

2004

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Bill of Rights and Responsibilities Bill  
2004**

**No.           , 2004**

*(Mr Organ)*

**A Bill for an Act to confer certain human rights  
and responsibilities on all people in Australia, and  
for related purposes**



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1 **A Bill for an Act to confer certain human rights**  
2 **and responsibilities on all people in Australia, and**  
3 **for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**

6 **1 Short title**

7 This Act may be cited as the *Bill of Rights and Responsibilities*  
8 *Act 2004*.

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## PART I—PRELIMINARY

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### 2 Commencement

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(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

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(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives Royal Assent, it commences on the first day after the end of that period.

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### 3 Objects

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The objects of this Act are:

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(a) For the Australian Parliament, on behalf of and for the Australian people to set the highest International standard for the observance of Human Rights and Responsibilities; and

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(b) To affirm for all time, Australia's commitment to Human Rights and Responsibilities; and

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(c) To ensure that any person whose rights or freedoms as set out in the Act are infringed by or under any law in relation to which that Charter operates has an effective remedy; and

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(d) To promote universal respect for, and observance of, human rights and fundamental freedoms for all persons without discrimination;

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### 4 Interpretation

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(1) In this Act, unless the contrary intention appears:

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*act* means an act done:

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(a) by or on behalf of the Commonwealth, a State or a Territory;

27

or

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- 1 (b) by or on behalf of an authority of the Commonwealth, of a  
2 State or of a Territory;
- 3 (c) by or on behalf of an individual, corporation, or other entity  
4 being an act done:
- 5 (c) in relation to an Australian citizen—within or outside  
6 Australia; or
- 7 (d) in any other case—within Australia;

8 *Australia* includes all external Territories.

9 “judgment” includes a decree, order or sentence;

10 “judicial officer” means a judge, magistrate or justice of the peace;

11 (2) For the purposes of this Act, refusing or failing to do an act, or  
12 delaying for an unreasonable time the doing of an act, shall be deemed  
13 to be the doing of an act and a reference to an act includes a reference to  
14 such a refusal, failure or delay.

15 (3) A reference in this Act to a law of Australia, of a State or of a  
16 Territory includes a reference to any instrument (including a rule,  
17 regulation, by-law, award, determination, order or direction) made,  
18 granted or issued under a power conferred by such a law.

19 **5 Interpretation of Bill of Rights and Responsibilities**

20 For the purposes of the interpretation of the Bill of Rights and  
21 Responsibilities, each Article of the Bill of Rights and Responsibilities  
22 contained in Schedule 1 of this Act shall be taken to be a section of this  
23 Act.

24 **6 Extent to which Act binds the Crown**

25 This Act binds the Crown in right of the Commonwealth, each of the  
26 States and the Territories and Local Government.

27 **7 Extension to external Territories**

28 This Act extends to every external Territory.

1 **8 Application of Bill of Rights and Responsibilities**

- 2 (1) Subject to subsection (2), any provision of a law, whether passed  
3 or made before, on or after the commencing day of this Act, that is  
4 inconsistent with a provision of this Act does not, to the extent of  
5 the inconsistency, have any force or effect.
- 6 (2) Subsection (1) does not restrict in any way a person's right to  
7 obtain a legal remedy from a Court of competent jurisdiction.
- 8 (3) The rights and responsibilities set out in this Act are in addition to,  
9 and not in derogation of, any other rights and freedoms of the  
10 individual, whether under the laws of Australia, of the States or of  
11 the Territories and this Act is not intended to exclude or limit the  
12 operation of any of those laws in so far as they can operate  
13 concurrently with the provisions of this Act.
- 14 (4) Nothing in this Act may be interpreted as implying any right to  
15 engage in any activity or perform any act that is restrictive of any  
16 of the rights and freedoms recognized in this Act or limits any of  
17 those rights and freedoms to a greater extent than is provided for in  
18 this Act.

