

1994

**THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA**

THE SENATE

(Senator Chamarette)

RIGHTS TO PRIVACY AND EQUALITY (ICCPR) BILL 1994

EXPLANATORY MEMORANDUM

**(Circulated by authority of Senator Christabel Chamarette
Senator for Western Australia)**

RIGHTS TO PRIVACY AND EQUALITY (ICCPR) BILL 1994

Outline

This Bill partially fulfils Australia's international treaty commitments by incorporating into Australian law article 17 and 26 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 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. Everyone has the right to the protection of the law against interference or attacks.' Article 26 provides that 'All people are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

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 Rights to Privacy and Equality (ICCPR) Act 1994.

Clause 2—Commencement

2. The proposed legislation will come into affect 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—Object—Articles 17 and 26 of ICCPR to be enforceable as part of Commonwealth law

4. Clause 4 makes it the object of the Act to make Article 17 and Article 26 of the ICCPR part of the law of the Commonwealth and that these two Articles will be able to be enforced as if they were part of domestic law. Thus any law under a State or a Territory inconsistent with this Act would suffer sanctions provided by the Constitution.

Clause 5—Interference and discrimination to be unlawful

5. Clause 5 makes it unlawful for a person to do any act that would breach the obligations imposed by Article 17 and Article 26 of the ICCPR.

6. Clause 5 subclause (a) implements Article 17 and protects individuals from arbitrary interference with their privacy, family, home or correspondence. The term 'arbitrary' guarantees that even interference provided for by law should 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 the given case.

7. Clause 5 subclause (b) implements into Commonwealth law the second aspect Article 17 of the ICCPR. It will be unlawful to make an unjustified attack on the honour and reputation of another person.

8. Clause 5 subclause (c) implements Article 26 of the ICCPR. It provides that all persons are entitled without any discrimination to the equal protection of the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Clause 6—Rights to equality

9. This clause provides that a person who does not enjoy a right that is enjoyed by other persons or enjoys a right more limited in extent, then they shall be deemed to hold those rights to the same extent as provided for by Article 26 of the ICCPR.

10. In interpreting the above clauses and the object of the Act, a court could be expected to have regard to the views of the United Nations Human Rights Committee and other international jurisprudence relevant to the interpretation of Article 17 and 26.