



# The state of fundamental legal rights in Australia

An audit of federal law

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## Executive summary

This report demonstrates that a serious problem exists with respect to fundamental legal rights in Australian law. Our research has focussed on the extent to which four such fundamental legal rights are abrogated in current acts of the federal parliament:

1. The presumption of innocence and burden of proof
2. Natural justice
3. The right to silence
4. Privilege against self-incrimination

In each of these areas we have discovered numerous legislative provisions that remove or undermine these fundamental legal rights.

The mechanism by which the presumption of innocence is upheld in common law legal systems is to place the onus of proof on the party making the legal claim. However, we have discovered 48 provisions that reverse the burden of proof. Such provisions force defendants to prove their own innocence.

Natural justice is a term used to describe a number of important elements of a fair legal proceeding. These include the right to a trial, the right to appeal, the right of the accused to know of the allegations made against him. Our research uncovered 92 laws that eliminate natural justice.

The right to silence protects individuals against whom a claim is being made from being coerced into answering questions or producing documents. We found 14 provisions that remove or undermine the right to silence.

We have also found 108 provisions that remove the privilege against self-incrimination.

**In total, our research has uncovered 262 provisions that breach fundamental legal rights.**

Our analysis also finds that breaching provisions fall more heavily on certain groups. A comparison between company directors and union officials revealed that 48 breaches apply to company directors, and two apply to union officials, with 18 applying to both groups.

This report demonstrates that two things must now occur. First, all current provisions that breach fundamental legal rights must be repealed. A complete audit of Australian legislation, regulations and other statutory instruments should be conducted with a view to removing offensive provisions. Second, legislators of all political stripes must commit to a greater level of respect for the principles of the rule of law and refuse to pass laws that breach our fundamental legal rights.

### Table of legal rights breaches in federal acts

Legal right	Number of breaches	Number of acts
Burden of proof	48	13
Natural justice	92	55
Right to silence	14	11
Privilege against self-incrimination	108	79

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## Introduction

Fundamental legal rights have evolved over hundreds of years. Predominantly, these rights originate from English legal tradition and have been further developed through other Western legal systems. The common law rights that have arisen out of this long process are necessary to the operation of any just legal system. They include the right to be presumed innocent, the right to silence and other principles of natural justice.

Classical liberals embrace these fundamental legal rights for two reasons. First, they are a tool for achieving justice. They provide safeguards to ensure that the innocent remain free, and to ensure that only those who are responsible for wrongdoing are punished.

Second, they are an important and appropriate limitation on the power of the state. The key justification for legal rights is to guarantee the constraint of coercive power. The state should only be given licence to use coercive power in very limited circumstances. A legal system that upholds rights to silence, innocence and a fair hearing is a legal system that appropriately restricts the state and allows for maximum liberty.

This report explains the importance of four legal rights: the presumption of innocence, natural justice, the right to silence and the privilege against self-incrimination. We have detailed the evolution of these legal rights within the common law.

At the heart of our report is a set of figures which demonstrate the extent to which legal rights are removed or restricted in current federal legislation. Our research has examined the law that Australians must obey every day and we have discovered significant flaws.

The failure of successive governments to ensure that legal rights are upheld presents a risk to the capacity of our legal system to produce just outcomes. This must be addressed.

## The presumption of innocence and burden of proof

Strict rules governing the burden of proof lie at the heart of any just legal system. This principle cannot be underestimated in its importance, as it supports the vital legal principle of the presumption of innocence. The judgment by Lord Sankey in *Woolmington v Director of Public Prosecutions* reflects how fundamental the burden of proof is to our rule of law:

Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt... If, at the end of and on the whole of the case, there is a reasonable doubt, [the] prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained.<sup>1</sup>

There are a number of complex legal concepts that should be understood in this context. They include distinctions between the burden and standard of proof, and between the legal and the evidential burden.

The burden of proof is a duty placed on the party that initiates a legal proceeding to establish the case.<sup>2</sup> This burden should always rest upon the party bringing the claim. The burden of proof rests upon the plaintiff or prosecution to establish the case. However, the standard of proof refers to the threshold that has to be met to establish the case, which differs between criminal and civil cases.

In criminal trials, the standard of proof requires that a defendant be found guilty 'beyond all reasonable doubt.' In civil cases, the plaintiff must establish that the defendant is liable to the civil action on the 'balance of probabilities.'<sup>3</sup>

The evidential burden of proof is not to be confused with the *legal* burden of proof. Where the legal burden should always rest with the plaintiff, the evidential burden readily falls upon different parties at different times within a particular cause of action. For example, in a criminal trial once the prosecution has established that a defendant undertook the criminal act, the evidential burden falls on the defendant to prove that the act was not a criminal one.<sup>4</sup>

The basis for the burden of proof being placed on the person bringing a claim to the court is a philosophical one. Logic dictates that not all assertions can be treated as being true until the assertion has been proved. Therefore the assumption is on the person claiming that the thing exists, rather than on the person who claims that the thing does not exist.

Shifting the burden of proof is an example of a logical fallacy that assumes the truth of a particular claim without the need for supporting evidence. The person making a negative claim cannot logically prove non-existence because to do so would require perfect knowledge.

The standard of proof reflects the historical development of legal, cultural and anthropological thought that it is a fundamental human right not to convict innocent men and women. By maintaining that an accused is legally innocent until the moment of conviction, this principle acts as

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<sup>1</sup> *Woolmington v Director of Public Prosecutions* [1935] UKHL 1.

<sup>2</sup> Albert Kiralfy, *The Burden of Proof* (Professional Books Limited, 1<sup>st</sup> ed, 1987) 12.

<sup>3</sup> Eggleston, *Evidence, Proof and Probability* 136.

<sup>4</sup> *Ibid* 105.

a protection of liberty. Though this presumption may mean that a small number of accused who actually committed the alleged crime walk free, this is the price that the community has been willing to pay to protect individual freedoms.

We are now reaching a turning point in our common law tradition. In recent decades, governments have increasingly introduced new civil laws that traditionally may have fallen under criminal jurisdiction. A recent example was the ill-fated *Human Rights and Anti-Discrimination Bill 2012*, which proposed to create a new category of unlawful conduct, rather than creating new criminal offences.

As noted earlier, the standard of proof threshold is much higher for criminal matters than it is for civil ones. To satisfy the legal requirements that one has been “offended” by a racial insult would be difficult to establish in the criminal realm, because it would have to be proven beyond a reasonable doubt. “Offence,” “hurt,” and similar terms are ambiguous and the standard of proof is much lower in the civil law than in criminal law. Governments increasingly regulate behaviour through the civil law, rather than the criminal law. Making conduct unlawful rather than illegal is an easier political sell and it has a better chance of success in court.

By outlawing acts in the civil realm, as opposed to placing them in the criminal jurisdiction, governments can outsource the significant costs of prosecution. If the conduct in question was outlawed under criminal legislation, the costs would be borne by taxpayer funded police and public prosecutors to make the case and convict the accused. In civil cases, private individuals are the plaintiffs in the dispute, thus the cost and energy of bringing a claim against another party is borne by private citizens, rather than the government. Costs are still incurred by the government in having civil courts; however it is significantly less expensive than running numerous criminal cases.

The theory and practice of the burden of proof goes as far back as the Roman Empire. Roman law established the idea that the burden of proof is on the plaintiff or prosecutor (*actori incumbit probatio*). Conversely, presumptions of innocence are made in favour of the defendant (*omnia praesumuntur pro negante*). The burden was placed on the party bringing the claim, in part to deter baseless or vexatious disputes. The idea of this ‘onerous burden’ was also enshrined in the common law to reflect society’s significant concern that the innocent would be wrongfully condemned. The burden was an attempt to prevent injustice by creating a right to be ‘innocent until proven guilty.’

In 1471, Sir John Fortescue stated that “I should, indeed, prefer twenty guilty men to escape through mercy, than one innocent to be condemned unjustly.”<sup>5</sup> The same sentiment was reiterated almost three centuries later by Sir William Blackstone: “the law holds, that it is better that ten guilty persons escape than that one innocent suffer.” This idea that lies at the heart of the justification for creating a legal system that makes it difficult to make out a legal case. Taking away a person’s freedom or livelihood through the courts should not be an easy thing to achieve.

Lord Bingham of Cornhill famously described historical reasoning of the burden of proof in *McIntosh v Lord Advocate*:

...the more serious the crime and the greater the public interest in securing convictions of the guilty, the more important do constitutional protections of the accused become. The starting point of any

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<sup>5</sup> John Fortescue, *De Laudibus Legum Angliae* 65 [1471] (S. Chrimes, ed and trans., 1942).



balancing inquiry where constitutional rights are concerned must be that the public interest in ensuring that innocent people are not convicted and subjected to ignominy and heavy sentences, massively outweighs the public interest in ensuring that a particular criminal is brought to book... Hence the presumption of innocence, which serves not only to protect a particular individual on trial, but to maintain public confidence in the enduring integrity and security of the legal system.<sup>6</sup>

## Bearing the legal burden in civil and criminal law

Traditionally, the crown would bear the burden of proving all elements of an offence, whereupon the defendant would merely bear the burden of raising a defence. The crown would then bear the onus of disproving that defence beyond all reasonable doubt.

Consider the common law defence to violent crimes of self-defence. Where applicable, the defendant bears the onus of raising this defence. The onus then turns on the crown to disprove at least one of the two elements of the defence beyond reasonable doubt.<sup>7</sup>

However, as recognised earlier, there is a considerable blurring of the lines between criminal and civil law. State and federal bodies, who have wide coercive powers, may be empowered to apply to a court for the imposition of a civil or pecuniary penalty, which can be more severe than criminal penalties.<sup>8</sup> Given that there is only nominal difference between a prosecutor and a civil regulator, criminal offences and civil penalty proceedings should be considered together.

This approach is typical of the common law legal system, which contains a strong presumption of innocence. The hurdles of the proceedings are borne by the crown to prove a matter beyond all reasonable doubt, rather than placing the hurdle on the accused to prove that a matter does or does not exist. In contrast, Section 240 of the *Migration Act 1958* provides that it is an offence to arrange a marriage between persons with the intention of assisting one of those persons to obtaining a stay visa. Here, the defendant bears a legal burden of proving that he or she believed on reasonable grounds that the marriage would result in a genuine and continuing marital relationship.

Often an element of an offence may seem rather difficult for the crown to prove. However, this is satisfactory. The common law legal system is ideal not for the ease with which it allows for prosecutions, but for the protections it offers against an overbearing state.

The law should always err on the side of innocence.

Our research has found 48 federal laws that reverse the onus of proof.

Below is a chart displaying the number of reversals of the onus of proof in current federal legislation per year. It displays when each current provision that reverses the onus of proof was introduced.

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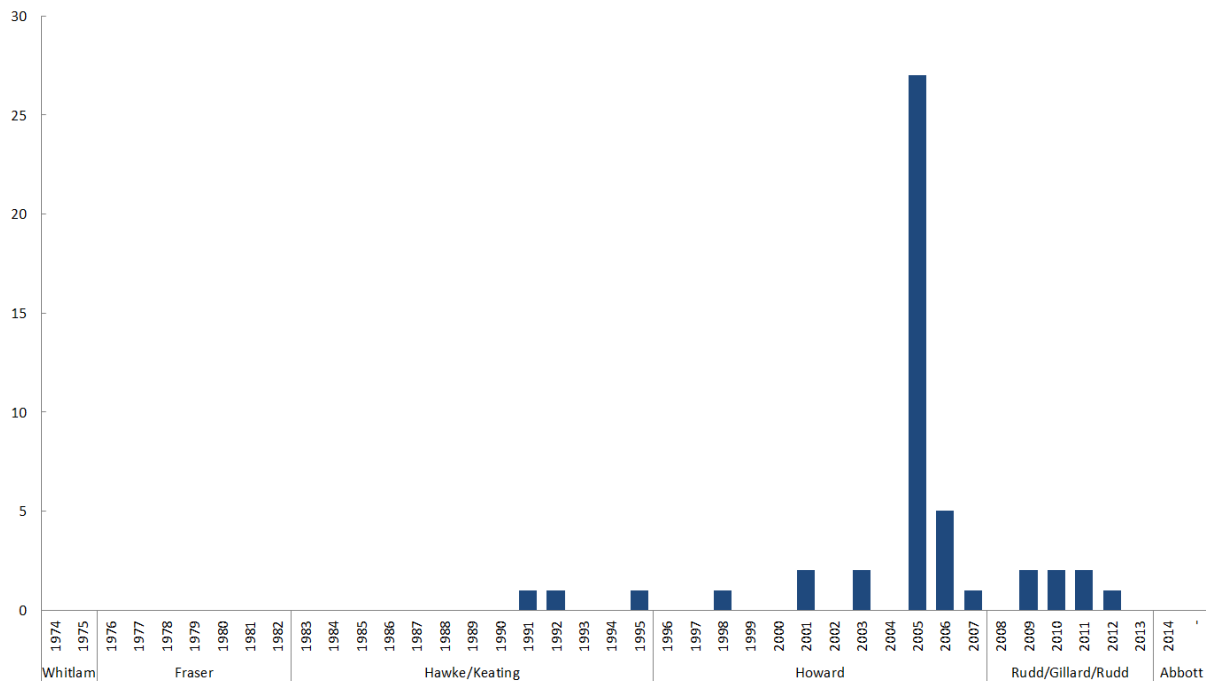
<sup>6</sup> *McIntosh v Lord Advocate* [2001] 3 WLR 107.

<sup>7</sup> *Zecevic v Director of Public Prosecutions (Vic)* (1987) 162 CLR 645.

<sup>8</sup> The civil penalty order under a violation of s 166 of the *Navigation Act 2012* (Cth) can comprise 6000 penalty units, compared to just 600 for a criminal penalty provision under the same section.



## Onus of proof breaches in current legislation, by year



Source: IPA

The following provisions provide some illustration of reversals of the onus of proof in current federal legislation.

### *Fair Work Act 2009*

Introduced under the Rudd government, this act made sweeping changes to the national industrial relations system.

Included in the act was Part 3-1, which outlines general protections for employers, employees and organisations.

#### **361 Reason for action to be presumed unless proved otherwise**

(1) If:

- (a) in an application in relation to a contravention of this Part\*, it is alleged that a person took, or is taking, action for a particular reason or with a particular intent; and
- (b) taking that action for that reason or with that intent would constitute a contravention of this Part;

it is presumed, in proceedings arising from the application, that the action was, or is being, taken for that reason or with that intent, unless the person proves otherwise.

Section 361 creates an adverse presumption for the defendant. The party bringing the claim to the court should bear the onus of proving all elements of unlawful conduct. Here, the element of the conduct is intention.

This provision created a great deal of uncertainty for employers, which was resolved in the case of *Board of Bendigo Regional Institute of Technical and Further Education v Barclay and Anor*.<sup>9</sup> Here, adverse action was taken against an employee for conduct which amounted to union activities, and thus protected under the act. However, the employer believed that the conduct also contravened the workplace code of conduct. The High Court held that the subjective belief of employers will be accepted by the court, if they can adduce sufficient evidence of said subjective intent.

