

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**HUMAN RIGHTS (SEXUAL CONDUCT) BILL 1994**

**REPLACEMENT EXPLANATORY MEMORANDUM**

(Circulated by authority of the Attorney-General,  
the Honourable Michael Lavarch MP)

**THIS MEMORANDUM REPLACES THE EXPLANATORY MEMORANDUM  
PRESENTED TO THE SENATE ON 7 NOVEMBER 1994**

## THE HUMAN RIGHTS (SEXUAL CONDUCT) BILL 1994

### Outline

This Bill provides that sexual conduct involving only consenting adults acting in private is not to be subject, by or under any law of the Commonwealth, a State or a Territory, to any arbitrary interference with privacy within the meaning of Article 17 of the International Covenant on Civil and Political Rights.

Australia became a party to the International Covenant on Civil and Political Rights in 1980. Article 17 paragraph 1 of the Covenant provides that 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.'

### Financial Impact Statement

This Bill will have no financial impact.

## Notes On Clauses

### Clause 1 - Short Title

1. The proposed legislation is to be called the Human Rights (Sexual Conduct) Act 1994.

### Clause 2 - Commencement

2. The proposed legislation will come into effect on the day on which it receives the Royal Assent.

### Clause 3 - Act extends to external Territories

3. The proposed legislation is to apply throughout Australia and to all Australia's external Territories.

### Clause 4 - Arbitrary interferences with privacy

4. Paragraph 1 of clause 4 provides that sexual conduct involving only consenting adults acting in private is not to be subject, by or under any law of the Commonwealth, a State or a Territory, to any arbitrary interference with privacy within the meaning of Article 17 of the International Covenant on Civil and Political Rights. In interpreting this clause, a court could be expected to have regard to appropriate extrinsic material including the views of the United Nations Human Rights Committee and other international jurisprudence relevant to the interpretation of Article 17.
5. The term 'sexual conduct' is intended to cover the physical expression of sexual desire. The term does not mean conduct which is incidental to sexual conduct such as the termination of pregnancy or the production or distribution of pornographic material.
6. Only conduct involving only consenting adults is protected. Paragraph 2 of clause 4 provides that an adult is a person who is 18 years old or more. The Bill does not, therefore, cover conduct involving children or non consensual conduct or conduct which results, for example, in physical harm to which the parties involved did not or could not validly consent.
7. The Bill only protects activity which is conducted in private.

8. The Bill does not provide a general guarantee of freedom from interference with privacy. It deals only with privacy in relation to sexual conduct involving only consenting adults acting in private.

9. The Bill will not affect the regulation of sexual conduct provided that such regulation is not an arbitrary interference with privacy. The term 'arbitrary' guarantees that even interference provided for by law must be justified and reasonable in the circumstances. The Human Rights Committee interprets reasonableness as requiring that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case. The individual's right to privacy is not absolute or unlimited and must be balanced with the needs of the community and with other rights.

10. Accordingly, the Bill will not affect laws such as those, for example, dealing with incest, sexual conduct involving a person with an intellectual disability, sexual conduct involving animals, regulation of the sex industry, sexual conduct amounting to professional misconduct, the possession or use of child pornography and sexual conduct in prisons where the interference with privacy is justified and reasonable.

