

Freedoms Under the Bill of Rights

The proposed Bill of Rights is contained in the Australian Bill of Rights Bill 1985 is substantially the same as the draft proposed by the previous Attorney-General, Senator Gareth Evans. However, it will not operate to override new State law or the law of the Northern Territory. For a five year period federal legislation, which is inconsistent with the Bill of Rights, will be invalid to the extent of any inconsistency unless it expressly overrides the Bill of Rights. In addition, any common law contrary to the intention of the bill will be overridden. After the five year period has expired, Federal laws in force at the time the Bill is proclaimed will be examined and to the extent they are inconsistent with the Bill of Rights they will be invalid.

Unlike Senator Evan's model, the Bill will not give any rights to seek declarations. In addition, no one will be able to approach the Courts seeking damages because their rights have been violated. It will only be able to be raised once the matter is before the Courts and then, as a shield and not a sword.

The fact that the Bill will not override State law clearly opens it to criticism that most of the potentially rights breaching legislation is under State jurisdiction.

The rights covered by the proposed Bill of Rights include:-

- equal protection under the law;
- participation in public life;
- freedom of expression, thought and conscience;
- freedom of association and the right of peaceful assembly;
- special protection for minorities;
- privacy and family rights;
- freedom of movement; and
- due process.

If the implementation of the Bill of Rights in overruling Commonwealth law causes grave public inconvenience or hardship, then an order can be sought from the Court keeping the law in question in force

for up to three months after the declaration, to give Parliament the chance to amend it.

The Bill of Rights will take effect as an ordinary act of Parliament, rather than as a constitutional amendment, as is the case in the United States. Accordingly, it can be amended or repealed.

Set out below is an extract from clause 8 of the Bill which is headed

"Australian Bill of Rights"

Division 1 - General

Article 1

Entitlement to rights and freedoms without distinction

1. 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.
2. Men and women have the equal right to the enjoyment of the human rights and fundamental freedoms set out in this Bill of Rights.

Article 2

Effect of Bill of Rights on existing rights and freedoms

A right or freedom existing under, or recognised by, 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 limitations 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 ex-

tent than is permitted by the International Covenant on Civil and Political Rights.

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. The right to the equal protection of the law set out in paragraph 1 includes, but is not limited to, the right to such protection without discrimination based on race, colour, national origin, sex, religion or political opinion.
3. Nothing in this Bill of Rights affects the operation of any earlier or later law by reason only of the fact that the law discriminates in favour of a 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 of the Press and other media of communication, and the freedom to seek, receive and impart ideas or information of any kind in any form, without interference and regardless of frontiers.

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 or whether in public or 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. For the purpose of giving effect to the right referred to (above) and without limiting the nature and extent of that right, a search or seizure is unlawful unless:-
 - (a) made pursuant to a warrant issued by a judge, magistrate or justice of the peace 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) made pursuant to a law authorising search or seizure, where search or seizure as so authorised is a necessary element in the proper administration or enforcement of revenue laws or the reasonable regulation of an activity.
 - (c) made pursuant to a law authorising search or seizure where there is a compelling need for immediate action; or
 - (d) in the case of a search - made with free and voluntary consent and after the giving of a warning as to the consequences of giving consent to the search.

Article 13

Right to marry and found a family

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

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tection by society and the State -

- (a) every man and woman 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.

Article 14

Rights of the child

Recognising that every child has the right to such measures of protection as are required by the child's age -

- (a) 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;
- (b) every child shall be registered immediately after birth and shall have a name;
- (c) every child has the right to acquire a nationality; and
- (d) 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, liberty and security of person

1. No person shall be deprived of life, liberty or security of person 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.

Article 19
Slavery and servitude

No person shall be held in slavery or servitude or be required to perform forced or compulsory labour.

