

1995
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Connolly)

Bill of Rights Bill 1995

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Bill of Rights Bill 1995

**A BILL
FOR**

**An Act to affirm, protect and promote human rights
and fundamental freedoms in the Territory**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

5 Short title

1. This Act may be cited as the *Bill of Rights Act 1995*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.
- 10 (2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.
- (3) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which

this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

PART II—APPLICATION AND GENERAL EFFECT OF ACT

Application

5 3. This Act applies only to—

- (a) acts done by the legislative, executive or judicial branches of the government of the Territory; and
 - (b) acts done by a person or body in the performance of a function, power or duty conferred or imposed on that person or body by or
- 10 under an Act or a subordinate law.

Ambit of rights and freedoms

4. The rights and freedoms set out in this Act apply generally and are subject only to any reasonable limits prescribed by law that are demonstrably justifiable in a free and democratic society.

15 5. Interpretation consistent with this Act to be preferred

5. Wherever an Act or a subordinate law can be given a meaning that is consistent with the rights and freedoms set out in this Act, that meaning shall be preferred to a meaning that is not consistent with those rights and freedoms.

20 6. Attorney-General to report on inconsistent Bills

6. Where a Bill is introduced into the Legislative Assembly, the Attorney-General shall—

- (a) if the Bill is a Government Bill—on presentation of the Bill; or
 - (b) in any other case—as soon as practicable after the introduction of
- 25 the Bill;

bring to the attention of the Legislative Assembly any provision in the Bill that appears to be inconsistent with any of the rights and freedoms set out in this Act.

PART III—DECLARATION OF RIGHTS BY SUPREME COURT

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Application to Supreme Court

7. (1) Where—

- (a) a right or freedom of a person set out in this Act is infringed; or

- (b) it is apprehended on reasonable grounds that a right or freedom of a person set out in this Act may be infringed;

application may be made to the Supreme Court for a declaration of the rights of the person.

- 5 (2) An application to the Supreme Court under subsection (1) may be made by—

- (a) a person acting in his or her own interest;
- (b) a person acting on behalf of another person who is not able to seek relief in his or her own interest;
- 10 (c) a person acting as a member of, or in the interests of, a group or class of persons; or
- (d) a person acting in the public interest.

(3) The Supreme Court has jurisdiction to hear and determine an application under subsection (1).

15 **PART IV—RIGHTS AND FREEDOMS**

Division 1—Fundamental freedoms

Freedom of thought, conscience and religion

8. Every person has the right to freedom of thought, conscience, religion and belief, including the right to adopt and hold opinions without
- 20 interference.

Freedom of expression

9. Every person has the right to freedom of speech and expression, including the freedom to impart information and opinions of any kind.

Freedom of peaceful assembly

- 25 10. Every person has the right to freedom of peaceful assembly.

Freedom of association

11. Every person has the right to freedom of association.

Division 2—Democratic rights

Democratic rights of residents

- 30 12. Every person who—

- (a) has attained the age of 18 years;
- (b) is resident in the Territory; and

(c) is an Australian citizen;

has the right to be qualified to vote in an election of members of the Legislative Assembly and the right to be qualified to be elected to be a member of the Assembly.

5 Secret ballot

13. A person who has the right to vote in an election of members of the Legislative Assembly has the right to do so in secret.

Equal suffrage

10 14. Elections of members of the Legislative Assembly shall be by equal suffrage.

Rights to engage in political activity

15. Every person has the right to—

- (a) form, participate in the activities of, and recruit members for a political party;
- 15 (b) campaign for a political party or cause; and
- (c) freely make political choices.

Division 3—Legal rights

Right to life, liberty and security

20 16. (1) Every person has the right to life, liberty and security of the person.

(2) A person shall not be deprived of life, liberty or security except on a ground established by law and consistent with the principles of fundamental justice.

Torture or cruel treatment

25 17. Every person has the right to freedom from torture and from cruel, inhumane or degrading treatment or punishment.

Unreasonable search or seizure

18. Every person has the right to be secure against unreasonable search or seizure of his or her person or property.

30 Rights of persons arrested or detained

19. (1) Every person who is arrested or who is detained under an enactment has the following rights:

- (a) the right to be informed at the time of the arrest or detention of the reasons for it;

- (b) the right to consult and instruct a lawyer without undue delay and to be informed of that right;
- (c) the right to have the validity of the arrest or detention determined without delay by way of *habeas corpus* and to be released if the arrest or detention is unlawful;
- (d) the right to be treated with humanity and with respect for his or her inherent dignity.

(2) Every person who is arrested for an offence has the right to be charged promptly or to be released.

(3) Every person who is arrested for an offence and is not released has the right to be brought as soon as possible before a court or competent tribunal.

(4) Every person who is—

- (a) arrested; or
- (b) detained under an enactment;

for an offence or suspected offence has the right to refrain from making any statement and to be informed of that right.