This solution is not satisfactory. It creates an excessive amount of work for potentially any employer who in all likelihood may not ever be affected the provision. Furthermore, it is unsatisfactory to expect the employer to rely on their own records to defend themselves from a claim, while the plaintiff carries little of the burden.

### *Classification (Publications, Films and Computer Games) Act 1995*

The purpose of the *Classification (Publications, Films and Computer Games) Act 1995* is to ensure that the Australian Classification Board is the ultimate classification authority in the country. It details the standards to be met, the different classification guides, penalties for breaching the act and other legal and administrative matters.

The below provision was inserted into the principle act by an amendment passed by the Howard Government in August 2007. Section 103(2) creates the offence where a person supplies five or more items which are prohibited items, with a third person in a prescribed area.

#### **103 Supplying prohibited material in and to prohibited material areas**

...

(3) For the purposes of proving an offence against subsection (2), a person who engages in conduct specified in subparagraph (2)(a)(ii), (iii), (iv) or (v) in a prohibited material area, is taken to have done so:

- (a) intending to supply the material; or
- (b) believing that another person intends to supply the material; or
- (c) intending to assist another person to supply the material;

as the subparagraph requires, to a person in a prohibited material area.

(4) Subsection (3) does not apply in relation to a subparagraph mentioned in that subsection if the person proves that he or she did not have the intention or belief required by that subparagraph.

This provision presumes that the accused has satisfied an element of the unlawful act. Namely, the conduct outlined in section 103(2) is sufficient to prove the mental element of the offence. Rather than requiring the crown to prove the element, the onus rests on the defendant to disprove the assumption on the balance of probabilities.

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<sup>9</sup> [2012] HCA 32.

## *Sex Discrimination Act 1984*

This act aims to eliminate discrimination based on the grounds of sex.

The *Sex Discrimination Amendment Act 1995* was passed by the Keating Government in December of 1995, and added a number of new grounds of discrimination. Section 7B provides that there is no discrimination if a condition imposed on a person is reasonable in the circumstances.

### **7C Burden of Proof**

In a proceeding under this Act, the burden of proving that an act does not constitute discrimination because of section 7B lies on the person who did the act.

This is deeply problematic. All that remains for the claimant to prove is that the alleged act occurred, which is potentially a very low threshold to cross.

## Natural justice

The principle of natural justice is fundamental to the proper function of the rule of law within any modern and democratic society. The ancient philosophical and theological concept of natural justice has evolved into what modern jurists understand as 'procedural fairness.' When modern acts refer to 'natural justice' they are referring to the extensive case law and legislation that is procedural fairness.

The principle of natural justice/procedural fairness ensures that decision makers must take into account certain factors when making a particular decision. The policy rationale behind natural justice is to ensure the fairness and independence of a particular decision making process.

Natural justice and procedural fairness are most closely associated with decisions made by government departments, statutory authorities, tribunals, review bodies and other independent authorities. As such entities often have the power of government-level decision making vested in their abilities, their decisions can affect individuals and large groups of people in adverse and unfair ways if not undertaken with due care, skill and diligence.

In undertaking natural justice, such entities have a variety of responsibilities and duties to uphold, in order to meet the requirements of procedural fairness. There are two key rules that have traditionally underpinned natural justice:

1. A decision maker must ensure that a person whose interests may be adversely affected by the decision has an opportunity to be heard or present their case; and
2. The decision maker must be impartial and unbiased.<sup>10</sup>

The application of these rules can vary, depending on the particular circumstances of the decision. This can include factors such as the type of decision-making entity, the sensitivity of the subject matter, the method of hearing, and any overriding public policy objectives.

## Factors for consideration

Natural justice ensures that decision makers must take into account various key factors when undertaking the decision making process, that may adversely affect an individual or organisation. These factors can include, but are not limited to:

- the rights of the parties to a decision or issue;
- any interests or legitimate expectations of key stakeholders or parties;
- any public policy considerations; and
- likely community expectations.

In assessing the decision of such entities, courts will generally examine the decision making process and determine if the decision or the method used to reach the decision, breached natural justice in one of three ways:

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<sup>10</sup> Pamela Tate, *Coherence of "Legitimate Expectations" and the Foundations of Natural Justice*, Monash University Law Review, 14 (15) 1988

1. Whether the entity has acted without authority or exceeded its power or jurisdiction;
2. Whether the entity made an error of law; or
3. If the entity failed to discharge the duty to observe natural justice.<sup>11</sup>

In order to hold an entity liable for a breach of natural justice, it is necessary to first show that the particular entity was under a duty, either through an act of parliament or through the common law, to observe the requirements of natural justice.

If a decision maker does not comply with the requirements of natural justice, the courts can find that the particular decision reached is invalid and must be remade. The principles and requirements of natural justice have developed as part of the common law over centuries, becoming a fundamental principle underpinning the development of modern democratic society, including in Australia. The rule of law requires natural justice in order to give effect to key democratic principles including accountability of government and representative government.

Natural justice, through its interpretation and understanding as ‘procedural fairness,’ has developed into two parallel yet distinct limbs of law: the hearing rule and the rule against bias. Both have a long and interesting history that has seen their respective powers expand and contract over the centuries, yet their essence has been a continuous, unwavering thread in the common law

## The hearing rule

*audi alteram partem*<sup>12</sup>

‘No man ought to be condemned without answer’<sup>13</sup>

The hearing rule states that no one can have judgment passed on them without first being given the opportunity to refute the allegations. Even if the judgment made by the court is sound and that the legally correct decision was reached, it can never be just unless the decision maker has heard from the accused before reaching that judgement.<sup>14</sup>

The rule was seen as a fundamental part of natural justice, an innate law of God and man that was binding on all. The courts constantly reiterated how unconscionable it would be to undermine it. The Kings Bench in 1799 eloquently expressed the reasoning of the era:

the laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence.<sup>15</sup>

The seventeenth century decision of *Bagg’s Case*<sup>16</sup> gives a prime example of the hearing rule. It concerned the removal of the Chief Burgess of Plymouth due to his uncouth behaviour (which

<sup>11</sup> Ibid.

<sup>12</sup> ‘Hear the other side too.’

<sup>13</sup> Judgement of Chief Justice Coke, dating from the early 17<sup>th</sup> century. Quoted in Robert S. French CJ, ‘Procedural fairness – indispensable to justice?’ (Speech delivered at the Sir Anthony Mason Lecture, University of Melbourne Law School, 7 October 2010) <<http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj07oct10.pdf>> 4

<sup>14</sup> Ibid 5

<sup>15</sup> *R v Chancellor of the University of Cambridge* (Dr Bentley's Case) (1723) 1 Str 557, 567 [93 ER 698 at 704]

included mooning fellow office holders) by both the Mayor and Chief Burgess of Plymouth. Chief Justice Coke of the Court of Kings Bench stated that:

... although they have lawful authority either by charter or prescription to remove any one from the freedom, and that they have just cause to remove him; yet it appears by the return, that they have proceeded against him without ... hearing him answer to what was objected, or that he was not reasonably warned, such removal is void, and shall not bind the party ...

Over 300 years later, the High Court of Australia, in *Utick v Utick*, held that a husband was entitled to be heard before an order for spousal maintenance was made. This was despite the fact he had failed to enter an appearance prior to the judgement. As Chief Justice Griffith argued 'it may have been a perfectly just order,' but it should not come at the expense of the husband's natural justice, within the framework of the hearing rule.<sup>17</sup>

## The rule against bias

*nemo iudex in causa sua*<sup>18</sup>

'...it is impossible that one should be Judge and party...'<sup>19</sup>

The second limb of procedural fairness ensures that everyone is entitled to a fair and impartial decision maker, free from bias. A judge should not only refrain from bias based on any preconceived notions of the accused, but should also have no relation or dealings to any parties or events connected with the case.

The early eighteenth century decision of *City of London v Wood* illustrates how the rule against bias is not just to ensure a fair decision but also acts as a check against the power of the state. In a rather ingenious fundraising measure, it had been customary that whenever the statesmen of London felt the city's coffers were getting empty that they would nominate a wealthy citizen to become the new sheriff. The trick was to ensure that whoever was nominated had to be known to not want the job because *refusal* of the position imposed an automatic £400 fine; a considerable sum of money, when compared to the wages of the day. By 1750 the average annual wage of educated men (such as lawyers, clergymen and scholars) was between £60 to £100.<sup>20</sup> Despite the extravagant sum, it had worked to London's advantage, as those wealthy enough were happy to pay the fine if it removed the nuisance request. After refusing the offer, Mr Wood was fined in the Mayor's Court, which was presided over by the Mayor and Alderman... the same officials who had nominated Wood in the first place. Appealing to the courts, Chief Justice Holt found in Wood's favour, and his judgment is still a relevant synthesis of the fundamental reasoning behind the law.

... if an Act of Parliament should ordain that the same person should be party and Judge... it would be a void Act of Parliament; for it is impossible that one should be Judge and party, for the Judge is to

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<sup>16</sup> *Bagg's Case* (1615) 11 Co Rep 95b [77 ER 1271, 1275]

<sup>17</sup> *Utick v Utick* (1907) 5 CLR 400, 403 in French CJ 'Procedural Fairness' 6

<sup>18</sup> 'No one shall be a judge in their own cause.'

<sup>19</sup> *City of London v Wood* (1702) 12 Mod 669, as quoted in French CJ 'Procedural Fairness' 10-11

<sup>20</sup> Kirstin Olsen *Daily Life in Eighteenth Century England* (Greenwood Press, 1<sup>st</sup> ed, 1999) 138-9

determine between party and party, or between the Government and the party... it cannot make one that lives under a Government Judge and party.<sup>21</sup>

The rule of bias being used as a protection against government despotism was reiterated in the late 19<sup>th</sup> century. It was argued that within the courts, 'proceedings here are judicial, not autocratic, which they would be if we could make laws instead of administering them.'<sup>22</sup> The rule against bias was another protection to ensure the separation of powers so that no one entity could have undue power over the individual citizen.

The end of the twentieth century again further consolidated the rule's place in the common law. A House of Lords decision was cast aside when it was deemed that one of their member, Lord Hoffman, was unduly biased towards the case. Augusto Pinochet was facing extradition due to allegations relating from his time as dictator of Chile. Amnesty International was involved in the trial, strongly supporting the planned extradition. Lord Hoffman was a director of an associated organisation, Amnesty International Charity Ltd. A law already stood that called for the automatic disqualification of judges if they were "party to an action" or "held a financial proprietary interest" in the outcome. This was subsequently extended to include those who were directors of companies that were connected or related to the case.<sup>23</sup>

Modern day common law has seen an apparent narrowing of the interpretation, though many argue that it is mere semantics and the intent remains the same. *Kioa v West* acknowledges that the law over the centuries has evolved so that jurists must accept "that there is a common law duty to act fairly, in the sense of according procedural fairness." However, the decision ruled that the rights of procedural fairness could be stifled if it was "contrary to statutory intention".<sup>24</sup> This is not as dire as it sounds though; the 2010 decision in *Saeed v Minister for Immigration and Citizenship* pointed out that 'all statutes are construed against a background of common law notions of justice and fairness.'<sup>25</sup> Legislation that removes the right to procedural justice, though deplorable, is arguably a toothless weapon.

Ultimately, though the law has evolved over the centuries, human nature remains relatively unchanged. In the Australian context, Chief Justice French believes that our cultural tradition demands a certain expectation from the law:

I do not think it too bold to say that the notion of procedural fairness would be widely regarded within the Australian community as indispensable to justice. If the notion of a 'fair go' means anything in this context, it must mean that before a decision is made affecting a person's interests, they should have a right to be heard by an impartial decision-maker.<sup>26</sup>

Our research has found 92 federal laws that limit the principles of natural justice.

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<sup>21</sup> *London v Wood* as quoted in French CJ 'Procedural Fairness' 11.

<sup>22</sup> *Lee v Bude and Torrington Junction Railway Co* in French CJ 12.

<sup>23</sup> French CJ, 'Procedural fairness' 13.

<sup>24</sup> (1985) 159 CLR 550, 584.

<sup>25</sup> (2010) 267 ALR 204, 208-9.

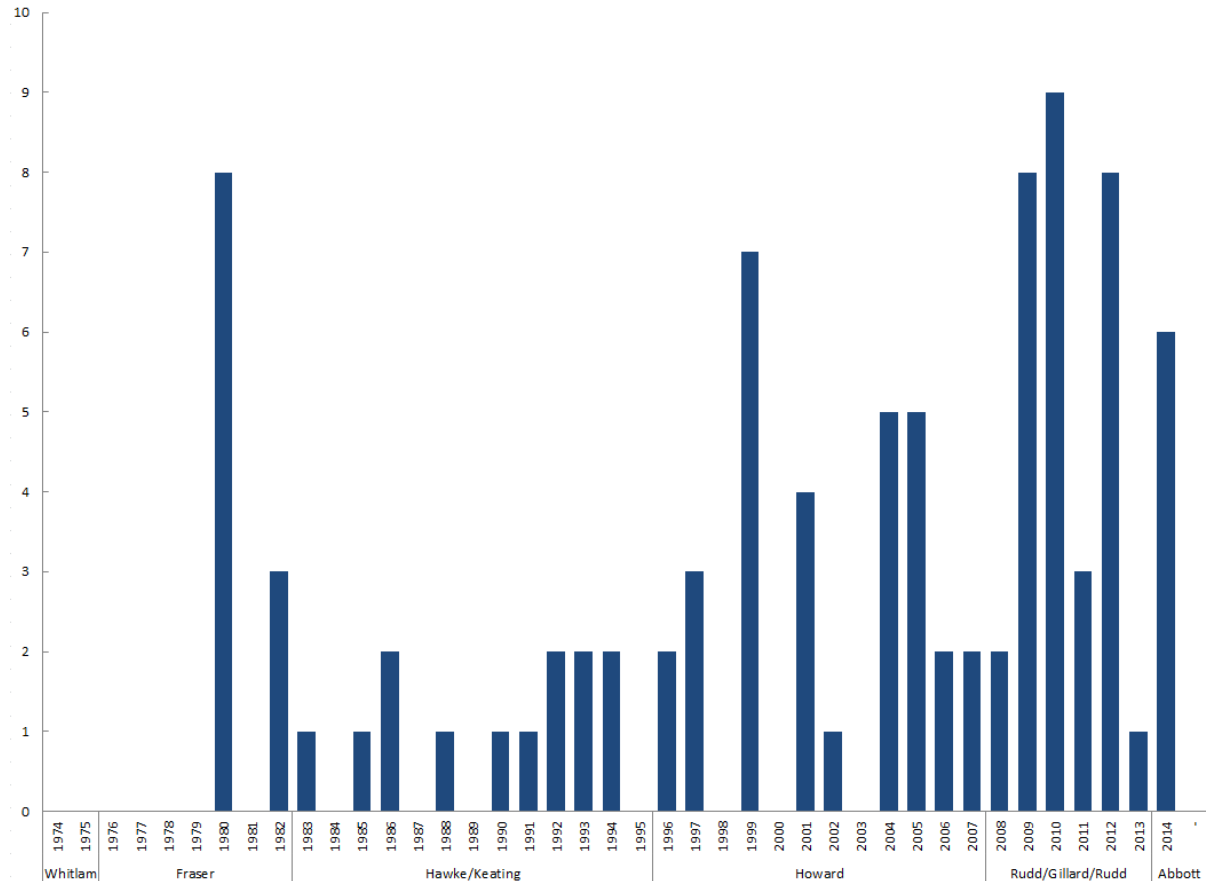
<sup>26</sup> Robert S. French CJ, 'Procedural fairness – indispensable to justice?' (Speech delivered at the Sir Anthony Mason Lecture, University of Melbourne Law School, 7 October 2010)

<<http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj07oct10.pdf>> 22-3.



