Human Rights and Anti-Discrimination Bill 2012

No.    , 2012

(Attorney-General)

A Bill for an Act relating to human rights and discrimination, and for related purposes
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xi Human Rights and Anti-Discrimination Bill 2012 No., 2012
A Bill for an Act relating to human rights and discrimination, and for related purposes

The Parliament of Australia enacts:

Chapter 1—Introduction

Part 1-1—Preliminary

Division 1—Short title and commencement

1 Short title

This Act may be cited as the Human Rights and Anti-Discrimination Act 2012.
Chapter 1 Introduction
Part 1-1 Preliminary
Division 1 Short title and commencement

Section 2

2 Commencement

(1) Each provision of this Act specified in column 1 of the table
commences, or is taken to have commenced, in accordance with
column 2 of the table. Any other statement in column 2 has effect
according to its terms.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
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<tbody>
<tr>
<td>1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
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<td>2. Sections 3 to 208</td>
<td>A single day to be fixed by Proclamation.</td>
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<td>However, if the provision(s) do not</td>
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<td>commence within the period of 12 months</td>
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<td>beginning on the day this Act receives the Royal</td>
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<td>Assent, they commence on the day</td>
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<td>after the end of that period.</td>
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Note: This table relates only to the provisions of this Act as originally
enacted. It will not be amended to deal with any later amendments of
this Act.

(2) Any information in column 3 of the table is not part of this Act.
Information may be inserted in this column, or information in it
may be edited, in any published version of this Act.
Division 2—Objects of this Act

3 Objects of this Act

(1) The objects of this Act are as follows:
   (a) to eliminate discrimination, sexual harassment and racial
       vilification, consistently with Australia’s obligations under
       the human rights instruments and the ILO instruments (see
       subsections (2) and (3));
   (b) in conjunction with other laws, to give effect to Australia’s
       obligations under the human rights instruments and the ILO
       instruments (see subsections (2) and (3));
   (c) to provide for the continued existence of the Australian
       Human Rights Commission as Australia’s national human
       rights institution;
   (d) to promote recognition and respect within the community for:
       (i) the principle of equality (including both formal and
           substantive equality); and
       (ii) the inherent dignity of all people;
   (e) to recognise that achieving substantive equality may require
       the taking of special measures or the making of reasonable
       adjustments;
   (f) to enable complaints alleging unlawful conduct to be
       resolved in a way that emphasises alternative dispute
       resolution, promotes just outcomes for all parties and is
       low-cost and accessible to all;
   (g) to encourage and facilitate compliance with the Act.

Note: In interpreting a provision of this Act, the interpretation that would
best achieve the objects of this Act is to be preferred to each other
interpretation: see section 15AA of the Acts Interpretation Act 1901.

(2) The human rights instruments are the following, as amended and
in force for Australia from time to time:
   (a) the International Convention on the Elimination of All Forms
       of Racial Discrimination done at New York on 21 December
       1965 ([1975] ATS 40);
Section 3

(b) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5);

(c) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);

(d) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9);

(e) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984 ([1989] ATS 21);

(f) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4);

(g) the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12).

(3) The ILO instruments are the following, as amended and in force for Australia from time to time:

(a) ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value done at Geneva on 29 June 1951 ([1975] ATS 45);

(b) ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation done at Geneva on 25 June 1958 ([1974] ATS 12);

(c) ILO Convention (No. 156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities done at Geneva on 23 June 1981 ([1991] ATS 7);


Note: In 2012, the text of a Convention or Covenant in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).
Division 3—Guide to this Act

4 Guide to this Act

This Act is about discrimination and other matters relating to human rights.

This Chapter deals with the following introductory matters:

(a) the short title, commencement and objects of this Act (Part 1-1);

(b) the interpretation of this Act (Part 1-2);

(c) matters related to the application of this Act (Part 1-3).

Chapter 2 deals with unlawful conduct and equality before the law. It contains provisions about the following:

(a) the protected attributes (Part 2-1);

(b) unlawful discrimination (Part 2-2);

(c) other kinds of unlawful conduct, including sexual harassment and racial vilification (Part 2-3);

(d) situations in which one person is liable for the unlawful conduct of another person (Part 2-4);

(e) equality before the law (Part 2-5).