20 **Part 2—Bill of Rights**

21 **9 Bill of Rights**

22 The Bill of Rights is set out in Schedule 1 which has effect  
23 according to its terms.

24 **Part 3—Miscellaneous**

25 **10 Regulations**

26 The Governor-General may make regulations, not inconsistent with  
27 this Act, prescribing matters:  
28 (a) required or permitted by this Act to be prescribed; or  
29 (b) necessary or convenient to be prescribed for carrying out or  
30 giving effect to this Act.

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# **Schedule 1—Bill of Rights and Responsibilities**

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## **Division 1 FUNDAMENTAL RIGHTS AND FREEDOMS**

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### **Entitlement to rights without distinction**

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Everyone is entitled to the fundamental rights and freedoms as set out in this Division, without distinction of any kind, such as race, colour, sex, language, sexual preference, religion, political or other opinion, national or social origin, poverty, property, or birth.

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### **Article 1 Equal protection of law**

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Everyone is entitled without any discrimination to the equal protection of the law.

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### **Article 2 Minorities**

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Persons belonging to cultural, ethnic or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture or to use their own language.

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### **Article 3 Thought, conscience and religion**

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**10.** (1) Everyone shall have the right to freedom of thought, conscience and religion.

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(2) The right shall include freedom to have or to adopt a religion or belief of his or her choice, and freedom, either individually or in community with others and in public or private, to manifest his or her religion or belief in worship, observance, practice and teaching.

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1 (3) No one shall be subject to coercion which would impair his or  
2 her freedom to have or to adopt a religion or belief of his or her  
3 choice.

4 (4) Freedom to manifest one's religion or beliefs may be subject  
5 only to such limitations as are prescribed by law and are  
6 reasonably necessary to protect public safety or public health or  
7 constitute reasonable regulations as to time, place and manner.

8 (5) The burden of proving that a limitation referred to in sub-  
9 section (4) is reasonably necessary or constitutes a reasonable  
10 regulation as mentioned in that sub-section lies upon the person  
11 asserting that the limitation is so necessary or constitutes such a  
12 regulation.

13 **Article 4 Expression**

14 (1) Everyone shall have the right to hold opinions without  
15 interference.

16 (2) Everyone shall have the right to freedom of expression,  
17 including freedom to seek, receive and impart information and  
18 ideas of all kinds, regardless of frontiers, either orally, in writing  
19 or in print, in the form of art, or through any other media of his or  
20 her choice.

21 (3) The exercise of the rights referred to in sub-section (2) may be  
22 subject only to such limitations as are prescribed by law and—

23 (a) are reasonably necessary for respect of the reputations of  
24 others;

25 (b) are reasonably necessary for the protection of national security  
26 or public health;

27 (c) constitute reasonable regulations as to time, place and manner;  
28 or

29 (d) are reasonably necessary to protect persons from involuntary  
30 exposure to any matter that might reasonably be regarded as  
31 offensive in the community in which they live.

1 (4) The burden of proving that a limitation referred to in sub-  
2 section (3) is reasonably necessary or constitutes a reasonable  
3 regulation as mentioned in that sub-section lies upon the person  
4 asserting that the limitation is so necessary or constitutes such a  
5 regulation.

6 (5) Nothing in this section affects the operation of a law relating  
7 to defamation or limiting the right of a juvenile person to access  
8 to any matter of the kind referred to in paragraph (3) (d).

9 **Article 5 Propaganda and incitement**

10 (1) Any propaganda for war is prohibited.

11 (2) Any advocacy of national, racial or religious hatred that  
12 constitutes incitement to discrimination, hostility or violence is  
13 prohibited.

14 **Article 6 Assembly**

15 (1) Everyone shall have the right to peaceful assembly, subject  
16 only to such limitations as are prescribed by law and are  
17 reasonably necessary in the interests of national security, public  
18 safety or public health or constitute reasonable regulations as to  
19 time, place and manner.

20 (2) The burden of proving that a limitation referred to in sub-  
21 section (1) is reasonably necessary or constitutes a reasonable  
22 regulation as mentioned in that sub-section lies upon the person  
23 asserting that the limitation is so necessary or constitutes such a  
24 regulation.