The chart below displays the number of provisions that limit natural justice in current federal legislation per year. It displays when each current provision that limits natural justice was introduced.

### Natural justice breaches in current legislation, by year



Source: IPA

The following provisions provide some illustration of where rights of natural justice have been denied in current federal legislation.

### *Administrative Decisions (Judicial Review) Act 1977*

This act (the *ADJR Act*) was enacted by the Fraser Government in 1977 to permit judicial review of administrative decisions.

#### 5 Applications for review of decisions

(1) A person who is aggrieved by a decision to which this Act applies... may apply to the Federal Court or the Federal Circuit Court for an order of review in respect of the decision on any one or more of the following grounds:

(a) that a breach of the rules of natural justice occurred in connection with the making of the decision...

This provision is a limited codification of the right to natural justice in relation to an administrative decision.

To that end, administrative decisions are given a definition, in section 3.

### 3 Interpretation

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

...

“decision to which this Act applies” means a decision of an administrative character made, proposed to be made, or required to be made(a) that a breach of the rules of natural justice occurred in connection with the making of the decision...

(a) under an enactment...; or

(b) by a Commonwealth authority or an officer of the Commonwealth;

Other than:

(c) a decision by the Governor-General; or

(d) a decision included in any of the classes of decisions set out in Schedule 1.

The Schedule 1 mentioned was added by the Fraser Government in September 1980. Not surprisingly, the purpose of the Schedule is to provide a list of decisions which are not reviewable under the *ADJR Act*.

Therein lies the danger of codifying a legal right – codification can lead to restrictions and reversals. One need only see the many acts which have now been added to the above Schedule to see the extent to which natural justice is potentially denied.

## *Competition and Consumer Act 2010*

Formerly the *Trade Practices Act 1974*, the *Competition and Consumer Act 2010* regulates all competition and consumer law in Australia. The Australian Competition and Consumer Commission (ACCC) administers the act.

Section 151AKA below relates to the power of the ACCC to issue a written notice stating that a relevant body has engaged, or is engaging, in a specified instance of anti-competitive conduct.

### 151AKA Part A competition notices

Particular anti-competitive conduct

...

(9) The Commission is not required to observe any requirements of procedural fairness in relation to the issue of a Part A competition notice.

The right to procedural fairness has been explicitly excluded in the above provision. In regards to procedural fairness being denied, if issued with a completion notice, the ACCC can issue a notice that states you are infringing the act. If successful, the company can be fined and have an injunction placed upon it. During this process, the company is unable to make their case in court.

## *Migration Act 1958*

This act controls and provides the framework for migration to Australia. Section 500A was inserted into the act by an amendment passed by the Howard Government in May of 1999. Subsections (1) and (3) deal with the power of the Minister for Immigration to cancel, or refuse to grant, safe haven visas.

### **500A Refusal or cancellation of temporary safe haven visas**

...

#### *Natural justice and code of procedure not to apply to decision*

(11) The rules of natural justice, and the code of procedure set out in Subdivision AB of Division 3 of Part 2, do not apply to a decision under subsection (1) or (3).

Section 500A(1) in particular deals with matters which concern the Minister's opinion on a matter. This opinion then permits the Minister to refuse to grant to a person a temporary safe haven visa. Such opinion include;

- if the Minister reasonably suspects the person has been, or is likely to be, involved in criminal conduct;
- if the Minister, having regard to the person's past and present general conduct, deems the person to be not of good character; or even
- if the Minister believes that the person would prejudice Australia's international relations

The federal government undoubtedly, and rightly, can exercise wide powers over immigration. The above-mentioned grounds of refusal may not be especially offensive, nor are they the subject of this report. The denial of procedural fairness is troubling, particularly as such a decision must not be challenged, reviewed, quashed or questioned in any court.<sup>27</sup>

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<sup>27</sup> *Migration Act 1958* (Cth) s 474(1).

## Right to silence

The right to silence is a fundamental freedom that has been a feature of the common law for centuries. Just as with so many of our freedoms, this right is also under attack. The right to silence grants an accused the ability to refuse to comment on any allegations and accusations. Just as with the burden of proof, the onus is on the prosecution to establish your guilt and produce any testimony or evidence that establishes that fact. At a practical level, an innocent person is unlikely to be able to comment on an act that he has had nothing to do with. An accused should not be penalised for the reasonable assumption that it is best not to speculate on events you know nothing about.

The right to silence is a term that covers a range of legal rights. As outlined by Lord Mustill in *R v Director of Serious Fraud Office, ex parte Smith*, the term right to silence is an umbrella term that encompasses six distinct legal immunities:

- (1) A general immunity, possessed by all persons and bodies, from being compelled on pain of punishment to answer questions posed by other persons or bodies;
- (2) A general immunity, possessed by all persons and bodies, from being compelled on pain of punishment to answer questions the answers to which may incriminate them;
- (3) A specific immunity, possessed by all persons under suspicion of criminal responsibility whilst being interviewed by police officers or others in similar positions of authority, from being compelled on pain of punishment to answer questions of any kind;
- (4) A specific immunity, possessed by accused persons undergoing trial, from being compelled to give evidence, and from being compelled to answer questions put to them in the dock;
- (5) A specific immunity, possessed by persons who have been charged with a criminal offence, from having questions material to the offence addressed to them by police officers or persons in a similar position of authority; and
- (6) A specific immunity (at least in certain circumstances...), possessed by accused persons undergoing trial, from having adverse comment made on any failure (a) to answer questions before the trial, or (b) to give evidence at the trial.<sup>28</sup>

In Australia, these immunities are protected through the common law, police standing orders and the law of evidence.

More broadly, the right to silence falls within a set of principles known as the 'Judges' Rules'. These rules were drafted by the King's Bench in England in 1912. The impetus for the creation of such procedures came about as a reaction to questionable techniques used by police to elicit responses during interrogation. The Judges Rules disallowed the use of evidence obtained improperly and helped to formalise the interrogation process.

The modern law of evidence still includes many of the same rules, including that statements are only admissible if they are given voluntarily and not obtained through duress.

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<sup>28</sup> *R v Director of Serious Fraud Office, ex parte Smith*, Lord Mustill [1993] AC 1 (HL) at 30; Page 3, [http://www.lawreform.lawlink.nsw.gov.au/agdbasev7wr/lrc/documents/pdf/report\\_95.pdf](http://www.lawreform.lawlink.nsw.gov.au/agdbasev7wr/lrc/documents/pdf/report_95.pdf)

What we now understand as the right to silence has evolved over centuries. Great debate has waged over the true origin of the right, with two main theories explaining its rise.

## King's Court versus Roman canonical Law

The first theory begins with 12<sup>th</sup> century England's two distinct legal systems: the King's Court and the ecclesiastical courts. The legal system of the King's Court would evolve into what we now know as the common law.<sup>29</sup> Church courts were the domain of Canon law, which had been transplanted from continent Europe.<sup>30</sup>

Trials with juries were established by the time the ecclesiastical courts introduced the *ex officio* oath.<sup>31</sup> This oath acted as an inquisitorial tool of justice for canon law judges. This created an uneasy tension between lay and clergy courts and their apparent disparity in sentencing and justice.<sup>32</sup>

The oath was taken by the defendant, who swore 'in God's name' that they would speak the truth. The nature of the oath also insured that the accused would remain ignorant of the accusation, his accuser and any evidence brought against him.<sup>33</sup> If you refused to take the oath, it was viewed as a confession by omission or that you were contemptuous of the church's court.<sup>34</sup> This was in stark contrast to the common law, where the jury was present<sup>35</sup> and all witnesses and evidence having to be presented openly to the court and the accused.<sup>36</sup>

With church and state combining in the form of Henry VIII, the canon law *ex officio* oath could be now be used to execute the whims of the State. Religious beliefs became "criminally treasonable acts."<sup>37</sup> By the seventeenth century, inquisitorial powers were dangerously unpopular; the Long Parliament of 1641 (on the eve of the Civil War) saw the abolition of the infamous Star Chamber, in response to outrage over the injustices that had been committed. 1649 was the first time a senior British court "recognised a rule against self-incrimination within the constitutional context of a fair trial and due process of law."<sup>38</sup> Chief Justice Edward Coke<sup>39</sup> stated once and for all the superiority of the common law over canon law,<sup>40</sup> thus ending the legal conflict that had given birth to the right to silence.

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<sup>29</sup> King's Court laws developed from England's Saxon-Germanic routes. See Helen Silving, 'The Oath: I' (1959) 68 *Yale Law Journal* 1329, 1362

<sup>30</sup> Canon law was a mixture of Roman law and the (relatively) new *gloss* scholarship of law, a fore runner to modern day Civil law. See C. Theophilopoulos, 'The Historical Antecedents of the Right to Silence and the Evolution of the Adversarial Trial System' (2003) 14 *Stellenbosch Law Review* 161, 164-6

<sup>31</sup> Margaret H. Kerr, 'Angevin Reform of the Appeal of Felony' (1995) 13 *Law and History Review* 351.

<sup>32</sup> Joseph Biancalana, 'For want of Justice: Legal Reforms of Henry II' (1988) 88 *Columbia Law Review* 433.

<sup>33</sup> Theophilopoulos, 'Historical Antecedents of the Right to Silence' 166.

<sup>34</sup> Leonard W. Levy, *Origins of the Fifth Amendment: the Right against Self-Incrimination* (Oxford University Press, 1<sup>st</sup> ed, 1968), 22-3.

<sup>35</sup> Ralph V. Turner, 'The Origins of the Medieval English Jury: Frankish, English or Scandinavian?' (1968) 7 *Journal of British Studies* 1.

<sup>36</sup> Theophilopoulos, 'Historical Antecedents of the Right to Silence' 166-70.

<sup>37</sup> *Ibid* 169-71.

<sup>38</sup> Rachel Foxley, 'John Lilburne and the Citizenship of 'Free-Born Englishmen'' (2004) 47 *The Historical Journal* 849-851.

<sup>39</sup> *Boyer v High Commission* (1614) 2 Bulstrode 182, *Hillary II James I, Kings Bench* and *Burrows v High Commission* (1616) 3 Bulstrode 49, *Hillary 13 and Trinity 14 James I, Kings Bench* in Theophilopoulos, 'Historical Antecedents of the Right to Silence' 161.

<sup>40</sup> Theophilopoulos, 'The Historical Antecedents of the Right to Silence' 168-9 and Harold W. Wolfram, 'John Lilburne: Democracy's Pillar of Fire' (1952) 3 *Syracuse Law Review* 213-4 and Levy *Origins* 271-300.

## *Ius commune* and the Morality of Law

The second theory argues that, though the ecclesiastical courts imposed the *ex officio* oath, the origins of the right actually have its basis in canon law.<sup>41</sup> The *ius commune* developed out of the study and practice of Roman and canon law.<sup>42</sup> Canon lawyers and scholars of the *ius commune* transplanted the ecclesiastical court system to England.<sup>43</sup>

*Nemo tenetur prodere seipsum*<sup>44</sup> grew from the need to protect the faithful from state enforced inquisitorial oaths.<sup>45</sup> With the religious upheavals, and the State's subsequent usurpation of Church power, the oath was used in unjust persecution of the faithful as traitors and criminals, and accuser could act as both judge and jury.<sup>46</sup> Bodies such as the Star Chamber used inquisitorial powers to go on fishing exhibitions, its officials both investigating and judging any crimes.<sup>47</sup> This was viewed as debasing the true essence of the canon law.<sup>48</sup> Not only did it attack Christian ideals, but it also violated doctrine: the confession between God and man was sacred and private.

Canon law solved this by creating a 'balancing test' that weighed the interests of the church against the evidence and the 'intrusiveness' of the investigation.<sup>49</sup> If the test was not met, the accused was given the right to refuse to answer, on the grounds that the accusers were persecuting him into a 'trilemma': he had the choice of committing perjury, contempt or self-incrimination.<sup>50</sup> This was a cruel situation the Church wanted to avoid; it thus granted the accused the protection of silence to avoid this existential dilemma.

The roots of the right to silence are old and its true origin will always be impossible to discern centuries after the fact. What is clear is that various legal regimes have long striven to protect people from self-incrimination by giving them a form of the right to silence.

Our research has found 14 current federal laws that reverse the onus of proof.

Below is a chart displaying the number of provisions which remove the right to silence in current federal acts per year. It displays when each current provision that removes the right to silence was introduced.

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<sup>41</sup> Theophilopoulos, 'The Historical Antecedents of the Right to Silence' 171-6.

<sup>42</sup> Martin Vranken *Fundamentals of European Civil Law* (Federation Press, 2<sup>nd</sup> ed, 2010).

<sup>43</sup> Theophilopoulos, 'The Historical Antecedents of the Right to Silence' 171.

<sup>44</sup> R.H. Helmholtz, 'Origins of the Privilege against Self-Incrimination: the Role of the European *Ius Commune*' (1990) 65 *New York University Law Review* 962-7.

<sup>45</sup> Theophilopoulos, 'The Historical Antecedents of the Right to Silence' 175-6.

<sup>46</sup> I. Helmholtz 'Origins' 975-6.