Rights of persons charged

20. Every person charged with an offence has the following rights:

- (a) the right to be informed promptly and in detail of the nature and reasons for the charge;
- (b) the right to be released on reasonable terms and conditions unless there is just cause for continued detention;
- (c) the right to consult and instruct a lawyer;
- (d) the right to be given adequate time and facilities to prepare a defence;
- (e) the right to reasonable legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance;
- (f) the right not to be found guilty in respect of an act or omission unless the act or omission constituted an offence at the time it occurred;
- (g) the right, if finally acquitted of the offence, not to be tried for it again or, if finally found guilty of the offence and punished, not to be tried and punished for it again.

Standards of criminal procedure

21. Every person who is charged with an offence has, in relation to the determination of the charge, the following rights:

- 5 (a) the right to a fair and public hearing by an independent and impartial court;
- (b) the right to a trial by a jury where the maximum penalty for the offence is, or includes, imprisonment for more than 1 year;
- (c) the right to be tried without undue delay;
- 10 (d) the right to be presumed innocent until proven guilty according to law;
- (e) the right not to be compelled to be a witness in proceedings against himself or herself in respect of the offence;
- (f) the right to be present at the trial and to present a defence;
- 15 (g) the right to examine the witnesses for the prosecution and to obtain the attendance of, and to examine, witnesses for the defence under the same conditions as the prosecution;
- (h) the right, if convicted of the offence, to appeal according to law to a higher court against the conviction or against the penalty or against both;
- 20 (j) the right, in the case of a child, to be dealt with in a manner that takes account of the child's age.

Interpreter and assistance for the hearing impaired

22. (1) A defendant or witness in criminal proceedings who does not understand or speak the language in which the proceedings are conducted has the right to the assistance of an interpreter.

(2) A defendant or witness in criminal proceedings who has a hearing impairment has the right to the assistance of a person skilled in communication with the hearing impaired.

Division 4—Rights of equality**30 Equality before the law**

23. Every person is equal under the law and has the right to equal protection and benefit of the law.

Freedom from discrimination

35 24. (1) Every person has the right of freedom from discrimination, including discrimination based on race, colour, ethnic or racial origin,

religious or ethical beliefs, sex, age, impairment, marital status or status as a parent or carer.

(2) Subsection (1) does not apply to prohibit an act a purpose of which is—

- 5 (a) to ensure that persons of a particular race or sex have equal opportunities with other persons; or
- (b) to afford persons of a particular race or sex with access to facilities, services or opportunities to meet their special needs.

10 (3) In this section, a reference to a carer shall be read as a reference to a person on whom another person is wholly or substantially dependent for ongoing care and attention.

Right to education

25. Every person has the right to reasonable access to the Territory education system.

15 ***Division 5—Rights of indigenous inhabitants***

Rights particular to Aboriginal persons and Torres Strait Islanders

26. (1) In this section—

20 “Aboriginal person” means a person who is descended from, identifies as, and is accepted by an Aboriginal community as, an Aboriginal person;

“Torres Strait Islander” means a descendant of an indigenous inhabitant of the Torres Strait Islands.

25 (2) All Aboriginal persons and Torres Strait Islanders have the following rights:

- (a) the right to revive, maintain and develop their cultural characteristics and identities, including—
 - (i) their religion and spiritual beliefs; and
 - (ii) their languages and educational practices;
- 30 (b) the right to maintain and develop their relationships with lands and natural resources with which they have traditional ties;
- (c) the right to have their social, cultural, religious and spiritual values treated with respect;
- 35 (d) the right to have regard given to their special needs as Aboriginal persons or Torres Strait Islanders;

- (e) the right to be consulted in respect of proposed action that will, or may, affect them as Aboriginal persons or Torres Strait Islanders;
- (f) the right to determine their own priorities for their cultural development.

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Division 6—Other rights**Privacy**

27. Every person has the right to his or her personal privacy, including the right not to be subject to violation of the confidentiality of his or her personal communications.

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Rights particular to children

28. (1) A child has the right to live with his or her parents, or with one of them if the parents live separately, and to be cared for by them unless the child's interests require some other arrangement.

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(2) A child has the right to be cared for by the Territory if there is no relative or other appropriate person who is willing and able to care for the child.

(3) Every child has the following rights:

- (a) the right to shelter, health care and recreation;
- (b) the right not to be neglected;
- 20 (c) the right not to be exposed to an unreasonable risk of injury or harm;
- (d) the right not to be forced to labour or render service harmful to the child's mental or physical wellbeing or amounting to economic exploitation;
- 25 (e) the right to be treated with respect for his or her inherent dignity.

(4) A child has the right to express views on all matters affecting his or her wellbeing and to have the views given appropriate weight having regard to the child's age and maturity.

PART V—MISCELLANEOUS

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Other rights and freedoms not affected

29. An existing right or freedom shall not be taken to be abrogated or restricted by reason only that the right or freedom is not referred to in this Act or is referred to only in part.

Application to legal persons

30. Except where this Act otherwise provides, the provisions of the Act apply, so far as is practicable, for the benefit of all legal persons as well as for the benefit of all natural persons.

Printed by Authority of the ACT Government Printer

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