25 **Article 7 Association**

26 (1) Everyone shall have the right to freedom of association with  
27 others, including the right to form and join trade unions for the  
28 protection of his or her interests, subject only to reasonable

1 restrictions in the interest of national security, public safety or  
2 public health.

3 (2) The burden of proving that a restriction referred to in sub-  
4 section (1) is a reasonable restriction as mentioned in that sub-  
5 section lies upon the person asserting that the restriction is such a  
6 reasonable restriction.

7 (3) Sub-section (1) does not affect any provision of, or any act  
8 done under, a law of Australia, of a State or of a Territory that  
9 restricts or prohibits, or authorizes the restriction or prohibition  
10 of, the registration under that law of organizations of employers  
11 or employees on the ground that there is already registered under  
12 that law an organization to which the members of an organization  
13 seeking registration may conveniently belong or on any similar  
14 ground.

#### 15 **Article 8 Voting and public office**

16 (1) Every Australian citizen shall have the right and the  
17 opportunity, without unreasonable restrictions—

18 (a) to take part in the conduct of public affairs, directly or through  
19 freely chosen representatives;

20 (b) to vote and to be elected at genuine periodic elections which  
21 shall be by universal and equal suffrage and shall be held by  
22 secret ballot, guaranteeing the free expression of the will of the  
23 electors; and

24 (c) to hold public office and to exercise all public functions  
25 established by law.

26 (2) The burden of proving that a restriction referred to in sub-  
27 section (1) is a reasonable restriction lies upon the person  
28 asserting that the restriction is reasonable.

#### 29 **Article 9 Movement**

30 (1) Everyone lawfully within Australia shall have the right to  
31 liberty of movement and freedom to choose his or her residence.

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1 (2) Everyone shall be free to leave Australia.

2 (3) The rights referred to in sub-sections (1) and (2) shall not be  
3 subject to any restriction except those which are provided by law,  
4 are reasonably necessary to protect national security, public  
5 safety, public health or civil obligations, and are consistent with  
6 the other rights guaranteed by this Part.

7 (4) A person who—

8 (a) was born in Australia and is an Australian citizen by birth; or  
9 (b) was born outside Australia and is an Australian citizen  
10 otherwise than by birth, shall not be deprived of the right to enter  
11 Australia.

12 (5) In this section, “civil obligations” means obligations imposed  
13 on a person under the law relating to bankruptcy or to the custody  
14 of children or under a condition upon which was imposed by a  
15 competent Court.

16 **Article 10 Aliens**

17 An alien in Australia may be expelled from Australia only in  
18 pursuance of a decision reached in accordance with law and shall,  
19 except where compelling reasons of national security otherwise  
20 require, be allowed to submit the reasons against his or her  
21 expulsion and to have his or her case reviewed by, and be  
22 represented for the purpose before, a competent Court provided  
23 by law.

24 **Article 11 Marriage and family**

25 (1) The right of men and women of marriageable age to marry  
26 regardless of sexuality and to found a family irrespective of  
27 sexuality shall be recognized.

28 (2) No marriage shall be entered into without the free and full  
29 consent of the intending spouses.

1 (3) Every child shall be registered within a reasonable time after  
2 birth and shall have a name.

3 (4) A person is of marriageable age for the purposes of this  
4 section if that person has attained 18 years.

5 **Article 12 Privacy**

6 (1) No one shall be subjected to arbitrary or unlawful interference  
7 with his or her privacy, family, home or correspondence, nor to  
8 unlawful attacks on his or her honour and reputation.

9 (2) Without limiting the generality of sub-section (1), an  
10 unreasonable search or seizure is an unlawful interference with  
11 privacy.