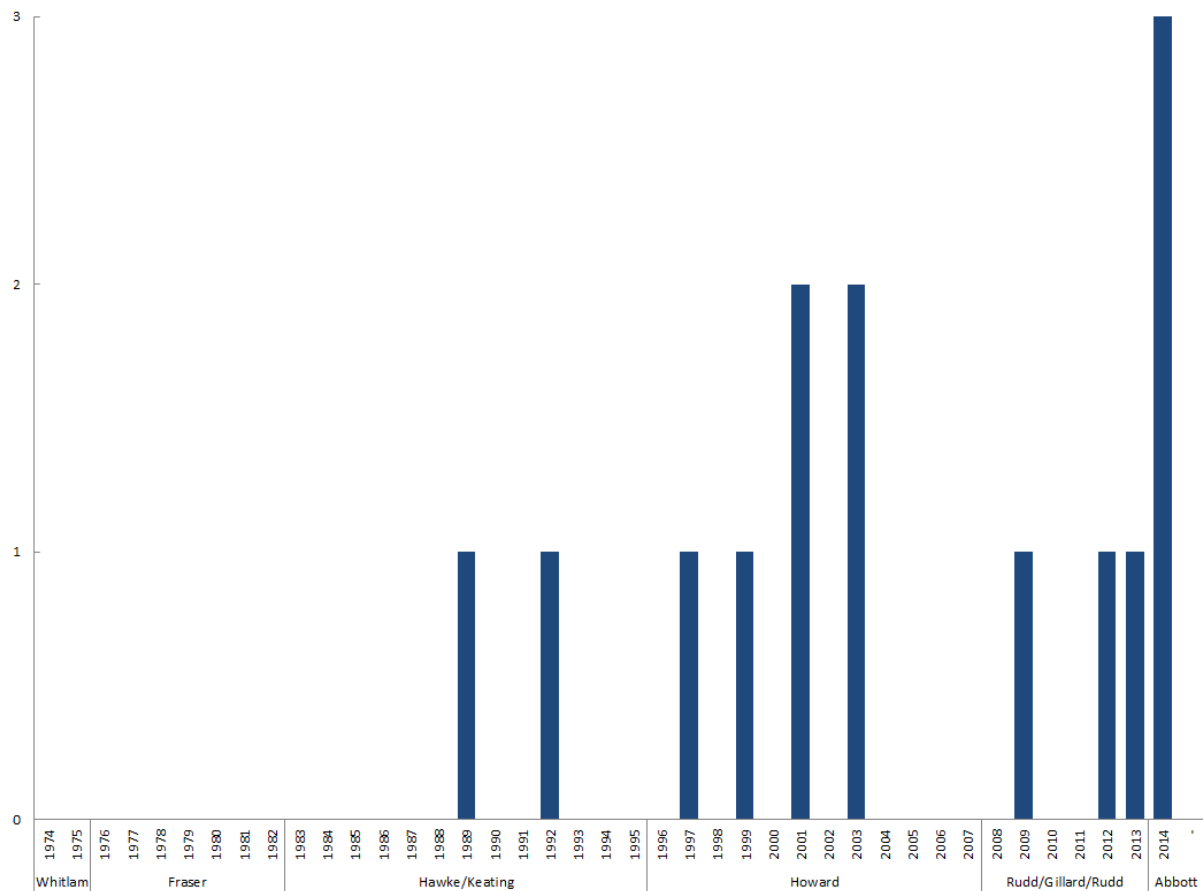
<sup>47</sup> *Ibid* 975-9.

<sup>48</sup> Theophilopoulos, 'The Historical Antecedents of the Right to Silence' 173.

<sup>49</sup> *Ibid* 172.

<sup>50</sup> *Ibid* 175.

## Right to silence breaches in current legislation, by year



Source: IPA

The following provisions provide some illustration of where the right to silence has been denied in current federal legislation.

### *Fair Work Act 2009*

Introduced by the Rudd government, this act created sweeping changes to the national industrial relations system.

Part 5-2 established the Fair Work Ombudsmen, which in turn can appoint Fair Work Inspectors. Subdivision D of the aforementioned Part outlines some powers and functions of these Inspectors, including;

#### **712 Power to require persons to produce records or documents**

(1) An inspector may require a person, by notice, to produce a record or document to the inspector

...

(3) A person who is served with a notice to produce must not fail to comply with the notice.

(4) Subsection (3) does not apply if the person has a reasonable excuse.



Here, the right to silence is clearly taken away, subject to a reasonable excuse exception.

## *Navigation Act 2012*

This act sets out the substantive provisions regulating international ship and seafarer safety in Australian waters. A rewrite of the original *Navigation Act 1912*, it was passed by the Gillard Government in September 2012. It is administered by the Australian Maritime Safety Authority (AMSA).

Division 3 of Part 4 of Chapter 8 sets out other powers of AMSA Inspectors.

### **263 Power to persons to answer questions and produce documents**

- (1) An inspector who is on the premises that he or she has entered under a warrant may require anyone on the premises to;
  - (a) Answer any questions put by the inspector; and
  - (b) Produce any books, records or documents requested by the inspector.

The provision then says that a failure to comply with such a request is a contravention of the act and is a criminal offence, amounting to 30 penalty units. As with the example from the *Fair Work Act 2009*, it contains a reasonable excuse exception. It differs slightly, as it deals with entry to premises pursuant to a warrant, where information is then requested.

## *Broadcasting Services Act 1992*

This Act is the primary piece of legislation regulating broadcast media in Australia. Among other functions, it establishes the Australian Media and Communication Authority (ACMA).

The principle act was originally enacted in July 1992 by the Keating Government, and included the following;

### **202 Non-compliance with requirement to give evidence**

- (2) A person required to answer a question, to give evidence or to produce documents under this Part must not:
  - (a) ...
  - (b) refuse or fail to answer a question that the person is required to answer; or
  - (c) refuse or fail to produce a document that the person is required to produce...

Section 202 is similar to the previous examples, as it includes the reasonable excuse exception. In contrast this provision also envisages the asking of questions at a hearing conducted by ACMA.

In the above examples, the right to silence is removed, with the proviso that the right can be regained if the person so relying has a reasonable excuse. The 'reasonable excuse' is a nebulous concept, which will always depend on the case-by-case situation. This lack of clarity is a conundrum which need not exist, had the right to silence not been removed in the first place.

## The privilege against self-incrimination

The privilege against self-incrimination is a general immunity from being coerced into answering questions in cases where answers to such questions may result in self-incrimination of an offence.<sup>51</sup> It is one of the specific rights included under the right to silence. It is a substantive right entitling a person to refuse to answer any question, or produce any document, if the answer or the production would tend to incriminate that person.<sup>52</sup>

The privilege against self-incrimination is one of the rights that evolved from the right to silence, but it is also a fundamental freedom in its own right. Its importance within Australian law is illustrated in the High Court decision of *Sorby v The Commonwealth*, where Chief Justice Gibbs held that it is 'a firmly established rule of the common law, since the seventeenth century, that no person can be compelled to incriminate himself. It is more than a mere rule of evidence and is deeply ingrained in the common law.'<sup>53</sup>

The privilege developed out of the idea that no one should be compelled to testify as to one's own guilt. The reasoning is that such power could be easily abused, and that innocents may be forced to give evidence for a crime or act they did not commit. Upholding this privilege is also viewed as critical to prevent the abuse of power, by:

...protecting the accusatorial system of justice and quality of evidence, to avoid the 'cruel dilemma' of placing a witness in the position of choosing between refusing to provide the information and risking contempt of court, providing the information and furnishing evidence of guilt, or of lying and risking punishment for perjury, and to protect human dignity and privacy.<sup>54</sup>

Just as with the right to silence, the burden is upon the prosecution or plaintiff to establish the accused's guilt. The innocent should be protected from coercion to produce facts they do not know of, and the guilty should nonetheless have the opportunity to protect themselves and build a defence case.

## Criminal law

The privilege against self-incrimination grants protection of any risk that may come about from producing direct or indirect evidence. Australia follows the United Kingdom view of the law, stated by Lord Wilberforce in *Rank Film Distributors Ltd v Video Information Centre*<sup>55</sup>:

...whatever direct use may or may not be made of information given or material disclosed, under the compulsory process of the court, it must not be overlooked that, quite apart from that, its provision or disclosure may set in train a process which may lead to incrimination or may lead to the discovery

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<sup>51</sup> Page 3, Law Reform NSW report.

<sup>52</sup> Margaret Wilson J 'Aspects of Privilege: Self-Incrimination' (Paper presented at Bar Association of Queensland Conference 2006, Sanctuary Cove, 4 March 2006) 1.

<sup>53</sup> Ibid 309.

<sup>54</sup> John Agius SC 'Certificates to Protect Against Self Incrimination under s 128 of the Evidence Act 1995 and s 61 of the Coroners Act 2009 NSW'

[http://www.criminalcle.net.au/attachments/s128\\_paper\\_Final\\_Agius\\_SC\\_30\\_10\\_10.pdf](http://www.criminalcle.net.au/attachments/s128_paper_Final_Agius_SC_30_10_10.pdf).

<sup>55</sup> [1982] AC 380 at 443.

of real evidence of an incriminating character. ...The party from whom disclosure is asked is entitled, on established law, to be protected from these consequences.

It is still up to the courts to decide whether the privilege shall be upheld within a particular case. The test is whether compelling answers of a person would place that person in “real and appreciable danger of conviction.”<sup>56</sup> In other words, it is not just enough that a witness refuses to answer a question, simply by stating that ‘I can’t tell you because it’ll incriminate me!’ However, this has to be weighed against forcing the witness to give a full explanation, as that may ‘defeat the privilege’ he has intended to invoke.<sup>57</sup> Despite this, the privilege is still recognised as an important individual human right and courts are loathed to undermine it. The privilege generally only applies to testimonial evidence, not ‘real’ evidence. In other words, you can refuse to repeat a damning statement you may have made, but not refuse the prosecution showing the dripping knife.

## Civil law

Within the civil realm, the penalty privilege acts similarly but is distinct to the privilege against self-incrimination. The penalty privilege is not viewed by the courts in the same light as the privilege against self-incrimination, and is therefore not seen as a human right. Thus “the law’s two nuclear weapons,” Mareva and Anton Piller orders, in theory can override the penalty privilege. The two orders can demand the seizure of assets and evidence of the applicant’s claims if they are in danger of being hidden, destroyed or removed.<sup>58</sup> There is debate within the law as to whether this is right, both in the United Kingdom and Australia. Though some may argue that the documents should be handed over, there are strong arguments that new legislation should be passed to ensure that those same documents or evidence should be barred from being used in any subsequent prosecution.<sup>59</sup>

This is not a sufficient protection for the privilege against self-incrimination. Mareva and Anton Piller orders are sufficient for the purpose of evidence-gathering in civil cases and no legislative provision should give regulators or other litigants the power to compel the production of documents or answers to questions asked in the course of an investigation or civil case.

Our research has found 108 current federal laws that restrict the privilege against self-incrimination.

Below is a chart which displays when each current provision that restricts the privilege against self-incrimination was introduced.

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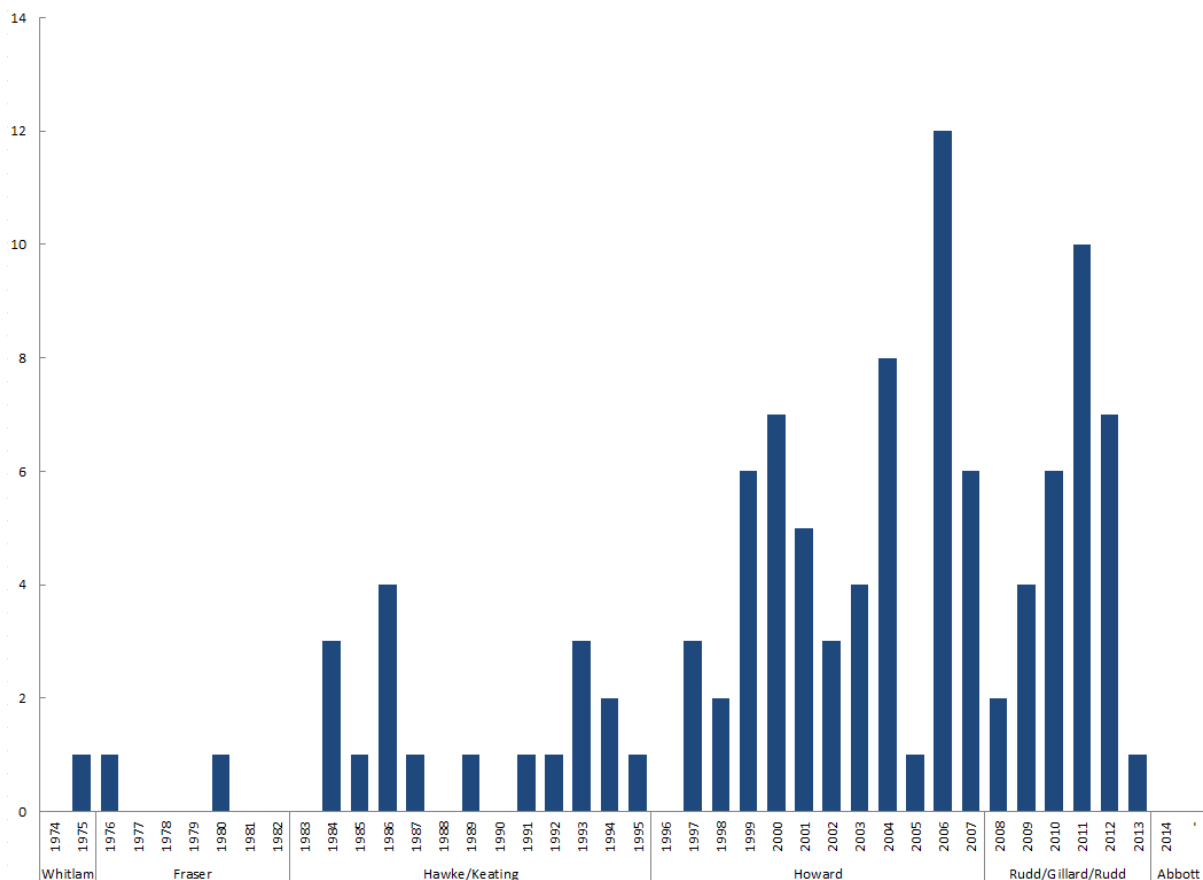
<sup>56</sup> Wilson J ‘Aspects of Privilege’ 4.

<sup>57</sup> Ibid 5.

<sup>58</sup> Ibid 21-2.

<sup>59</sup> Ibid 22-7.

## Privilege against self-incrimination breaches in current legislation, by year



Source: IPA

The following provisions provide some illustration of where the privilege against self-incrimination has been abrogated in current federal legislation.

### *Evidence Act 1995*

This act was introduced to provide for a uniform series of rules for adducing and admitting evidence in civil and criminal proceedings at the federal level. The principle act was passed by the Keating Government in February 1995.

Section 187 provides a general requirement that where a law states that a body corporate is required to answer a question, produce documents or other information, or do any act whatsoever;

#### **187 Abolition of the privilege against self-incrimination for bodies corporate**

(2) The body corporate is not entitled to refuse or fail to comply with the requirement on the ground that answering the question, giving the information, producing the document or other thing... as the case may be, might tend to incriminate the body or make the body liable to a penalty.

This provision imposes a general abrogation of the privilege against self-incrimination, insofar as body corporates are concerned.

## *Australian Charities and Not-for-profits Commission Act 2012*

This act was introduced to create an updated 'regulatory framework' for charities and not-for-profit organisations. This had the typical effect of covering more organisations than previous regulations were able to.

### **70-25 Self-incrimination**

- (1) An entity is not excused from giving information, or producing a document or a copy of a document, under this Division on the ground that the information or the production of the document or copy might tend to incriminate the entity or expose the entity to a penalty...

In contrast to the right to silence provisions, there is no 'reasonable excuse' to refuse the requests for information or evidence. The law then provides that such information given is not admissible in evidence against the individual in criminal or civil proceedings.

