

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Attorney-General)

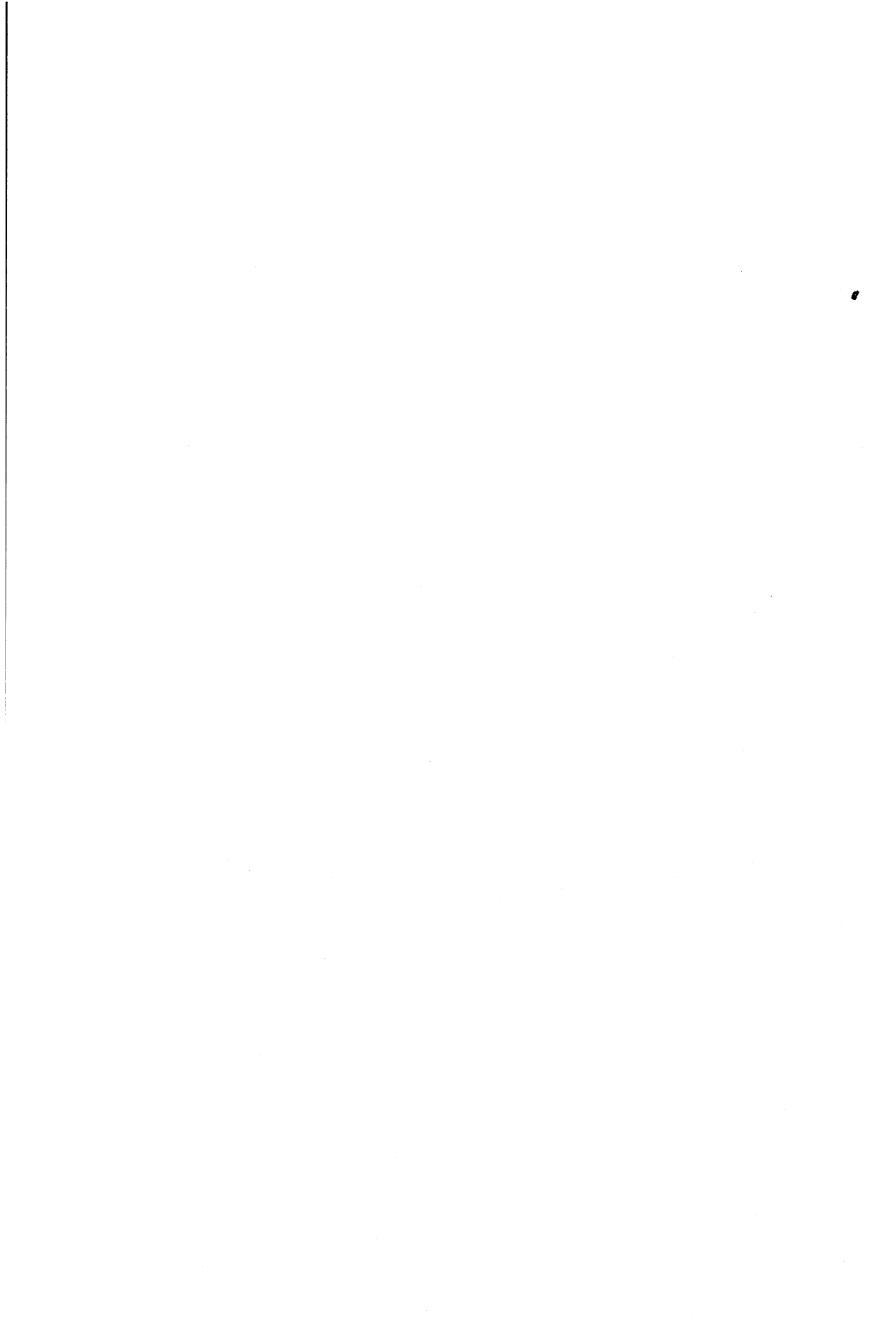
**ADMINISTRATIVE DECISIONS (EFFECT OF
INTERNATIONAL INSTRUMENTS) BILL 1995**

CONTENTS

Preamble

Section

1. Short title
2. Commencement
3. Application to external Territories
4. Definitions
5. International instruments do not give rise to legitimate expectations
6. Enactments may incorporate or apply international instruments
7. Enactments may provide remedies relating to international instruments
8. Relevance of international instruments in decision making



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A BILL

FOR

An Act relating to the effect of international instruments on the making of administrative decisions

Preamble

This preamble sets out considerations taken into account by the Parliament of Australia in enacting the law that follows.