12 (3) For the purposes of this section, a search or seizure shall be  
13 deemed to be unreasonable unless lawfully made—

14 (a) pursuant to an order made by a court;

15 (b) pursuant to a warrant for a search issued by a court or judicial  
16 officer on reasonable grounds, supported by oath or affirmation,  
17 particularly describing the purpose of the search and who or what  
18 is to be searched;

19 (c) in response to circumstances of such seriousness and urgency  
20 as to require and justify immediate action without the authority of  
21 such an order or warrant;

22 (d) pursuant to a law that authorizes the inspection of goods,  
23 premises, vehicles, ships or aircraft to ensure compliance with  
24 lawful requirements as to the entry of persons or importation of  
25 goods into Australia or the departure of persons or exportation of  
26 goods from Australia or as to standards of safe construction,  
27 public safety, public health, permitted use or similar matters, or to  
28 secure compliance with the terms of a licence to engage in  
29 manufacture or trade;

30 (e) for the purpose of inspecting or taking copies of documents  
31 relating to—

- 1 (i) the conduct of a business, trade, profession or industry  
2 pursuant to a law regulating the conduct of that business,  
3 trade, profession or industry; or  
4 (ii) the affairs of a company pursuant to a law relating to  
5 companies; or  
6 (f) for the purpose of inspecting goods, or inspecting or taking  
7 copies of documents, in connexion with the collection, or the  
8 enforcement of payment, of taxes or pursuant to a law prohibiting  
9 or restricting the importation of goods into Australia or the  
10 exportation of goods from Australia.

11 **Article 13 Arrest**

- 12 (1) Everyone has the right to liberty and security of person.  
13 (2) No one shall be subjected to arbitrary arrest or detention.  
14 (3) No one shall be deprived of his or her liberty except on such  
15 grounds and in accordance with such procedures as are  
16 established by law.  
17 (4) Anyone who is arrested shall be informed, at the time of  
18 arrest, of the reasons for his or her arrest and shall be promptly  
19 informed of any charges against him or her.  
20 (5) When a person is charged, the nature of the charge shall be  
21 made known to him or her in a language that he or she  
22 understands.  
23 (6) Anyone arrested on a criminal charge shall be brought  
24 promptly before a court, judge or magistrate and shall be entitled  
25 to trial within a reasonable time or to release.  
26 (7) Anyone arrested on a criminal charge shall not be detained in  
27 custody unless the detention is reasonably necessary in the  
28 circumstances of the case.

1 (8) The burden of proving that the detention of a person is  
2 reasonably necessary lies upon the person asserting that the  
3 detention is so necessary.

4 (9) The release from custody of anyone arrested on a criminal  
5 charge may be subject to guarantees to appear for trial, at any  
6 other stage of the judicial proceedings or, if necessary, for  
7 execution of the judgment.

8 (10) Anyone who is deprived of his or her liberty by arrest or  
9 detention shall be entitled to take proceedings before a court in  
10 order that that court may decide without delay on the lawfulness  
11 of his or her detention and order his or her release if the detention  
12 is not lawful.

13 (11) Anyone who has been the victim of unlawful arrest or  
14 detention shall have an enforceable right to compensation that  
15 includes a presumption of an award for aggravated damages.

16 **Article 14 Post-arrest procedures**

17 Where a person is in custody, the person must—

- 18 (a) be afforded adequate time and facilities to confidentially  
19 communicate with a lawyer of his or her own choosing;  
20 (b) not be compelled to make any incriminating statement;  
21 (c) be informed of the rights referred to in paragraphs (a) and (b).

22 **Article 15 Speedy trial**

23 Anyone charged with a criminal offence shall be tried within a  
24 reasonable time.

25 **Article 16 Presumption of innocence**

26 Everyone charged with a criminal offence shall be presumed  
27 innocent until proved guilty according to law.

1 **Article 17 Public trial**

2 (1) In the determination of any criminal or civil charge against a  
3 person, or in a determination that may effect a persons interests  
4 everyone shall be entitled to a fair and public hearing by a  
5 competent, independent and impartial tribunal established by law.

6 (2) The press and the public may be excluded from all or part of a  
7 trial for reasons of national security or when the interest of the  
8 private lives of the parties so requires, or where in the opinion of  
9 the court special circumstances exist where publicity would  
10 prejudice the interests of justice.