This is insufficient. The privilege is abrogated where the law requires a person to answer. This is regardless of how the substance of any disclosure is subsequently used. Furthermore, the admissibility protection only applies to individuals. Other legal persons are subject to the requirement to disclose (corporations, for example) and there is nothing in the provision restricting the use of such disclosures in proceedings against them.

## *Tobacco Plain Packaging Act 2011*

This act was introduced on the dubious grounds that controlling how cigarettes were packaged would improve public health.

Chapter 4 of the act confers powers on authorised officers to investigate contraventions of the act. Section 83 provides:

### **83 Self-incrimination**

- (1) A person is not excused from giving information, producing a document or answering a question under subsection 58(2) or 80(2) on the ground that the information, the production of the document, or answer to the question, might tend to incriminate the person or expose the person to a penalty.

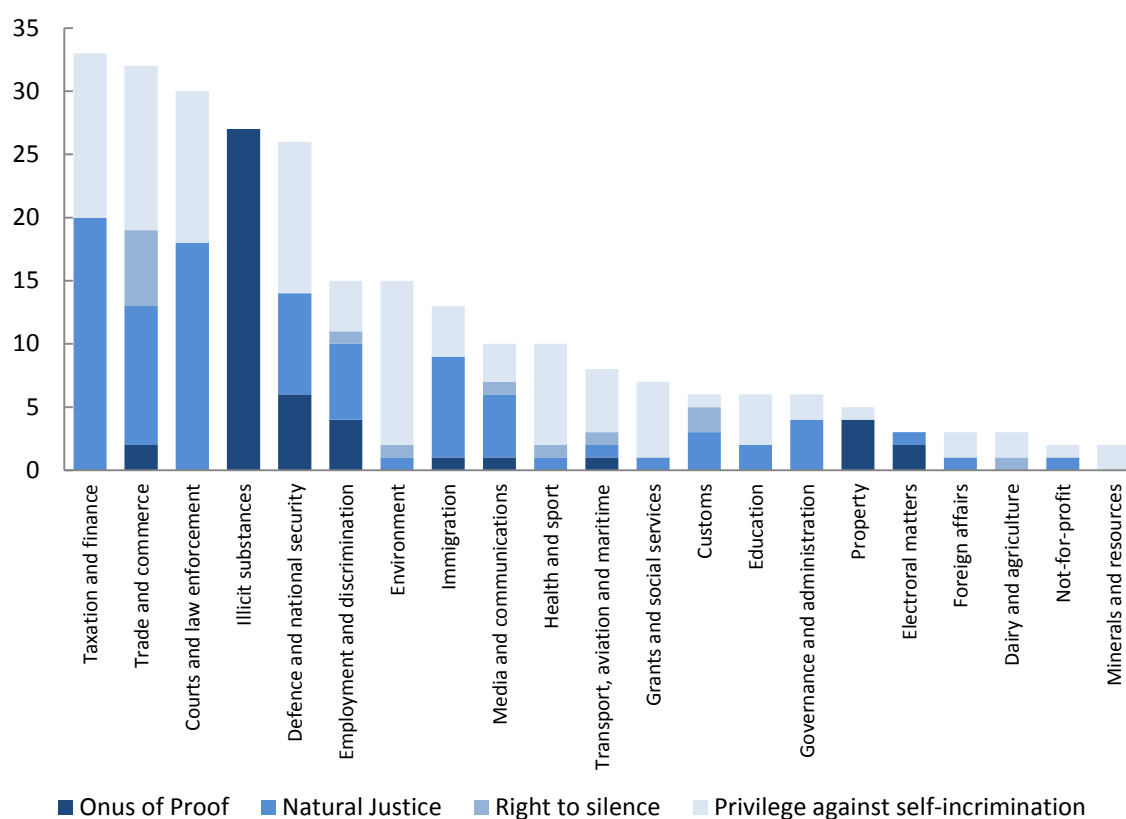
The succeeding subsection provides that such information is not admissible against an individual in criminal proceedings. The obvious conclusion is that even responses by an individual which would expose them to a penalty are still admissible against the person in civil proceedings. Also, as with the *ACNC Act* self-incrimination example above, there is nothing to suggest that non-natural persons are subject to the admissibility protection in either criminal or civil proceedings.

## Who bears the burden?

Our analysis demonstrates that there are particular areas subject to greater numbers of legal rights breaches. We categorised every breach into one of 19 categories: courts and law enforcement; customs; defence and national security; education; electoral matters; employment and discrimination; environment; foreign affairs; governance and administration; grants and social services; health and sport; illicit substances, immigration; media and communications; minerals and resources; miscellaneous; not-for-profit; property; taxation and finance; trade and commerce; transport, aviation and maritime.

The graph below represents these categories, in order of number of legal rights breaches.

### Legal rights breaches in current legislation, by category



Source: IPA

The top categories by legal rights breaches are: taxation and finance (33 breaches), trade and commerce (32), courts and law enforcement (30), illicit substances (27) and defence and national security (26).

Overwhelmingly, the legal rights of company directors and agents, business owners and employers are restricted through legislation governing a range of areas of law. These rights are removed under taxation, industrial relations, health and safety, discrimination and environmental laws. Taxation, for example, is an area of law with a significant legal rights deficit. The vast majority of tax assessment decisions are not reviewable and assessors often have coercive powers which remove the right to silence.

A comparison between company directors and union officials was quite revealing. On our figures, no less than 43 breaching provisions apply to companies and their directors and agents,<sup>60</sup> while just two apply directly to union officials.<sup>61</sup> A further 18 are applicable to both, by virtue of a broad definition of 'person'.<sup>62</sup>

This level of systematic, state-sanctioned discrimination is unacceptable in a legal system ostensibly based on the rule of law. Of course, the solution is not to add another 40 restrictions on the legal rights of union officials so as to achieve equality, it is to repeal the vast number of provisions which remove the legal rights of company directors.

It is also interesting to note which acts breach multiple legal rights. Two federal acts contain provisions which breach all four legal rights: the *Competition and Consumer Act 2010* and the *Fair Work Act 2009*. Two federal acts contain provisions which breach three legal rights: the *Migration Act 1958* and the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. 24 federal acts breach two legal rights and 95 federal acts breach one legal right.<sup>63</sup> The repeat offenders indicate particular areas of law where the legal rights deficit is greatest. Concerted attempts should be made to ensure the restoration of legal rights in these areas.

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<sup>60</sup> See, for example, section 1316A of the *Corporations Act*, which states that the privilege against self-incrimination is not available to bodies corporate in *Corporations Act* criminal proceedings. The provision does not cover trade unions.

<sup>61</sup> See, for example, section 337(4) of the *Fair Work (Registered Organisations) Act 2009* s 337(4), which states that a person is not excused from giving information that would tend to incriminate the person. This Act regulates both employer and employee organisations.

<sup>62</sup> See, for example, section 142 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, which creates an offence where it would be reasonable to conclude that multiple transactions, owing to the manner and form, are for the sole or dominant purpose of ensuring or attempting to ensure that the money/property therein involved was transferred in a manner and form that would not give rise to a threshold transaction that would have been required to be reported under section 43. Section 142(2) states that the defendant bears a legal burden in proving that the first person did not conduct the transaction or cause the transactions to be conducted, as the case may be, in such a manner.

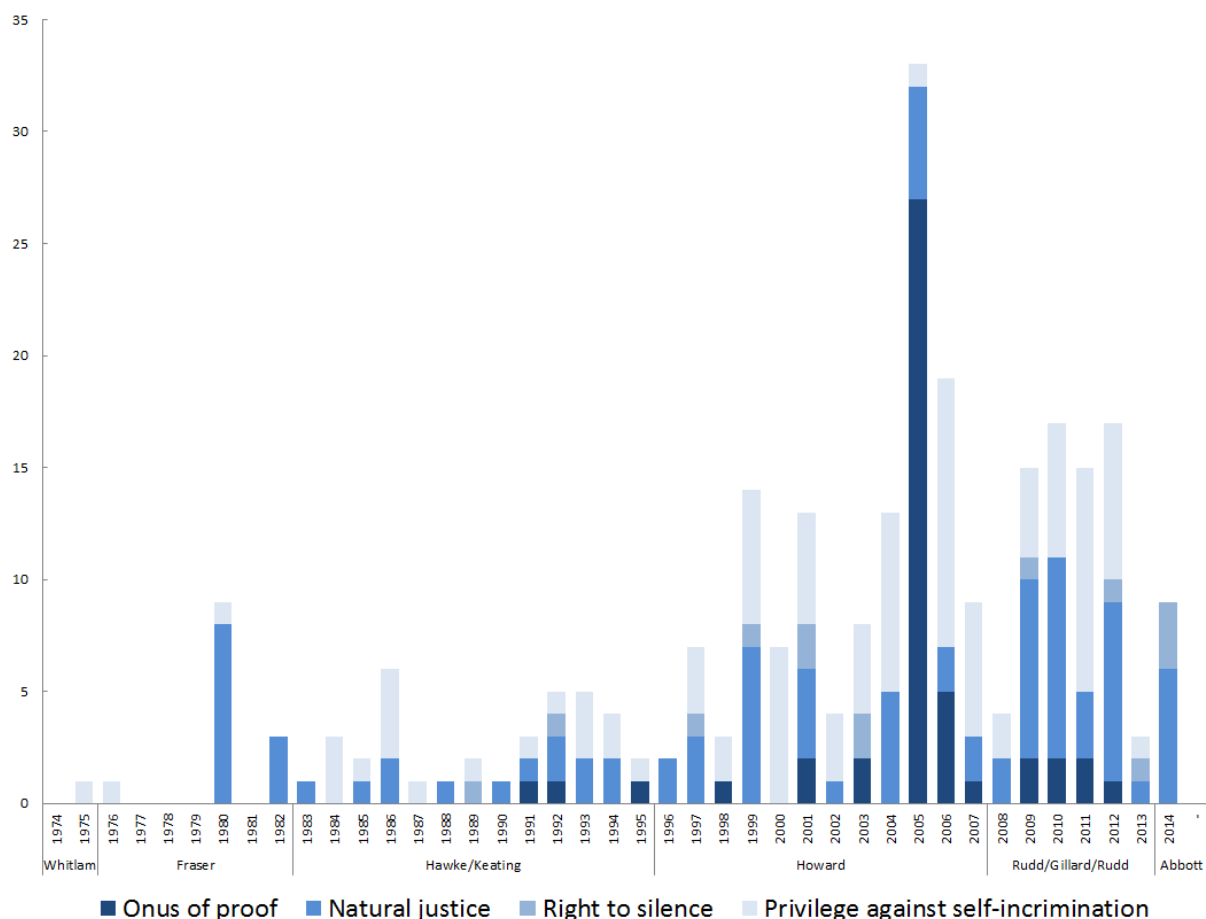
<sup>63</sup> See appendix 5 for the list of all Acts and the number of breaches therein contained.



## Limitations: a ‘snapshot’ of legal rights breaches

The graph below is a representation of total legal rights breaches contained in current federal acts by year. This graph highlights the years in which currently applicable legal rights breaches were passed, and the government that was in power at the time.

### Legal rights breaches in current legislation, by year



Source: IPA

An important qualification: this audit takes account of federal law as it currently stands. The data collected represents a snapshot in time. Our research does not indicate the original number of legal rights breaches in any particular year. It simply highlights the year in which current legal rights breaches were passed. In terms of the government that was in power at the time these provisions were made law this can be understood as that government’s legacy of legal rights breaches as the law stands today.

A further matter of note is that ‘point in time’ analysis does not take account of legal rights breaches rectified by repealing legislation. In other words, our research does not give governments credit for repealing provisions which breach legal rights. Further research into the restoration of legal rights over time would allow for an account of legal rights for each government. Governments could be ranked based on whether they were net ‘restorers’ or ‘removers’ of legal rights. The Abbott government, for instance, has repealed several provisions passed under previous governments.

Sections 225 and 236 of the *Clean Energy Act 2011*, which removed the privilege against self-incrimination, would have been included in our report and attributed to the Rudd/Gillard/Rudd governments had our analysis been done before the Abbott government came to power. However, it was removed as a part of the Abbott government's repeal of the carbon tax on 17 July 2014.<sup>64</sup> This removes the provision from the Rudd/Gillard government column but does not give the Abbott government a corresponding 'credit'.

Although the number of breaches in later years is higher than in earlier years this should not necessarily be interpreted as evidence of an upward trend in the instances of legal rights breaches in federal legislation. One reason that this data shows more breaches in recent years is that there is a natural process of legislative renewal. Over time, some laws are replaced with others in an attempt to reform the law (or create the illusion of reform). This often involves the replacement of existing law with new provisions that are very similar or identical in substance to the provisions they replace. Legal rights breaches may have been included in an original piece of legislation only to be replaced by future legislation. In cases such as these only the most recent amendment has been recorded here.

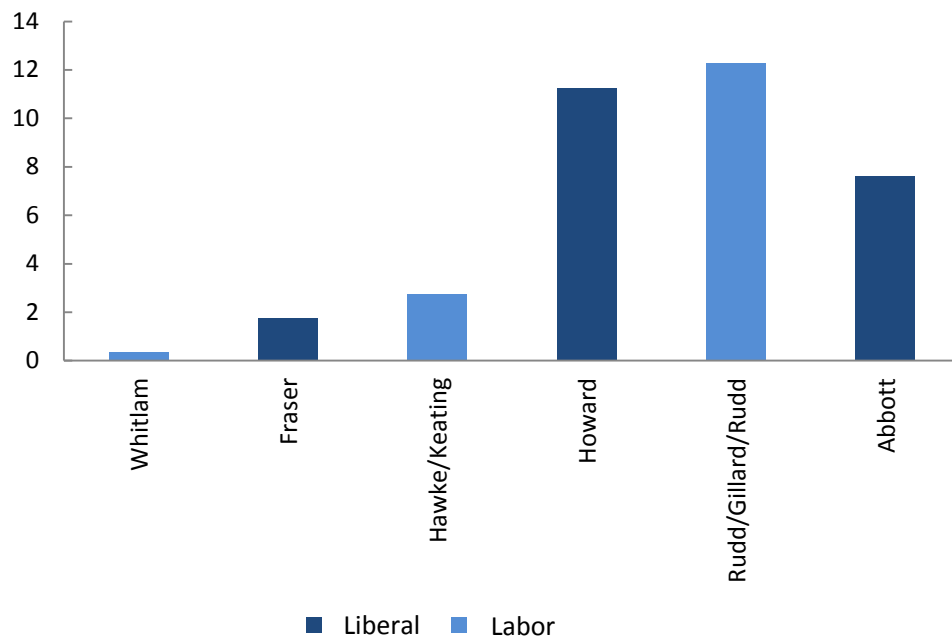
That said, we do suspect there is a growing trend of legal rights breaches over time, if only because the sheer amount of legislation passed by the federal parliament is continually growing over time. However, in order to properly assess this trend, further research is needed into the annual rate of legal rights breaches.

It is possible, using this data, to paint a picture of the legacy of each government in respect to legal rights breaches. This is represented in the chart below. Here, the number of legal rights breaches in current legislation by government has been adjusted for the period of time each government was in power. The final figure is an annual average number of legal rights breaches for each government based on current legislation.

