall be published in the *Gazette*.

Application of Human Rights Commission Act

47. (1) For the purposes of the application of section 12 of the *Human Rights Commission Act 1981* in relation to the performance of the functions of the Commission under this Part, that section has effect as if the reference in sub-section (2) of that section to any human right included a reference to any right or freedom set out in the Bill of Rights.

(2) For the purpose of the application of section 33 of the *Human Rights Commission Act 1981* in relation to functions and powers conferred on the Commission under this Part, that section has effect as if the reference in sub-section (1) of that section to a person acting under the direction or

authority of the Commission included a reference to a person acting pursuant to a delegation under section 44 of this Act.

PART VI—SEVERABILITY

Operation of Act

48. (1) If this Act exceeds the powers of the Parliament by reason of the inclusion in the Bill of Rights of a particular article or particular articles, this Act is intended to operate as if that article, or those articles, as the case may be, were omitted from the Bill of Rights.

(2) If this Act exceeds the powers of the Parliament by reason of the application in relation to laws of the Commonwealth of an article or articles in the Bill of Rights, this Act is intended to operate as if that article, or those articles, as the case may be, applied only in relation to laws of the States.

(3) If this Act exceeds the powers of the Parliament by reason that it applies in relation to—

- (a) the making of laws of the States; and
- (b) acts done and practices engaged in—
 - (i) by or on behalf of a State or by or on behalf of an authority of a State; or
 - (ii) pursuant to a function, power or duty conferred by a law of a State,

and this Act would be within the powers of the Parliament if it applied only in relation to—

- (c) the making of laws of the Commonwealth and of the Territories; and
- (d) acts done and practices engaged in—
 - (i) by or on behalf of the Commonwealth or a Territory by or on behalf of an authority of the Commonwealth or of a Territory; or
 - (ii) pursuant to a function, power or duty conferred by a law of the Commonwealth or of a Territory,

this Act is intended to operate as if it applied only in relation to the making of laws referred to in paragraph (c) and to acts and practices referred to in paragraph (d).

Operation of Part III

49. (1) The provisions of Part III, other than sections 14 and 15, are intended to operate whether or not either or both of those sections is or are, in the whole or in part, within the powers of the Parliament.

(2) Each of sections 14 and 15 is intended to operate whether or not the other of those sections is, in whole or in part, within the powers of the Parliament.

(3) If sub-sections 14 (2) to (6), inclusive, are within the powers of the Parliament, those sub-sections are intended to operate whether or not sub-sections 14 (7) to (9), inclusive, are within the powers of the Parliament.

(4) If sub-section 14 (4) or (6) would, but for the inclusion of the words "except the purposes of the proceedings in which the declaration in relation to the enactment was made under sub-section (2) or (3)", be within the powers of the Parliament, that sub-section is intended to operate as if those words were omitted from it.

(5) If sub-section 14 (8) or (9) would, but for the inclusion of the words "except the purposes of the proceedings in which the declaration in relation to the enactment was made", be within the powers of the Parliament, that sub-section is intended to operate as if those words were omitted from it.

(6) If sub-section 15 (3) to (5), inclusive, are within the powers of the Parliament, those sub-sections are intended to operate whether or not sub-sections 15 (6) and (7) are within the powers of the Parliament.

(7) If sub-section 15 (4) or (7) would, but for the inclusion of the words "except in relation to the proceedings in which the declaration was made", be within the powers of the Parliament, that sub-section is intended to operate as if those words were omitted from it.

(8) Nothing in this section is intended to limit the application of section 15A of the *Acts Interpretation Act 1901* in relation to this Act or in relation to the Bill of Rights.

PART VII—MISCELLANEOUS

Assistance in proceedings involving Bill of Rights

50. (1) A person who—

- (a) has instituted a proceeding for a declaration under section 17; or
- (b) has invoked the provisions of the Bill of Rights in any other legal proceeding,

may apply to the Attorney-General for the provision of assistance under this section in respect of the proceeding.

(2) Where an application is made by a person under sub-section (1) and the Attorney-General is satisfied that—

- (a) it would involve hardship to that person to refuse the application; and
- (b) in all the circumstances, having particular regard to the public interest in having important questions as to the operation of the Bill of Rights determined by the courts, it is reasonable that the application be granted,

the Attorney-General may authorize the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in respect of the proceeding as the Attorney-General determines.

Regulations

51. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

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

SCHEDULE

Section 4

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