11 (3) Any judgment rendered in a criminal case or in a suit at law  
12 shall be made public unless in the opinion of the court, special  
13 circumstances such as matrimonial, child custody or other  
14 sensitive matters exist that would warrant the suppression of the  
15 parties involved in the legal proceeding.

16 **Article 18 Fair trial**

17 (1) In the determination of any criminal charge, everyone shall be  
18 entitled to the following minimum guarantees—

19 (a) to be tried in his or her presence, and to defend himself in  
20 person or through legal assistance of his or her own choosing, and  
21 to be informed, if he does not have legal assistance, of his or her  
22 rights under this paragraph;

23 (b) to have high quality legal assistance provided free of charge

24 (c) to have the free assistance of an interpreter if required

25 (d) not to be compelled to testify against him or herself or to  
26 confess guilt.

27 (2) In the case of persons who are under the age of 16 years, the  
28 procedure shall be such as will take account of their age and the  
29 desirability of promoting their rehabilitation.

1 **Article 19 Post-trial procedures**

2 (1) Everyone convicted of a crime shall have the right to his or  
3 her conviction and sentence being reviewed by a higher court or  
4 tribunal according to law.

5 (2) A person found innocent of any offence shall be entitled to  
6 compensation for the period that their liberty was constrained by  
7 a failure to obtain or be granted restricted Bail.

8 (3) When a person has by a final decision been convicted of a  
9 criminal offence and when subsequently his or her conviction has  
10 been reversed or he has been pardoned on the ground that a new  
11 or newly discovered fact shows conclusively that there has been a  
12 miscarriage of justice, the person who has suffered punishment as  
13 a result of such conviction has an enforceable right to  
14 compensation that includes a presumption of an award for  
15 aggravated damages.

16 **Article 20 Retrospective offences**

17 (1) No one shall be held guilty of any criminal offence on account  
18 of any act or omission which did not constitute a criminal  
19 offence, under national or international law, at the time when it  
20 was committed, nor shall a heavier penalty be imposed than the  
21 one that was applicable at the time when the criminal offence was  
22 committed.

23 (2) If, subsequent to the commission of the offence, provision is  
24 made by law for the imposition of a lighter penalty, the offender  
25 shall benefit thereby.

26 **Article 21 Punishment**

27 No one shall be subjected to torture or to cruel, inhuman or  
28 degrading treatment or punishment including indefinite detention  
29 or the detention of people that do not breach the criminal law.

1 **Article 22 Imprisonment**

2 (1) All persons deprived of their liberty shall be treated with  
3 humanity and with respect for the inherent dignity of the human  
4 person.

5 (2) Accused persons shall be segregated from convicted persons  
6 and shall be subject to separate treatment appropriate to their  
7 status as unconvicted persons.

8 (3) Accused persons who are under the age of 16 years shall be  
9 separated from other persons.

10 (4) Offenders who are under the age of 16 years shall be  
11 segregated from other persons and be accorded treatment  
12 appropriate to their age and legal status.

13 (5) No one shall be imprisoned merely on the ground of inability  
14 to fulfil a contractual obligation.

15 **Article 23 Right to life**

16 (1) Every human being has the inherent right to life, and no  
17 human being shall be deprived of his or her life.

18 (2) The Death Sentence shall not be imposed for crimes  
19 committed by persons against any law of Australia, the States or  
20 of the Territories.

21 **Article 24 Slavery and forced labour**

22 (1) No one shall be held in slavery, and slavery and the slave-  
23 trade in all their forms are prohibited.

24 (2) No one shall be required to perform forced or compulsory  
25 labour.

26 (3) In this section, “forced or compulsory labour” does not  
27 include—

1 (a) any work or service lawfully required of a person who is  
2 under detention in consequence of a lawful order of a court or of a  
3 person during conditional release from such detention;

4  
5 (b) any service of a military character and any national service  
6 required by law of conscientious objectors;

7  
8 (c) any service exacted in cases of emergency or calamity  
9 threatening the life or well-being of the community; and

10  
11 (d) any work or service which forms part of normal civil  
12 obligations.

