



The Law Council of Australia
The National Council of Lawyers

Does Australia Need a Bill of Rights?

In an attempt to answer the questions surrounding a Bill of rights for Australia, the Law Council of Australia, the Human Rights Commissioner, the Australian Law Reform Commission, the Australian Youth Foundation and the Australian National University, are convening the Australian Rights Congress, to be held February 16 - 18 1995 in Sydney.

The Congress will examine the adequacy of a Bill of Rights and other measures as protective instruments for fundamental human rights. The Congress will highlight the benefits and uncover the deficiencies of a Bill of Rights in the Australian context so that an informed public debate can follow.

In early December, the Human Rights Sub-Committee of the Joint Parliamentary Committee on Foreign Affairs, Defence and Trade released a report, *A Review of Australia's Efforts to promote and Protect Human Rights*. One of the key recommendations was that an inquiry be established to inquire into Australia's need for a Bill of Rights.

Justice Michael Kirby recently wrote an article in *Australian Lawyer* setting out the pros and cons of a Bill of Rights for Australia. He highlighted the contradictory evidence which suggests that a Bill of Rights can delimit rights by defining them or guarantee rights by giving them the certain force of law.

The Law Council and its co-sponsors hope that the Australian Rights Congress will be seen by lawyers as an opportunity to contribute to the debate on one of the most important issues of the day.

For further information please contact: Mr John Mulready at Conference Action on (02) 956 8333.

AUSTRALIAN RIGHTS CONGRESS

Sydney, 16 - 18 February 1995

How should we protect our rights?
Do we need a Bill of Rights?

Presented by the Law Council of Australia, the Human Rights and Equal Opportunity Commissioner, Australian Youth Foundation, Australian Law Reform Commission, and the Centre for International Public Law - ANU

REGISTER NOW! Please ring Conference Action
(02) 956 8333 for information and registration forms.

Statutory Changes

The Real Property Amendment Act (No 2) 1993 came into force on 1 October 1994.

The main effect of this legislation is to create the concept of an "overriding statutory charge". The most common rates and charges which may give rise to overriding statutory charges are municipal rates and water and sewerage charges.

Overriding statutory charges takes priority over all prior registered mortgages and encumbrances.

Although it looks like a blatant case of statutory queue jumping, for all practical purposes the only real difference it makes is that it ensures the charge holder must be paid upon the sale of the land. It will not be possible for an owner or mortgagee to sell land subject to a charge without paying outstanding rates or water and sewerage charges and adjusting the purchase price in favour of the purchaser.

As far as municipal rates and water and sewerage charges are concerned, it is unlikely that these amendments are going to lead to local authorities and the PAWA Authority rushing to register overriding statutory charges. Outstanding rates and water and sewerage charges will remain payable by the owner for the time being of the land.

One interesting problem will be the effect of registering a non-overriding charge after a mortgage securing a fluctuating loan facility.

Such charges will take priority over all subsequent advances made against the security of prior registered mortgages. Some mortgagees may have to review the terms of their loan agreements and mortgages to ensure they are justified in refusing to make any further advances after the registration of a statutory charge.