Chapter 3 deals with measures to assist people to comply with this Act. It contains provisions about the following:

(a) guidelines (Division 2 of Part 3-1);

(b) review of policies or programs (Division 3 of Part 3-1);
Chapter 1 Introduction
Part 1-1 Preliminary
Division 3 Guide to this Act

Section 4

(c) action plans (Division 4 of Part 3-1);
(d) disability standards (Division 5 of Part 3-1);
(e) compliance codes (Division 6 of Part 3-1);
(f) special measure determinations (Division 7 of Part 3-1);
(g) temporary exemptions (Division 8 of Part 3-1).

Chapter 4 deals with complaints to the Commission. It contains provisions about the following:

(a) making complaints to the Commission about unlawful conduct, or about Commonwealth conduct that is contrary to human rights (Part 4-1);
(b) how the Commission deals with complaints (Part 4-2);
(c) when an application may be made to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct (Part 4-3).

Chapter 5 deals with inquiries by the Commission.

Chapter 6 deals with the Commission. It includes provisions about the following:

(a) the establishment, functions, powers and liabilities of the Commission (Part 6-1);
(b) the constitution and membership of the Commission (Part 6-2);
(c) how the Commission operates (Part 6-3);
(d) other matters relating to the Commission (Part 6-4).
Chapter 7 deals with miscellaneous matters, including offences related to the administration of this Act.
Section 5

Part 1-2—Interpretation

Division 1—Guide to this Part

5 Guide to this Part

This Part deals with the interpretation of this Act.

Division 2 contains the dictionary of definitions, and other interpretive provisions.
Division 2—Interpretation

6 The dictionary

(1) In this Act:

Aboriginal and Torres Strait Islander Social Justice Commissioner: see section 160.

Aboriginal person means a person of the Aboriginal race of Australia.

accommodation includes residential or business accommodation.

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

action plan: see subsection 67(1).

affected party, in relation to a complaint: see section 89.

age includes age group.

Age Discrimination Commissioner: see section 160.

areas of public life: see subsection 22(2).

assistance animal means a dog or other animal that is:

(a) accredited under a State law or a Territory law that provides for the accreditation of animals trained to assist people who have a disability to alleviate the effect of the disability; or

(b) accredited by an animal training organisation prescribed by the regulations; or

(c) trained:

(i) to assist a person who has a disability to alleviate the effect of the disability; and

(ii) to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.

associate of a person includes:

(a) a member of the person’s immediate family, or another relative of the person; and
(b) another person with whom the person has a care, business or social relationship.

Australia, when used in a geographical sense, includes the external Territories.

breastfeeding includes the act of expressing milk, and also includes:
(a) an act of breastfeeding; and
(b) breastfeeding over a period of time.

charitable benefits means benefits for purposes that are exclusively charitable according to the law (including the common law) in force in any part of Australia.

child: without limiting who is a child of a person for the purposes of this section, each of the following is the child of a person:
(a) an adopted child, stepchild or exnuptial child of the person;
(b) someone who is a child of the person within the meaning of the Family Law Act 1975.

children means people under the age of 18.

Note: This definition is not intended to affect the meaning of child.

club or member-based association means an association (whether incorporated or unincorporated) of people associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that provides and maintains its facilities, in whole or in part, from the funds of the association.

Commission means the body corporate continued in existence by section 145 under the name Australian Human Rights Commission.

Commission member means a member of the Commission (including the President).

Commission offices: see subsection 163(2).

Commission official means:
(a) a Commission member; or
(b) a member of the Commission staff; or
Section 6

(c) a person otherwise acting for or on behalf of the Commission
or a Commission member.

Commission staff means the staff of the Commission referred to in
subsection 189(1).

committee of management of an unincorporated association means
the body (however described) that governs, manages or conducts
the affairs of the association.

Commonwealth authority means:
(a) a body established for a public purpose by or under a
Commonwealth law; or
(b) an incorporated company over which any of the following is
in a position to exercise control:
(i) the Commonwealth;
(ii) a body referred to in paragraph (a); or
(c) a person who holds:
(i) an office or position established by or under a
Commonwealth law; or
(ii) an appointment made under a Commonwealth law; or
(iii) an appointment made by the Governor-General, by a
Minister, or by any other person on behalf of the
Commonwealth Government; or
(iv) an office or appointment that is prescribed by the
regulations for the purpose of this subparagraph.

Commonwealth conduct means:
(a) conduct engaged in by or on behalf of any of the following:
(i) the Commonwealth;
(ii) a Commonwealth authority;
(iii) the Administration of a Territory;
(iv) a Territory authority; or
(b) conduct engaged in in accordance with a Commonwealth law
or a Territory law; or
(c) conduct engaged in within a Territory.

