**Submission to the Australian Law Reform Commission**

1. The Attorney-General of Australia has referred to the Australian Law Reform Commission responsibility for a public Inquiry into the relationship between Commonwealth law and the exercise by Australian citizens of their traditional rights, freedoms and privileges.
2. It is not surprising that the A-G’s terms of reference for the work of the ALRC glaringly omit special consideration of the traditional rights, freedoms and privileges of the Aboriginal and Torres Strait Islander (ATSI) peoples. The freedom of self-determination of ATSI peoples is a special freedom which cannot be subsumed under any of the other broad freedoms (speech, association etc.) covered by the TOR. The CPA (M-L) strongly condemns the arbitrary omission of consideration of the freedom to exercise self-determination on the part of the Indigenous peoples of Australia.
3. It is not surprising that the A-G’s terms of reference contain no provision for recommendations in relation to an Australian Bill of Rights. The ALRC notes (p. 11): “Whether the introduction of a bill of rights in Australia is desirable is widely debated, but it is not the subject of this Inquiry”. This is consistent with the restriction placed on the 2009 National Consultation on Human Rights in Australia, the terms of reference of which read: “The options identified should preserve the sovereignty of the Parliament and not include a constitutionally entrenched bill of rights”. The CPA (M-L) strongly condemns the arbitrary rejection of proposals for a Bill of Rights as a violation of the right to advocate for a preferred political outcome relevant to this Inquiry.
4. The rights, freedoms and privileges listed in the ALRC’s Terms of Reference are poorly defined and not well protected. The Australian Constitution is out-of-date and riddled with the contradictions inherent in a document that sought to ameliorate the conflicting interests of the British, the colonial elites, and the advocates of national representation. The ALRC correctly notes (p. 14): “The *Australian Constitution* does not expressly or impliedly protect most of the rights, freedoms and privileges listed in the ALRC’s Terms of Reference”.
5. The rights, freedoms and privileges of the Australian people are not guaranteed under the principle of legality. The “sovereignty of Parliament” which our law-makers so jealously guard against a Bill of Rights, allows the Parliament to make laws which encroach on our rights, freedoms and privileges so long as those laws encroach clearly and unambiguously.
6. The same applies to international law. International treaties, conventions and other instruments provide no guarantees for the rights, freedoms and privileges of the Australian people. So long as the sovereign Parliament makes its encroachments clearly and unambiguously it may thumb its nose at our international obligations.
7. The Commonwealth has a history of encroaching on the rights, freedoms and privileges of the Australian people. The Crimes Act enabled the Commonwealth to threaten the exercise of free speech under provisions relating to sedition and treason. Conscription denied freedom of choice over whether or not to undertake military service. Commonwealth law prevented freedom of speech against fascism (the Egon Kisch case) and freedom of movement (the withholding of Wilfred Burchett’s passport). The law of tort is used to encroach upon the right to strike; indeed, penalties for so-called “unprotected” industrial action are severe for both individuals and their unions and likely to be made even more severe. The application of the Trade Practices Act and corporations law to unions during the SEQEB, Dollar Sweets and Mudginberri disputes in the mid-1980s saw a high tide in the use of Commonwealth law to encroach on the right of association and the right to strike. The Australian Building and Construction Commission and its successor, the Fair Work Building and Construction Commission deprive construction workers of even the limited rights enjoyed by other sections of the Australian workforce. Federal intervention in the Northern Territory under the guise of the Emergency Intervention encroached on the rights, freedoms and privileges of ATSI peoples and required the suspension of the *Racial Discrimination Act 1975.* Compulsory income management encroaches on the rights of welfare recipients. Anti-terror legislation contains sweeping powers for law enforcement and intelligence agencies that encroach on our rights, freedoms and privileges.
8. The rights, freedoms and privileges enumerated in the Terms of Reference should not be thought of as absolutes that can only be encroached upon by the clear and unambiguous actions of the sovereign Australian Parliament. The reality of class society is that rights, freedoms and privileges have a class content. Freedom of speech, for example, does not mean the right of every Australian citizen to purchase mass media on the scale of a Rupert Murdoch. The very rich and powerful can exercise rights, freedoms and privileges in ways that are denied to the majority of Australia’s citizens. To have a right that can be effectively marginalised and ignored through the unequal access to or exercise of that right is itself an encroachment.
9. As noted above, and by the ALRC, the Australian Constitution says very little about the rights, freedoms and privileges of the Australian people. Certainly it excludes those of the ATSI people. A new, republican and democratic Constitution proclaiming Australia as an independent, sovereign and democratic nation, and a Bill of Rights protected from the whims of Parliament by virtue of being embedded within that Constitution, are the only short-term means by which our rights, freedoms and privileges can be better protected.
10. The CPA (M-L) submits that real and enforceable human rights, freedoms and privileges for the majority of Australians will only become operative with the winning of genuine independence from imperialism and with the ending of the capitalist economic and political system. Anti-imperialist independence and socialism are our long-term objective. In the interim, we will continue to fight for the better definition and protection of the rights, freedoms and privileges of the majority of the population.

February 2015.

Central Committee

Communist Party of Australia (Marxist-Leninist)