Article 20
Right to be informed of reasons for arrest and 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 to remain silent

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

Article 22
Hearings, release and trial

1. Any person arrested or detained on a criminal charge shall be brought promptly before a judge, magistrate or justice of the peace.
2. No person awaiting trial shall be unreasonably deprived of the right to release on giving a guarantee to appear for trial.
3. Any person arrested or detained on a criminal charge has the right to be tried 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 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

lation to adequate and comprehensive service had been tested in a competitive market the ABT was prepared to give ADS-7 the benefit of any doubt. It found compliance with the second level of the undertaking in relation to encouragement of Australian programs and it also was satisfied that the applicant continued to possess the financial and technical capabilities to effectively operate the station. Taking all these considerations into account the Tribunal was satisfied that the renewal of the licence accorded with the public interest.

In deciding on the length of time of renewal the Tribunal referred to its POS-05 - renewal of a licence for less than the maximum period. The two main factors referred to in that policy statement which were relevant here were the need for an earlier review of performance of the station and the need for a form of sanction to be imposed.

The ABT said that the circumstances did not justify a renewal for the full term. If the licence was renewed for the full term it would not be sufficiently clear to the licensee that the deficiencies indicated were significant ones, which required positive correction. Accordingly, the licence was only renewed for two years and six months.

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- to pay for the assistance;
- (d) to have adequate time and facilities to prepare a defence;
 - (e) to be present at any proceedings relating to the offence and to present a defence;
 - (f) to examine the witnesses against the person;
 - (g) to obtain the attendance of, and to examine, witnesses for the person;

- (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

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.

Article 28

Right of review of conviction and sentence

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

Article 29

No trial of punishment for the 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

Every person deprived of liberty has the right to be treated with humanity and with respect for the inherent dignity of the human person.

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;
- (b) accused children shall be segregated from accused adults; and

cause it represents the line of least resistance; that is, MCS is the more conservative approach especially in its maintenance of regional monopolies.

Furthermore, MCS does not overcome the structural weaknesses associated with a large number of small regional markets. Although the FDU recognises that revenue projections will be critical in any assessment of viability, it does little more than summarise the widely varying estimates of its consultants and does not offer an independent analysis of the results.

In short, the FDU, mindful of the political priority, but with a longer term interest in securing a competitive and more efficient industry, suggests that the equalisation program proceed by means of a "migratory path" from MCS to aggregation. The mechanics of this path are as yet unannounced. Nevertheless, the recently announced study into ownership and control provisions of the Broadcasting and Television Act, which the FDU is now undertaking, is sure to provide a key to this process.

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- (c) convicted children shall be segregated from convicted adults, and shall be treated in a manner appropriate to their age and legal status.

Article 31/1

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."

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RECENT PUBLICATIONS

Computer Software Legal Protection in the United Kingdom and Commonwealth - Henry Carr, ESC Publishing Limited (25 Beaumont Street, Oxford OX1 2NP, U.K.), 1985. A review of the current legal position of computer software under United Kingdom law.

Private Copying of Sound and Audio-Visual Recordings - Gillian Davies, ESC Publishing Limited (25 Beaumont Street, Oxford OX1 2NP, U.K.), 1984. Highlights the failure of existing copyright laws to provide protection from unauthorised reproduction of recorded music and films. This study of "off-air", "tape-to-tape" and "disc-to-tape" recording was prepared at the request of the European Commission.

Protecting Computer Technology: Europe and Asia Pacific - Longman Professional Intelligence Reports, 1985, (Longman Professional). Focuses on aspects of national and international law. Begins with an overview of intellectual property law in Europe. A summary of current data protection legislation in Europe is provided in Chapter Two. For the Asia Pacific region the Report focuses on Australia, Japan and Taiwan.

Protecting Computer Technology: The Americas - Longman Professional Intelligence Reports, 1985, (Longman Professional). The Report examines issues emanating from key countries such as the USA, Canada, Brazil and Mexico. Deals with the US Semiconductor Chip Protection Act. Also discusses issues associated with customs procedures, export controls and taxation.

Australian Broadcasting Corporation - Report of the Election Coverage Committee Federal Election 1 December, 1984, ABC.

Communications Up-Date - the Newsletter for the Media and Communications Council (this is available from GPO Box 4264 Sydney, 2001, and twelve issues appear a year).