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<sup>64</sup> *Clean Energy Legislation (Carbon Tax Repeal) Act 2014*.

### Annual average number of breaches in current legislation, by government



Source: IPA

Again, it is important to emphasise that this is the average number of breaches per year in current legislation, by government.

## Conclusion

The basic ideal of any worthy legal system must be justice.

Australia is fortunate to have inherited a legal system that has had the time in which to produce a set of principles that lead to just outcomes. That system is the English common law. And the principles examined in this report represent a selection of the set of principles that protect liberty and ensure justice.

But the lucky heritage of Australia's legal system is not sufficient to ensure justice forever. We must be vigilant in safeguarding these vital legal rights. The extent to which basic legal rights are being eroded in Australia poses a significant threat to the rule of law.

This report details the extent to which this is an issue. This report also shows that some areas of the law are more affected by this erosion; particularly taxation, financial and commercial regulation.

The Abbott government is now in a position to correct this state of affairs.

Pursuant to this, Attorney-General George Brandis instructed the Australian Law Reform Commission on 11 December 2013 to review federal legislation to identify provisions that "unreasonably encroach upon traditional rights, freedoms and privileges." In contrast to this report, the ALRC's inquiry is to conduct a broader examination of freedoms which have been encroached upon, including where a provision interferes "with any other similar legal right, freedom or privilege." This is an important first step.

In conjunction with this report, that review should provide the necessary evidence and the impetus to protect and restore basic legal rights in the Federation.

## Appendix 1 – Presumption of innocence/burden of proof breaches in current federal acts

Legislation	Key word(s) searched	Relevant section	Date	Category
<i>Work Health and Safety Act 2011</i> (Cth)	"burden of proof"	Division 3, s 113 Procedure for civil actions for discriminatory conduct	29 November 2011	Employment and discrimination
		Division 2, s 110 Criminal proceedings: Proof of discriminatory conduct	29 November 2011	Employment and discrimination
<i>Defence Act 1903</i> (Cth)	"onus of proof"	Part IV, Division 4, s 61CV Procedures of Conscientious Objection Tribunal: Onus of proof	30 June 1992	Defence and national security
<i>Migration Act 1958</i> (Cth)	"bears a legal burden"	Division 12, s 240 Offence to arrange marriage to obtain permanent residence	18 December 1991	Immigration
<i>Criminal Code Act 1995</i> (Cth)	"bears a legal burden"	s 302.5 Presumption where trafficable quantities are involved	8 November 2005	Illicit substances
		s 303.7 As above	8 November 2005	Illicit substances
		s 305.6 As above	8 November 2005	Illicit substances
		s 309.5 As above	8 November 2005	Illicit substances
		s 306.5 Presumption for pre-trafficking controlled precursors- sale	8 November 2005	Illicit substances
		s 306.6 Presumption for pre-trafficking controlled pre-cursors - manufacture for drug manufacture	8 November 2005	Illicit substances
		s 306.7 Presumption for pre-trafficking controlled pre-cursors - manufacture for sale	8 November 2005	Illicit substances
		s 306.8 Presumption for pre-trafficking controlled pre-cursors - possession	8 November 2005	Illicit substances
		s 307.14 Presumption for importing and exporting border controlled precursors	8 November 2005	Illicit substances
		s 308.2 Possessing controlled precursors	8 November 2005	Illicit substances
		s 308.4 Possessing substance, equipment or instructions for commercial manufacture of controlled drugs	8 November 2005	Illicit substances
		s 307.2 Importing or exporting marketable quantities of border controlled drugs or border controlled plants	8 November 2005	Illicit substances
		s 307.3 Importing or exporting border controlled drug or plants	8 November 2005	Illicit substances
		s 307.5 Possessing commercial quantities of unlawfully imported border controlled frugs or border controlled plants	8 November 2005	Illicit substances
		s 307.6 Possessing marketable quantities of	8 November 2005	Illicit substances

		unlawfully imported border controlled drugs or border controlled plants			
		s 307.7 Possessing unlawfully imported border controlled drugs or plants	8 November 2005	Illicit substances	
		s 307.8 Possessing commercial quantities of border controlled drugs or plants reasonably suspected of having been unlawfully imported	8 November 2005	Illicit substances	
		s 307.9 Possessing marketable quantities of border controlled drugs or plants reasonable suspected of having been unlawfully imported	8 November 2005	Illicit substances	
		s 307.10 Possessing border controlled drugs or plants reasonably suspected of having been unlawfully imported	8 November 2005	Illicit substances	
		s 307.12 Importing and exporting marketable quantities of border controlled precursors	8 November 2005	Illicit substances	
		s 307.13 Importing and exporting border controlled precursors	8 November 2005	Illicit substances	
		s 309.12 Procuring children for importing or exporting marketable quantities of border controlled drugs or plants	8 November 2005	Illicit substances	
		s 309.13 Procuring children for importing or exporting border controlled drugs or plants	8 November 2005	Illicit substances	
		s 309.14 Procuring children for importing or exporting marketable quantities of border controlled precursors	8 November 2005	Illicit substances	
		s 309.15 Procuring children for importing or exporting border controlled precursors	8 November 2005	Illicit substances	
		s 313.4 Alternative verdict – mistake as to quantity of drug, plant or precursor	8 November 2005	Illicit substances	
		s 313.5 Alternative verdict – mistake as to identity of drug, plant or precursor	8 November 2005	Illicit substances	
<i>Commonwealth Electoral Act 1918</i> (Cth)	“bears a legal burden”	s 101 Compulsory enrolment and transfer	17 September 2001	Electoral matters	
		s 329 Misleading or deceptive publications etc.	17 September 2001	Electoral matters	
<i>Classification (Publications, Films and Computer Games) Act 1995</i> (Cth)	“bears a legal burden”	s 103 Supplying prohibited material in and to prohibited areas	17 August 2007	Media and communications	
<i>Personal Property Securities Act 2009</i> (Cth)	“presumed”	s 299 Actual or constructive knowledge in relation to certain property transfers	14 December 2009	Property	

<i>Sex Discrimination Act 1984</i> (Cth)	"burden of proof"	s 7C Burden of proof	16 December 1995	Employment and discrimination
<i>Fair Work Act 2009</i> (Cth)	"presumed"	s 361 Reason for action to be presumed unless proved otherwise	7 April 2009	Employment and discrimination
<i>Copyright Act 1968</i> (Cth)	"presumed"	s 130A Acts relating to imported copies of sound recordings	30 July 1998	Property
		s 130B Imported copies of computer programs	15 April 2003	Property
		s 130C Imported copies of electronic literary or music items	15 April 2003	Property
<i>Navigation Act 2012</i> (Cth)	"or does not exist"	s 166: Navigating without a licenced pilot	13 September 2012	Transport, aviation and maritime
<i>Competition and Consumer Act 2010</i> (Cth)	"onus of proving"	Vol 3, Sch 2; cl 40 Asserting right of payment for unsolicited goods and services	30 June 2010	Trade and commerce
		Vol 3, Sch 2; cl 43 Asserting right to payment for placing unsolicited advertisement	30 June 2010	Trade and commerce
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> (Cth)	"or does not exist"	s 142 Conducting transactions so as to avoid reporting requirements relating to threshold transactions	12 December 2006	Defence and national security
		s 143 Conducting transfers so as to avoid reporting requirements relating to cross-border movements of physical currency	12 December 2006	Defence and national security
		s 237 Treatment of partnerships	12 December 2006	Defence and national security
		s 238 Treatment of unincorporated associations	12 December 2006	Defence and national security
		s 239 Treatment of trusts with multiple trustees	12 December 2006	Defence and national security
<b>Total number of Acts</b>	<b>13</b>	<b>Total number of provisions</b>	<b>48</b>	



## Appendix 2 – Natural justice breaches in current federal acts

Legislation	Key word(s) searched	Relevant section	Date	Category
<i>Migration Act 1958 (Cth)</i>	"Natural justice"	s 198AB Regional processing country	17 August 2012	Immigration
		s 198AD Taking offshore entry persons to a regional processing country	17 August 2012	Immigration
		s 198AE Ministerial determination that s 198AD does not apply	17 August 2012	Immigration
		s 500A Refusal or cancellation of temporary safe haven visas	20 May 1999	Immigration
		s 501 Refusal or cancellation of visa on character grounds	1 June 1999	Immigration
		s 501A Refusal or cancellation of visa - setting aside and substitution of non-adverse decision under subsection 501(1) or (2)	1 June 1999	Immigration
	"privative clause"	Part 8 Division 1- s 474 Privative clause	27 September 2001	Immigration
<i>National Vocational Education and Training Regulator Act 2011 (Cth)</i>	"Natural justice"	s 36 Sanctions	12 April 2011	Education
<i>National Health Reform Act 2011 (Cth)</i>	"procedural fairness"	s 62 Additional provisions about reports	14 October 2011	Health and sport
<i>Competition and Consumer Act 2010 (Cth)</i>	"procedural fairness"	ss 151AKA Part A competition notices	15 December 2010	Trade and commerce
		s 152BCF Duration of access determinations	15 December 2010	Trade and commerce
		s 152BD Binding rules of conduct	15 December 2010	Trade and commerce
		s 152BCGA Stay of access determinations	15 December 2010	Trade and commerce
<i>Administrative Decisions (Judicial Review) Act 1977 (Cth)</i>	Application for decision on the basis of breach of rules of "natural justice". Administrative Decisions to which this Act applies do not include decisions as set out in Sch 1 of this Act. References to decisions made under other Acts are set out below.	Sch 1(u)	27 October 1993	Trade and commerce
		Sch 1(v)	30 November 1993	Trade and commerce
		Sch 1(va)	23 September 2005	Trade and commerce
		Sch 1(zb)	21 November 1997	Trade and commerce
		Sch 1(j)	1 September 1980	Taxation and finance
		Sch 1(l)	1 September 1980	Employment and discrimination
<i>Fair Work Act 2009 (Cth)</i>		Schedule 1(a), <i>ADJR Act (Cth)</i> Decisions under this Act	7 July 2009	Employment and discrimination
<i>Fair Work (Registered Organisations) Act 2009 (Cth)</i>		Schedule 1(a), <i>ADJR Act (Cth)</i> Decisions under this Act	7 July 2009	Employment and discrimination
<i>Road Safety Remuneration Act 2012 (Cth)</i>		Schedule 1(a), <i>ADJR Act (Cth)</i> Decisions under this Act	16 April 2012	Transport, aviation and maritime

<i>Workplace Relations Act 1996</i> (Cth)	Schedule 1(a), <i>ADJR Act</i> (Cth) Decisions under this Act	25 November 1996	Employment and discrimination
<i>Building and Construction Industry Improvement Act 2005</i> (Cth)	Schedule 1(a), <i>ADJR Act</i> (Cth) Decisions under this Act	12 September 2005	Employment and discrimination
<i>Fair Work (Building Industry) Act 2012</i> (Cth)	Schedule 1(a), <i>ADJR Act</i> (Cth) Decisions under this Act	24 May 2012	Employment and discrimination
<i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth)	Schedule 1(b), <i>ADJR Act</i> (Cth) Administrative decisions, objections decisions and extension decisions, all within the meaning of that Act.	3 December 2012	Not-for-profit
<i>Intelligence Services Act 2001</i> (Cth)	Schedule 1(d), <i>ADJR Act</i> (Cth) Decisions under this Act	1 October 2001	Defence and national security
<i>Australian Security Intelligence Organisation Act 1979</i> (Cth)	Schedule 1(d), <i>ADJR Act</i> (Cth) Decisions under this Act	1 September 1980	Defence and national security
<i>Inspector-General of Intelligence and Security Act 1986</i> (Cth)	Schedule 1(d), <i>ADJR Act</i> (Cth) Decisions under this Act	17 October 1986	Defence and national security
<i>Telecommunications (Interception and Access) Act 1979</i> (Cth)	Schedule 1(d), <i>ADJR Act</i> (Cth) Decisions under this Act	1 September 1980	Communications
<i>Telecommunications Act 1997</i> (Cth)	Schedule 1(daa), <i>ADJR Act</i> (Cth) s 58A(3) Refusal of carrier licence - security	20 April 2004	Communications
	s 581(3): Power to give directions to carriers providers	20 April 2004	Communications
	Schedule 1(daaa), <i>ADJR Act</i> (Cth) s 57A, Schedule 3A Refusal of permit - security	27 May 2014	Communications
	s 72A, Sch 3A Refusal of permit - security	27 May 2014	Communications
<i>Criminal Code Act 1995</i> (Cth)	Schedule 1(dab), <i>ADJR Act</i> (Cth) s 104.2 Attorney-General's consent to request an interim control order	14 December 2005	Defence and national security
	Schedule 1(dac), <i>ADJR Act</i> (Cth) Division 105 Preventative detention orders	14 December 2005	Defence and national security
<i>Migration Act 1958</i> (Cth)	Schedule 1(db), <i>ADJR Act</i> (Cth) s 5E Meaning of purported privative clause decision	15 November 2005	Immigration
<i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)	Schedule 1(e), <i>ADJR Act</i> (Cth) Any taxation assessment decision.	22 December 1999	Taxation and finance
<i>A New Tax System (Luxury Car Tax) Act 1999</i> (Cth)	Schedule 1(e), <i>ADJR Act</i> (Cth) Any taxation assessment decision.	22 December 1999	Taxation and finance
<i>A New Tax System (Wine Equalisation Tax) Act 1999</i> (Cth)	Schedule 1(e), <i>ADJR Act</i> (Cth) Any taxation assessment decision.	22 December 1999	Taxation and finance
<i>Customs Act 1901</i> (Cth)	Schedule 1(e), <i>ADJR Act</i> (Cth)	1 September 1980	Customs
	Schedule 1, <i>ADJR Act</i> (Cth) s 42 Right to require security	23 December 1982	Customs
<i>Customs Tariff Act 1995</i> (Cth)	Schedule 1(e), <i>ADJR Act</i> (Cth) First inserted into the sch in 1982. Replaced with 1987 version, and again in 1995	22 November 1982	Customs