Commonwealth-funded aged care means:
(a) aged care, within the meaning of the Aged Care Act 1997:
(i) that is provided by an approved provider, within the
meaning of that Act; and
(ii) in relation to which the approved provider has
responsibilities under that Act; or
(b) care or services in relation to which a grant has been paid
under Chapter 5 of the Aged Care Act 1997; or
(c) care or services of a class prescribed by the regulations for
the purpose of this paragraph.

Commonwealth law means any of the following (or a provision of
any of the following):
(a) an Act;
(b) regulations, or any another instrument, made under an Act;
(c) any other legislation that applies as a law of the
Commonwealth because of an Act, or because of regulations
or an instrument referred to in paragraph (b);
but does not include a Territory law.

Commonwealth program means a program conducted by or on
behalf of the Commonwealth Government.

complainant, in relation to a complaint: see section 89.

complaint means a complaint under Chapter 4.

compliance code: see subsection 75(1).

conduct includes:
(a) a refusal or failure to act; and
(b) a course of conduct.

connected with an area of public life or other activity: see
section 7.

constitutional corporation means a corporation to which
paragraph 51(xx) of the Constitution applies.

contrary to human rights: conduct is contrary to human rights if:
(a) the conduct is contrary to, or inconsistent with, any human
right; and
(b) the conduct is not:
Section 6

(i) a special measure to achieve equality; or
(ii) engaged in in accordance with a law, policy or program
that is a special measure to achieve equality; or
(iii) conduct consisting of the making, amending, revoking
or repealing (or refusing or failing to make, amend,
revoke or repeal) a law.

custodian: see subsection 97(2).

de facto partner has the meaning given by the Acts Interpretation
Act 1901.

Defence combat duties means duties that require, or are likely to
require, a person to commit, or participate directly in the
commission of, an act of violence in an armed conflict.

Defence combat-related duties means:
(a) duties that require, or are likely to require, a person to
undertake training or preparation for, or connected with,
Defence combat duties; or
(b) duties that require, or are likely to require, a person to work
in support of a person performing Defence combat duties.

Defence peacekeeping service means peacekeeping service, within
the meaning of the Veterans’ Entitlements Act 1986.

director includes a constituent member of a body corporate
incorporated by or under a law.

disability means any of the following:
(a) total or partial loss of bodily or mental functions;
(b) total or partial loss of a part of the body;
(c) the presence in the body of organisms causing disease or
illness;
(d) the presence in the body of organisms capable of causing
disease or illness;
(e) the malfunction, malformation or disfigurement of a part of
the body;
Section 6

(f) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction;

(g) a disorder, illness or disease that affects a person’s thought processes, perception of reality, emotions or judgement, or that results in disturbed behaviour;

and includes:

(h) behaviour that is a symptom or manifestation of a disability referred to in any of the above paragraphs; and

(i) having any of the following because of having a disability referred to in any of the above paragraphs:

   (i) a carer, assistant, interpreter or reader;

   (ii) an assistance animal or disability aid.

*disability aid* means equipment (including a palliative or therapeutic device) that:

   (a) is used by a person who has a disability; and

   (b) provides assistance to alleviate the effect of the disability.

*Disability Discrimination Commissioner* see section 160.

*disability standard* see subsection 70(1).

*discriminates* see section 19.

Note: The words *discriminate* and *discrimination* have corresponding meanings; see section 18A of the Acts Interpretation Act 1901.

*discriminatory effect* see subsection 19(6).

*educational institution* means a school, college, university or other institution at which education or training is provided.

*employment* means:

   (a) work under a contract of employment (within its ordinary meaning); or

   (b) work that a person is otherwise appointed or engaged to perform; or

   (c) voluntary or unpaid work;

whether the work is on a full-time, part-time, temporary or casual basis.

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employment agency means any person who, or body that, whether for payment or not:
(a) assists people to find employment or other work; or
(b) assists people to find employees or other workers.

family responsibilities of a person means responsibilities of the person to care for or support:
(a) a child of the person who is wholly or substantially dependent on the person; or
(b) any other member of the person’s immediate family who is in need of care and support.