Australia is fully committed to observing its obligations under international instruments.

However, international instruments by which Australia is bound or to which Australia is a party do not form a part of Australian law unless Australian legislation provides otherwise.

There is a need for certainty in making administrative decisions. Uncertainty is created by allowing decisions to be challenged on the ground that decision makers did not properly give effect to legitimate expectations based on international instruments that do not form part of Australian law. 5

In a joint statement issued on 10 May 1995, the Minister for Foreign Affairs and the Attorney-General stated, on behalf of the Commonwealth Government, that no such legitimate expectations are created, and that the Commonwealth Government intended to introduce legislation to reinforce the statement and put the matter beyond any doubt. 10

The Parliament of Australia intends that the following law will take effect according to its terms in the interests of certainty in administrative decision making. 15

The Parliament of Australia therefore enacts:

Short title

1. This Act may be cited as the *Administrative Decisions (Effect of International Instruments) Act 1995*.

Commencement 20

2. This Act is taken to have commenced on 10 May 1995.

Application to external Territories

3. This Act extends to all the external Territories.

Definitions

4. In this Act, unless the contrary intention appears: 25

administrative decision means:

- (a) a decision by or on behalf of the Commonwealth, a State or a Territory; or
- (b) a decision by or on behalf of an authority of, or office holder of, the Commonwealth, a State or a Territory; 30

that is a decision of an administrative character (whether or not the decision is made under an enactment), and includes such a decision reviewing, or determining an appeal in respect of, a decision made before the commencement of this Act.

enactment means:

- (a) an Act passed by the Parliament, by the Parliament of a State or a Legislative Assembly of a Territory; or
- (b) an instrument of a legislative character made under such an Act.

5 **international instrument** means:

- (a) any treaty, convention, protocol, agreement or other instrument that is binding in international law; and
- (b) a part of such a treaty, convention, protocol, agreement or other instrument.

10 **International instruments do not give rise to legitimate expectations**

5. The fact that Australia is bound by, or a party to, a particular international instrument, or that an enactment reproduces or refers to a particular international instrument, does not give rise to a legitimate expectation, on the part of any person, that:

- 15 (a) an administrative decision will be made in conformity with the requirements of that instrument; or
 - (b) if the decision were to be made contrary to any of those requirements, any person affected by the decision would be given notice and an adequate opportunity to present a case against the taking of such a
- 20 course.

Enactments may incorporate or apply international instruments

6.(1) For the avoidance of doubt, section 5 does not affect the operation of any enactment so far as it incorporates an international instrument into Australian law or otherwise applies it as Australian law.

25 (2) For the purposes of this section, an enactment is not taken to incorporate an international instrument into Australian law, or to apply it as Australian law, merely because the instrument is reproduced or referred to in the enactment.

30 **Enactments may provide remedies relating to international instruments**

7. For the avoidance of doubt, section 5 does not affect the operation of an enactment so far as it provides for remedies against, or for any procedures for redress of grievances in respect of, acts or omissions that breach international instruments binding on Australia or to which Australia is a

35 party.

Relevance of international instruments in decision making

40 8.(1) For the avoidance of doubt, section 5 does not affect the operation of an enactment so far as it provides that the requirements of an international instrument are a relevant consideration in making an administrative decision.

(2) For the avoidance of doubt, section 5 does not have the effect of making the requirements of an international instrument an irrelevant consideration in making an administrative decision.





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