<i>Excise Act 1901</i> (Cth)	Schedule 1(e), ADJR Act (Cth) Any taxation assessment decision.	1 September 1980	Taxation and finance
<i>Fringe Benefits Tax Assessment Act 1986</i> (Cth)	Schedule 1(e), ADJR Act (Cth) Any taxation assessment decision.	24 June 1986	Taxation and finance
<i>Fuel Tax Act 2006</i> (Cth)	Schedule 1(e), ADJR Act (Cth) Any taxation assessment decision.	26 June 2006	Taxation and finance
<i>Income Tax Assessment Act 1936</i> (Cth)	Schedule 1(e), ADJR Act (Cth) Any taxation assessment decision.	1 September 1980	Taxation and finance
<i>Income Tax Assessment Act 1997</i> (Cth)	Schedule 1(e), ADJR Act (Cth) Any taxation assessment decision.	17 April 1997	Taxation and finance
<i>Petroleum Resource Rent Tax Assessment Act 1987</i> (Cth)	Schedule 1(e), ADJR Act (Cth) Any taxation assessment decision.	18 December 1997	Taxation and finance
<i>Superannuation Guarantee (Administration) Act 1992</i> (Cth)	Schedule 1(e), ADJR Act (Cth) Any taxation assessment decision.	30 June 1992	Taxation and finance
<i>Taxation Administration Act 1953</i> (Cth)	Schedule 1(gaa), ADJR Act (Cth) Subdivision 268-B Making estimates s 268-35	29 June 2010	Taxation and finance
	How estimate may be reduced or revoked - Commissioner's powers	29 June 2010	Taxation and finance
	Schedule 1(e), ADJR Act (Cth) Part 2-35 Excess concessional contributions	29 June 2013	Taxation and finance
	Part 3-10 Indirect taxes	29 March 2012	Taxation and finance
	Part 4-1 Returns and assessments	29 March 2012	Taxation and finance
	Schedule 1(ga), ADJR Act (Cth) s 14ZY Commissioner to decide taxation objections	24 December 1991	Taxation and finance
<i>Training Guarantee (Administration) Act 1990</i> (Cth)	Schedule 1(e), ADJR Act (Cth) Any taxation assessment decision.	16 June 1990	Education
<i>Trust Recoupment Tax Assessment Act 1985</i> (Cth)	Schedule 1(e), ADJR Act (Cth) Any taxation assessment decision.	29 March 1985	Taxation and finance
<i>Renewable Energy (Electricity) Act 2000</i> (Cth)	Schedule 1(gb), ADJR Act (Cth) Div 2 of Part 5 Assessments	30 June 2006	Environment
<i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth)	Schedule 1(h), ADJR Act (Cth) Decisions made under this Act	1 September 1980	Trade and commerce
<i>Corporations Act 2001</i> (Cth)	Schedule 1(ha), ADJR Act (Cth) Division 1 of Part 7.4 Limits on control of certain licensees	27 September 2001	Trade and commerce
	Schedule 1(hb), ADJR Act (Cth) Part 7.5 Compensation regimes for financial markets	27 September 2001	Taxation and finance
<i>Insurance Act 1973</i> (Cth)	Schedule 1(hc), ADJR Act (Cth) Division 3 of Part VC Early payment of claims	24 October 2008	Trade and commerce
<i>Banking Act 1959</i> (Cth)	Schedule 1(hd), ADJR Act (Cth) Part II, Div 2AA, Subdiv C Payment of account-holders with declared ADI's	24 October 2008	Taxation and finance
<i>Financial Framework (Supplementary Powers) Act 1997</i>	Schedule 1(he), ADJR Act Part 2 Supplementary powers to make commitments to spend money and be	30 June 2014	Governance and administration

	involved in companies etc.		
<i>Public Governance, Performance and Accountability Act 2013</i> (Cth)	Schedule 1(hf), <i>ADJR Act</i> (Cth) s 15 Duty to govern the Commonwealth entity	30 June 2014	Governance and administration
	s 23 Power in relation to arrangements	30 June 2014	Governance and administration
	s 85 The Commonwealth's involvement in companies	30 June 2014	Governance and administration
<i>Defence Force Discipline Act 1982</i> (Cth)	Schedule 1(o), <i>ADJR Act</i> (Cth) Decisions made under this Act	31 December 1982	Defence and national security
<i>Commonwealth Electoral Act 1918</i> (Cth)	Schedule 1(q), <i>ADJR Act</i> (Cth) subsection 25(1) Termination of employment	22 December 1983	Electoral matters
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> (Cth)	Schedule 1(qa), <i>ADJR Act</i> (Cth) s 176 Who may apply for a civil penalty order	12 April 2007	Defence and national security
	s 248 Exemptions from modifications by the AUSTRAC CEO	12 April 2007	Defence and national security
<i>Extradition Act 1988</i> (Cth)	Schedule 1(r), <i>ADJR Act</i> (Cth) Decisions made under this Act	9 March 1988	Foreign affairs
<i>Child Support (Assessment) Act 1989</i> (Cth)	Schedule 1(s), <i>ADJR Act</i> (Cth) Part 6A Departure form administrative assessment of child support (departure determinations)	11 December 1992	Grants and social services
<i>Witness Protection Act 1994</i> (Cth)	Schedule 1(w), <i>ADJR Act</i> (Cth) Decisions made under this Act	18 October 1994	Courts and law enforcement
<i>Australian Crime Commission Act 2002</i> (Cth)	Schedule 1, <i>ADJR Act</i> (Cth) s 34B Federal court or Supreme Court to deal with contempt	19 February 2010	Courts and law enforcement
	s 34D Person in contempt may be detained	19 February 2010	Courts and law enforcement
<i>Australian Federal Police Act 1979</i> (Cth)	Schedule 1(wa), <i>ADJR Act</i> (Cth) subsection 60A(2B) Secrecy	18 October 1994	Courts and law enforcement
<i>Transfer of Prisoners Act 1983</i> (Cth)	Schedule 1(xb), <i>ADJR Act</i> (Cth) Part II Transfer for prisoner's welfare	16 August 2004	Courts and law enforcement
	Part III Transfer for purpose of trial	16 August 2004	Courts and law enforcement
	Schedule 1(xc), <i>ADJR Act</i> (Cth) Part IV Transfer for purpose of security	16 August 2004	Courts and law enforcement
<i>Administrative Appeals Tribunal Act 1975</i> (Cth)	Schedule 1, <i>ADJR Act</i> (Cth) Decisions by the Security Appeals Division of the AAT.	25 November 1996	Courts and law enforcement
<i>Proceeds of Crime Act 2002</i> (Cth)	Schedule 1(y), <i>ADJR Act</i> (Cth) Part 3-1 Examinations	11 October 2002	Courts and law enforcement
		19 February 2010	Courts and law enforcement

		s 315B Transfer of responsibility for principal orders and applications	5 December 2011	Courts and law enforcement
<i>Judiciary Act 1903</i> (Cth)		Schedule 1(za), <i>ADJR Act</i> (Cth) Part VIII B The Australian Government Solicitor	31 March 1999	Courts and law enforcement
<i>Family Law Act</i> (Cth)		Schedule 1(zd), <i>ADJR Act</i> (Cth) Subsection 21B(1A) Arrangement of business of courts	4 December 2009	Courts and law enforcement
		s 22(2AAA)(a) Appointment, removal and resignation of Judges	4 December 2009	Courts and law enforcement
<i>Federal Court of Australia Act</i> (Cth)		Schedule 1(ze), <i>ADJR Act</i> (Cth) Subsection 15(1AA) Arrangement of business of court	4 December 2009	Courts and law enforcement
		Paragraph 6(3)(a) Appointment, removal and resignation of Judges	4 December 2009	Courts and law enforcement
<i>Federal Circuit Court of Australia Act 1999</i> (Cth)		Schedule 1(zf), <i>ADJR Act</i> (Cth) Subsection 12(3) Arrangement of business of the Federal Circuit Court of Australia	4 December 2009	Courts and law enforcement
		Subsection 12(4) As above	4 December 2009	Courts and law enforcement
<b>Total number of Acts</b>	<b>55</b>	<b>Total number of provisions</b>	<b>92</b>	

### Appendix 3 – Right to silence breaches in current federal acts

Legislation	Key word(s) searched	Relevant section		Category
<i>Customs Act 1901</i> (Cth)	"must not fail"	s 243SA Failure to answer questions	20 July 2001	Customs
		s 243SB Failure to produce documents or records	20 July 2001	Customs
<i>Competition and Consumer Act 2010</i> (Cth)		s 95U: Refusal to be sworn or to answer question	17 December 2003	Trade and commerce
		s 95ZK: Power to obtain information or documents	17 December 2003	Trade and commerce
<i>Broadcasting Services Act 1992</i> (Cth)	"fail to answer"	s 202: Non-compliance with requirement to give evidence	14 July 1992	Media and communications
<i>Fair Work Act 2009</i> (Cth)	"must not fail"	s 712 Power to require persons to produce records or documents	7 April 2009	Employment and discrimination
<i>Export Control Act 1982</i> (Cth)	"must not fail"	s 11P Power of authorised officer to require information or documents	31 March 1999	Trade and commerce
<i>Australian Meat and Live-stock Industry Act 1997</i> (Cth)	"must not fail"	s 47 Power of authorised officer to require information or documents	17 December 1997	Trade and commerce
<i>Navigation Act 2012</i> (Cth)	"fails to comply"	s 263: Power to require persons to answer questions and produce documents	13 September 2012	Transport, aviation and maritime
<i>Trade Support Loans Act 2014</i> (Cth)	"fails to comply"	s 63 Offence	17 July 2014	Trade and commerce
		s 73 Offence	17 July 2014	Trade and commerce
<i>Agricultural and Veterinary Chemicals Code Act 1994</i> (Cth)	"must not fail"	Schedule 1, cl. 99 Information and documents about, and analysis of, substances supplied as active constituents or chemical products	21 July 2014	Primary Industries
<i>Australian Sports Anti-Doping Authority Act (2006)</i> (Cth)	"fails to comply"	s 13C Failure to comply with disclosure notice	29 June 2013	Health and sport
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> (Cth)	"shall not refuse"	s 64: Failure to answer questions etc.	16 March 1989	Environment
<b>Total number of Acts</b>	<b>12</b>	<b>Total number of provisions</b>	<b>14</b>	

## Appendix 4 – Privilege against self-incrimination breaches in current federal acts

Legislation	Key word(s) searched	Relevant section		Category
<i>Australian Security Intelligence Organisation Act 1979</i> (Cth)	"Person may not fail"	s 34L Giving information and producing things etc	22 July 2003	Defence and national security
<i>Offshore Minerals Act 1994</i> (Cth)	"must not fail"	s 372 Obligation to comply with request	25 February 1994	Resources and mining
<i>National Greenhouse and Energy Reporting Act 2007</i> (Cth)	"must not fail"	s 71 Power to request information	28 September 2007	Environment
<i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth)	"self-incrimination"	s 70-25 Self-incrimination	3 December 2012	Not-for-profits
<i>Defence Trade Controls Act 2012</i> (Cth)	"self-incrimination"	s 44 Self-incrimination	13 November 2012	Defence and national security
		s 57 Self-incrimination	13 November 2012	Defence and national security
		s 62 Self-incrimination	13 November 2012	Defence and national security
<i>Fair Work (Registered Organisations) Act 2009</i> (Cth)	"self-incrimination"	s 337AA Additional power to require information etc- civil penalty provisions	29 June 2012	Employment and discrimination
	"tend to incriminate"	s 337 Offences in relation to investigation by General Manager	29 June 2012	Employment and discrimination
<i>Coastal Trading (Revitalising Australian Shipping) Act 2012</i> (Cth)	"self-incrimination"	s 82 Self-incrimination etc.	21 June 2012	Trade and commerce
<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i> (Cth)	"self-incrimination"	s 189 Self-incrimination	15 September 2011	Environment
		s 202 Self-incrimination	15 September 2011	Environment
<i>Tertiary Education Quality and Standards Agency Act 2011</i> (Cth)	"self-incrimination"	s 69 Self-incrimination	29 June 2011	Education
		s 76 Self-incrimination	29 June 2011	Education
<i>Health Insurance Act 1973</i> (Cth)	"self-incrimination"	s 129AAF Self-incrimination etc.	8 April 2011	Health and sport
		s 106ZPQ No privilege against self-incrimination	16 July 1999	Health and sport
<i>Work Health and Safety Act 2011</i> (Cth)	"self-incrimination"	s 172 Abrogation of privilege against self-incrimination	29 November 2011	Employment
<i>Veterans' Entitlement Act 1986</i> (Cth)	"self-incrimination"	s 129 Self-incrimination	19 May 1986	Grants and social services
<i>Transport Safety Investigation Act 2003</i> (Cth)	"self-incrimination"	s 47 Self-incrimination not an excuse	11 April 2003	Transport, aviation and maritime
<i>Tobacco Plain Packaging Act 2011</i> (Cth)	"self-incrimination"	s 83 Self-incrimination	1 December 2011	Trade and commerce
<i>Therapeutic Goods Act 1989</i> (Cth)	"self-incrimination"	s 31F Self-incrimination	12 September 2000	Health and sport

		s 32JD Self-incrimination	31 May 2010	Health and sport
		s 32JK Self-incrimination	31 May 2010	Health and sport
		s 41JJ Self-incrimination	4 April 2002	Health and sport
<i>Textile, Clothing and Footwear Investment and Innovation Programs Act 1999 (Cth)</i>	"self-incrimination"	s 40 Self-incrimination	22 December 1999	Grants and social services
<i>Telecommunications Act 1997 (Cth)</i>	"self-incrimination"	s 524 Self-incrimination	22 April 1997	Media and communication
<i>Tax Agent Services Act 2009 (Cth)</i>	"self-incrimination"	s 60-115 Self-incrimination	26 March 2009	Trade and commerce
<i>Superannuation Industry (Supervision) Act 1993 (Cth)</i>	"self-incrimination"	s 336F Self-incrimination	24 September 2007	Taxation and finance
		s 287 Self-incrimination	30 November 1993	Taxation and finance
<i>Mutual Assistance in Business Regulation Act 1992 (Cth)</i>	"self-incrimination"	s 14 Self-incrimination	12 May 1992	Trade and commerce
<i>Military Rehabilitation and Compensation Act 2004 (Cth)</i>	"self-incrimination"	s 407 Self-incrimination	27 April 2004	Defence and national security
<i>Migration Act 1958 (Cth)</i>	"self-incrimination"	s 305C Requiring registered migration agents to give information or documents	21 April 2004	Immigration
		s 306J Self-incrimination	21 April 2004	Immigration
		s 24 Information and documents that incriminate a person	18 December 1991	Immigration
		s 311EA Requiring former registered migration agents to give information or documents	21 April 2004	Immigration
<i>Maritime Transport and Offshore Facilities Security Act 2003 (Cth)</i>	"self-incrimination"	s 185 Self-incrimination	12 December 2003	Transport, aviation and maritime
<i>Royal Commissions Act 1902 (Cth)</i>	"self-incrimination"	s 6A Self-incrimination	1 October 2001	Courts and law enforcement
<i>Retirement Savings Accounts Act 1997 (Cth)</i>	"self-incrimination"	s 117 Self-incrimination	28 May 1997	Taxation and finance
<i>Renewable Energy (Electricity) Act 2000 (Cth)</i>	"self-incrimination"	s 125B Self-incrimination	30 June 2006	Environment
<i>Quarantine Act 1908 (Cth)</i>	"self-incrimination"	s 79A Exclusion of privilege against self-incrimination in certain circumstances	23 December 1999	Customs
<i>Product Grants and Benefits Administration Act 2000 (Cth)</i>	"self-incrimination"	s 43 Self-incrimination	19 June 2000	Grants and social services
<i>Proceeds of Crime Act 2002 (Cth)</i>	"self-incrimination"	s 206 Privilege against self-incrimination etc does not apply	11 October 2002	Courts and law enforcement
	"self-incrimination"	s 271 Privilege against self-incrimination	11 October 2002	Courts and law enforcement