13 **Article 25 Medical experimentation**

14 No one shall be subjected without his or her free consent to  
15 medical or scientific experimentation

16 **Article 26 Education**

17 Everyone shall have the right to access free education including  
18 Kindergarten, Primary School, Secondary School and Tertiary  
19 Education.

20 **Article 27 Adequate Standard of Living**

21 Everyone has the right to adequate housing, health care and social  
22 welfare payments.

23 **Article 28 Work**

24 Everyone will have the right to work.

25 **Article 29 Legal Assistance**

26 Everyone will have the right to quality legal assistance in civil,  
27 criminal and administrative matters.

1 **Article 30 Child Care**

2 Everyone shall have the right to access quality accredited child  
3 care

4 **Article 31 Environment**

5 Everyone shall have the right to enjoy and maintain wilderness  
6 areas and to live in an environment free of degradation.

7 **Article 32 Ecologically Sustainable Development**

8 Everyone shall have the right to live and work in areas consistent  
9 with the principles of ecologically sustainable development.

10

11 **Division 2 ENFORCEMENT OF RIGHTS**

12 **Civil proceedings**

13 (1) A person aggrieved by an act that he considers to be a  
14 contravention of this Act may institute a proceeding by way of  
15 civil action in any Australian Court for any one or more of the  
16 remedies specified in sub-section (2).

17 (2) Where, in a proceeding instituted under sub-section (1) it is  
18 established upon the balance of probabilities to the Court that the  
19 defendant has done an act (in this sub-section referred to as the  
20 “relevant act”) that is a contravention of this Act, the Court shall  
21 make a declaration to that effect and may grant all or any of the  
22 following remedies:—

23 (a) an injunction restraining the defendant from repeating the  
24 relevant act or from doing an act of a similar kind or from causing  
25 or permitting others to do acts of the same or a similar kind;

26  
27 (b) an order directing the defendant to do a specified act, being an  
28 act directed to—

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- 1 (i)  
2 placing a person aggrieved by the relevant act as nearly as practicable in  
3 the position in which he would be if the relevant act had not been done;  
4 or  
5 (ii)  
6 otherwise avoiding a detriment to such a person resulting from the  
7 doing of the relevant act;  
8 (c)  
9 if the doing of the relevant act resulted in the making of a contract or  
10 the relevant act was done in pursuance of a contract—an order  
11 cancelling the contract, varying any of the terms of the contract or  
12 requiring the repayment, in whole or in part, of an amount paid in  
13 pursuance of the contract;  
14 (d)  
15 damages against the defendant in respect of—  
16 (i)  
17 loss suffered by a person aggrieved by the relevant act, including loss of  
18 any benefit that that person might reasonably have been expected to  
19 obtain if the relevant act had not been done; and  
20 (ii)  
21 loss of dignity, humiliation and injury to the feelings of a person  
22 aggrieved by the relevant act;  
23 (e)  
24 an order setting aside or varying a judgment given in any court;  
25 (f)  
26 an order quashing a conviction imposed by any court;  
27 (g)  
28 an order directing a new trial in a civil or criminal proceeding in any  
29 court;  
30 (h)  
31 such other relief as the Court thinks just, including an award of costs.

32

33 (3) Where, it is established to the reasonable satisfaction of the  
34 Court that the defendant is about to do an act that would be a  
35 contravention of this Act the Court shall make a declaration to  
36 that effect and may grant all or any of the following remedies:—

37 (a)

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1 an injunction restraining the defendant from doing the act or from doing  
2 an act of a similar kind or from causing or permitting others to do acts  
3 of the same or a similar kind; and  
4 (b)  
5 such other relief as the Court thinks just, including an award of costs.

6 **Jurisdiction of Court**

7 All Civil Courts in Australia shall have jurisdiction to hear and  
8 determine proceedings under this Act.

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