	"Self-incrimination"	s 39A Privilege against self-incrimination etc. does not apply	19 February 2010	Courts and law enforcement
<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)</i>	"self-incrimination"	Sch 3: cl.74(8) Self-incrimination	29 March 2006	Environment
<i>National Vocational Education and Training Regulator Act 2011 (Cth)</i>	"self-incrimination"	s 65 Self-incrimination etc.	12 April 2011	Education
<i>National Consumer Credit Protection Act 2009 (Cth)</i>	"self-incrimination"	s 295 Self-incrimination	15 December 2009	Taxation and finance
<i>Insurance Act 1973 (Cth)</i>	"self-incrimination"	s 38F Self-incrimination	24 September 2007	Trade and commerce
<i>Life Insurance Act 1995 (Cth)</i>	"self-incrimination"	s 156F Self-incrimination	24 September 2007	Trade and commerce
<i>Law Enforcement Integrity Commissioner Act 2006 (Cth)</i>	"self-incrimination"	s 80 Self-incrimination etc.	30 June 2006	Courts and law enforcement
		s 96 Self-incrimination etc.	30 June 2006	Courts and law enforcement
<i>Corporations Act 2001 (Cth)</i>	"self-incrimination"	s 1316A Privilege against self-incrimination not available to bodies corporate in Corporations Act criminal proceedings	28 June 2001	Trade and commerce
	"tend to incriminate"	s 597(12)	28 June 2001	Trade and commerce
<i>Competition and Consumer Act 2010 (Cth)</i>	"self-incrimination"	s 133E Self-incrimination	13 July 2010	Trade and commerce
		s 151BUF Self-incrimination	5 July 1999	Trade and commerce
		s 154R Answering of questions or producing evidential material	6 November 2006	Trade and commerce
<i>Industrial Chemicals (Notification and Assessment) Act 1989 (Cth)</i>	"self-incrimination"	s 40M Self-incrimination	13 July 2004	Environment
		s 100H Self-incrimination	11 March 2004	Environment
<i>Human Services (Medicare) Act 1973 (Cth)</i>	"self-incrimination"	s 8S Self-incrimination	23 June 1994	Grants and social services
<i>First Home Saver Accounts Act 2008 (Cth)</i>	"self-incrimination"	s 79 Self-incrimination	25 June 2008	Taxation and finance
<i>Fair Work Act 2009 (Cth)</i>	"self-incrimination"	s 713 Self-incrimination	7 April 2009	Employment and discrimination
<i>Evidence Act 1995 (Cth)</i>	"self-incrimination"	s 187 Abolition of the privilege against self-incrimination for bodies corporate	23 February 1995	Courts and law enforcement
<i>Environmental Protection and Biodiversity Conservation Act 1999 (Cth)</i>	"self-incrimination"	s 486J Self-incrimination	12 December 2006	Environment
<i>Defence Act 1903 (Cth)</i>	"self-incrimination"	s 51SO Power to require person to answer questions or produce documents	1 March 2006	Defence and national security
<i>Dairy Produce Act 1986 (Cth)</i>	"self-incrimination"	Sch 2, cl 40 Self-incrimination	3 April 2000	Primary Industries

		s 114 Self-incrimination	3 April 2000	Primary Industries
<i>Aviation Transport Security Act 2004</i> (Cth)	"self-incrimination"	s 110 Self-incrimination	10 March 2004	Transport, aviation and maritime
		s 112 Self-incrimination	26 March 2009	Transport, aviation and maritime
<i>Autonomous Sanctions Act 2011</i> (Cth)	"self-incrimination"	s 22 Self-incrimination not an excuse	26 May 2011	Foreign affairs
<i>Australian Securities and Investments Commission Act 2001</i> (Cth)	"self-incrimination"	s 68 Self-incrimination	28 June 2001	Taxation and finance
<i>Australian Participants in British Nuclear Tests (Treatment) Act 2006</i> (Cth)	"self-incrimination"	s 35 Self-incrimination	30 November 2006	Grants and social services
<i>Australian Federal Police Act 1979</i> (Cth)	"self-incrimination"	s 40A Self-incrimination	7 March 2000	Courts and law enforcement
		s 40L Financial statements	7 March 2000	Taxation and finance
<i>Australian Crime Commission Act 2002</i> (Cth)	"self-incrimination"	s 30 Failure of witnesses to attend and answer questions	15 June 1984	Courts and law enforcement
<i>Auditor-General Act 1997</i> (Cth)	"self-incrimination"	s 35 Self-incrimination no excuse	24 October 1997	Governance and administration
<i>Child Support (Registration and Collection) Act 1988</i> (Cth)	"self-incrimination"	s 72V Privilege against self-incrimination	30 June 2001	Courts and law enforcement
<i>Charter of the United Nations Act 1945</i> (Cth)	"self-incrimination"	s 33 Self-incrimination not an excuse	24 September 2007	Foreign affairs
<i>Banking Act 1959</i> (Cth)	"self-incrimination"	s 14AD APRA may require a person to give information etc for the purposes of this Division	29 June 2010	Taxation and finance
		s 52F Self-incrimination	24 September 2007	Taxation and finance
<i>Anti-Personnel Mines Convention Act 1998</i> (Cth)	"self-incrimination"	s 24 Self-incrimination	21 December 1998	Health and sport
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> (Cth)	"self-incrimination"	s 48 Self-incrimination	12 December 2006	Defence and national security
		s 150 Authorised officer may ask questions and seek production of documents	12 December 2006	Defence and national security
		s 169 Self-incrimination	12 December 2006	Defence and national security
		s 205 Self-incrimination	12 December 2006	Defence and national security
<i>Tradex Scheme Act 1999</i> (Cth)	"tend to incriminate"	s 30 Failure to comply with requirement made by authorised officer	23 December 1999	Taxation and finance
<i>Torres Strait Fisheries Act 1984</i> (Cth)	"tend to incriminate"	s 60 Regulations	26 April 1984	Environment
<i>Telecommunications (Interception and Access) Act 1979</i> (Cth)	"tend to incriminate"	s 88 Ombudsman to be given information and access notwithstanding other laws	5 June 1987	Media and communications

<i>Surveillance Devices Act 2004 (Cth)</i>	"tend to incriminate"	s 57 Ombudsman to be given information and access despite other laws	15 December 2004	Media and communications
<i>Protection of the Sea (Oil Pollution Compensation Funds) Act 1993 (Cth)</i>	"tend to incriminate"	s 44 Record-keeping and returns etc	15 October 1993	Environment
		s 46S Record-keeping and returns etc	3 October 2008	Environment
<i>Native Title Act 1993 (Cth)</i>	"tend to incriminate"	s 203DG Access to information	27 July 1998	Property
<i>Interstate Road Transport Act 1985 (Cth)</i>	"tend to incriminate"	s 45 Power to require persons to give information or produce documents	22 November 1985	Transport, aviation and maritime
<i>Liquid Fuel Emergency Act 1984 (Cth)</i>	"tend to incriminate"	s 30 Power to require persons to furnish information and produce documents	27 March 1984	Minerals and resources
<i>Crimes Act 1914 (Cth)</i>	"tend to incriminate"	s 3ZQR Documents must be produced	14 December 2005	Defence and national security
		s 15HV Ombudsman to be given information and access despite other laws	19 February 2010	Courts and law enforcement
<i>Inspector-General of Taxation Act 2003 (Cth)</i>	"tend to incriminate"	s 16 Certain excused are not available in relation to s 15 requirements	15 April 2003	Taxation and finance
<i>Horse Disease Response Levy Collection Act 2011 (Cth)</i>	"tend to incriminate"	s 12 Offence of failing to give information, document or return	21 October 2011	Taxation and finance
<i>Great Barrier Reef Marine Park Act 1975 (Cth)</i>	"tend to incriminate"	s 39P Record-keeping and returns etc	9 June 1993	Environment
<i>Foreign Acquisitions and Takeovers Act 1975 (Cth)</i>	"tend to incriminate"	s 36 Treasurer may require information	28 August 1975	Trade and commerce
<i>Export Control Act 1982 (Cth)</i>	"tend to incriminate"	s 11Q Secretary may require information or documents	31 March 1999	Trade and commerce
<i>Education Services for Overseas Students Act 2000 (Cth)</i>	"tend to incriminate"	s 123 Information and documents that incriminate a person	21 December 2000	Education
<i>Disability Services Act 1986 (Cth)</i>	"tend to incriminate"	s 27 Power to obtain information etc.	9 December 1986	Grants and social services
<i>Bankruptcy Act 1966 (Cth)</i>	"tend to incriminate"	s 81 Discovery of bankrupt's property etc.	8 April 1980	Taxation and finance
<i>Ombudsman Act 1976 (Cth)</i>	"is not excused"	s 9 Power to obtain information and documents	13 December 1976	Governance and administration
<i>Australian Human Rights Commission Act 1986 (Cth)</i>	"is not excused"	s 24 Disclosure of information or contents of documents	6 December 1986	Courts and law enforcement
<i>Inspector-General of Intelligence and Security Act 1986 (Cth)</i>	"is not excused"	s 18 Power to obtain information and documents	17 October 1986	Defence and national security
<i>Australian Sports Anti-Doping Authority Act 2006 (Cth)</i>	"is not excused"	s 13D Self-incrimination	29 June 2013	Health and sport
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth)</i>	Not searched	s 64 Failure to answer questions etc	16 March 1989	Environment
<b>Number of Acts</b>	<b>79</b>	<b>Number of provisions</b>	<b>108</b>	

## Appendix 5 – Type of legal rights breaches per act

Key	One legal right breached			
	Two legal rights breached			
	Three legal rights breached			
	Four legal rights breached			
Legislation	Onus of proof	Natural Justice	Right to Silence	Privilege against self-incrimination
<i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>A New Tax System (Luxury Car Tax) Act 1999 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>A New Tax System (Wine Equalisation Tax) Act 1999 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Administrative Appeals Tribunal Act 1975 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Administrative Decisions (Judicial Review) Act 1977 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Agricultural and Veterinary Chemicals Code Act 1994</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Australian Charities and Not-for-profits Commission Act 2012 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Australian Crime Commission Act 2002 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Australian Federal Police Act 1979 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Australian Human Rights Commission Act 1986 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Australian Meat and Live-stock Industry Act 1997 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Australian Participants in British Nuclear Tests (Treatment) Act 2006 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Australian Securities [&amp;] Investments Commission Act 2001 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Australian Security Intelligence Organisation Act 1979 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Australian Sports Anti-Doping Authority Act (2006)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Autonomous Sanctions Act 2011 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Aviation Transport Security Act 2004 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Banking Act 1959 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Bankruptcy Act 1966 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Broadcasting Services Act 1992 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Building and Construction Industry Improvement Act 2005 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Charter of the United Nations Act 1945 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Child Support (Assessment) Act 1989 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Child Support (Registration and Collection) Act 1988 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Classification (Publications, Films and Computer Games) Act 1995 (Cth)</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Coastal Trading (Revitalising Australian Shipping) Act 2012 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Commonwealth Electoral Act 1918 (Cth)</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Competition and Consumer Act 2010 (Cth)</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Copyright Act 1968 (Cth)</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Corporations Act 2001 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Crimes Act 1914 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Criminal Code Act 1995 (Cth)</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Customs Act 1901 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Customs Tariff Act 1995 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Dairy Produce Act 1986 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<i>Defence Act 1903 (Cth)</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Defence Force Discipline Act 1982 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Defence Trade Controls Act 2012 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Disability Services Act 1986 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Education Services for Overseas Students Act 2000 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Environmental Protection and Biodiversity Conservation Act 1999 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Evidence Act 1995 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Excise Act 1901 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Export Control Act 1982 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Extradition Act 1988 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Fair Work (Building Industry) Act 2012 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Fair Work (Registered Organisations) Act 2009 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Fair Work Act 2009 (Cth)</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Family Law Act (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Federal Circuit Court of Australia Act 1999 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Federal Court of Australia Act (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Financial Framework (Supplementary Powers) Act 1997</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>First Home Saver Accounts Act 2008 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Foreign Acquisitions and Takeovers Act 1975 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Fringe Benefits Tax Assessment Act 1986 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Fuel Tax Act 2006 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Great Barrier Reef Marine Park Act 1975 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Health Insurance Act 1973 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Horse Disease Response Levy Collection Act 2011 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Human Services (Medicare) Act 1973 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Income Tax Assessment Act 1936 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Income Tax Assessment Act 1997 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Industrial Chemicals (Notification and Assessment) Act 1989 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Inspector-General of Intelligence and Security Act 1986 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Inspector-General of Taxation Act 2003 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Insurance Act 1973 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Intelligence Services Act 2001 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Interstate Road Transport Act 1985 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Judiciary Act 1903 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Law Enforcement Integrity Commissioner Act 2006 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Life Insurance Act 1995 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Liquid Fuel Emergency Act 1984 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Maritime Transport and Offshore Facilities Security Act 2003 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Migration Act 1958 (Cth)</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Military Rehabilitation and Compensation Act 2004 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Mutual Assistance in Business Regulation Act 1992 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>National Consumer Credit Protection Act 2009 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>National Greenhouse and Energy Reporting Act 2007 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>National Health Reform Act 2011 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>National Vocational Education and Training Regulator Act 2011 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Native Title Act 1993 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Navigation Act 2012 (Cth)</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Offshore Minerals Act 1994 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Ombudsman Act 1976 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Personal Property Securities Act 2009 (Cth)</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Petroleum Resource Rent Tax Assessment Act 1987 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Proceeds of Crime Act 2002 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Product Grants and Benefits Administration Act 2000 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Protection of the Sea (Oil Pollution Compensation Funds) Act 1993 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Public Governance, Performance and Accountability Act 2013 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Quarantine Act 1908 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Renewable Energy (Electricity) Act 2000 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Retirement Savings Accounts Act 1997 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Road Safety Remuneration Act 2012 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Royal Commissions Act 1902 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Sex Discrimination Act 1984 (Cth)</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Superannuation Guarantee (Administration) Act 1992 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Superannuation Industry (Supervision) Act 1993 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Surveillance Devices Act 2004 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Tax Agent Services Act 2009 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Taxation Administration Act 1953 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Telecommunications (Interception and Access) Act 1979 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Telecommunications Act 1997 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Tertiary Education Quality and Standards Agency Act 2011 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Textile, Clothing and Footwear Investment and Innovation Programs Act 1999 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Therapeutic Goods Act 1989 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Tobacco Plain Packaging Act 2011 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Torres Strait Fisheries Act 1984 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Trade Support Loans Act 2014</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Tradex Scheme Act 1999 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Training Guarantee (Administration) Act 1990 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Transfer of Prisoners Act 1983 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Transport Safety Investigation Act 2003 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Trust Recoupment Tax Assessment Act 1985 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Veterans' Entitlement Act 1986 (Cth)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Witness Protection Act 1994 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Work Health and Safety Act 2011 (Cth)</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<i>Workplace Relations Act 1996 (Cth)</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Total Number of Acts**

**123**