Federal Court means the Federal Court of Australia.

financial liability: see subsection 156(2).

gender identity means:
(a) the identification, on a genuine basis, by a person of one sex as a member of the other sex (whether or not the person is recognised as such):
   (i) by assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or
   (ii) by living, or seeking to live, as a member of the other sex; or
(b) the identification, on a genuine basis, by a person of indeterminate sex as a member of a particular sex (whether or not the person is recognised as such):
   (i) by assuming characteristics of that sex, whether by means of medical intervention, style of dressing or otherwise; or
   (ii) by living, or seeking to live, as a member of that sex.

ground of discrimination: see subsection 19(5).

human rights means the rights and freedoms recognised or declared by the human rights instruments.
human rights instruments: see subsection 3(2).

ILO means the International Labour Organization.

ILO instruments: see subsection 3(3).

immediate family: a person’s immediate family includes:
(a) a spouse, former spouse, de facto partner or
   former de facto partner of the person; and
(b) a child, parent, grandparent, grandchild or sibling of the
   person, or of a spouse, former spouse, de facto partner or
   former de facto partner of the person.

immigrant status means the status of being an immigrant.

industrial association has the same meaning as in the Fair Work
Act 2009.

industrial history of a person means the person’s history of:
(a) becoming or not becoming, or remaining or ceasing to be, an
   officer or member of an industrial association; or
(b) doing, or not doing, any of the following:
   (i) becoming involved in establishing an industrial
       association;
   (ii) organising or promoting a lawful activity for, or on
       behalf of, an industrial association;
   (iii) encouraging, or participating in, a lawful activity
       organised or promoted by an industrial association;
   (iv) complying with a lawful request made by, or with a
       requirement of, an industrial association;
   (v) representing or advancing the views, claims or interests
       of an industrial association;
   (vi) paying a fee (however described) to an industrial
       association, or to someone in lieu of an industrial
       association;
   (vii) seeking to be represented by an industrial association.

inquiry means an inquiry under Chapter 5.

insurance policy means any of the following:
(a) a life insurance policy;
(b) a policy of insurance against accident or illness, or any other policy of insurance;
(c) an annuity.

intelligence agency has the same meaning as in the Inspector-General of Intelligence and Security Act 1986.

judicial office means:
(a) an office of a judge, magistrate or justice of a court created by the Parliament or of a court of a State; or
(b) an office whose holder has, under a law (other than a Territory law), the same status as a judge, magistrate or justice of a court created by the Parliament or of a court of a State.

junior rates means remuneration payable in accordance with minimum wage entitlements, under a Commonwealth law, a State law or a Territory law, for people under the age of 21.

justifiable: for when conduct is justifiable, see section 23.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

law means a Commonwealth law, a State law or a Territory law.

marital or relationship status means a person’s status of being any of the following:
(a) single;
(b) married;
(c) married, but living separately and apart from his or her spouse;
(d) divorced;
(e) the de facto partner of another person;
(f) the de facto partner of another person, but living separately and apart from that other person;
(g) the former de facto partner of another person;
(h) the surviving spouse or de facto partner of a person who has died.
Section 6

**medical support person** means:

(a) a person who is exclusively engaged in the search for, or the collection, transport or treatment of, the wounded or sick, or in the prevention of disease, and whose engagement is connected with the Defence Force; or

(b) a person who is exclusively engaged in the administration of medical units and establishments, and whose engagement is connected with the Defence Force.

*National Children’s Commissioner:* see section 160.

**occupational authority** means an authority or body that has power to grant, continue or terminate an occupational qualification.

**occupational qualification** means an authorisation or qualification that is needed for, or facilitates:

(a) practising a profession; or

(b) carrying on a trade; or

(c) engaging in an occupation.

**parent:** without limiting who is a parent of a person for the purpose of this Act, someone is the parent of a person if the person is his or her child because of paragraph (b) of the definition of child.

**place** means any place or premises (whether enclosed or built on or not), and includes a structure, building, aircraft, vehicle or vessel.

**policy** (except in the context of a reference to insurance or life insurance) includes a condition, requirement or practice.

**potential pregnancy** of a person includes:

(a) the fact that the person is or may be capable of bearing children; or

(b) the fact that the person has expressed a desire to become pregnant; or

(c) the fact that the person is likely, or is perceived as being likely, to become pregnant.

**prejudice to the security, defence or international relations of Australia** includes any such prejudice that might result from the divulging of information or matters communicated in confidence.
Section 6

by or on behalf of the government of a foreign country, an
authority of a government of a foreign country or an international
organisation to the Commonwealth Government, a Commonwealth
authority or a person receiving the communication on behalf of the
Commonwealth Government or a Commonwealth authority.

President: see section 160.

program includes a scheme.

properly made: for when a complaint is properly made, see
subsection 101(3).

protected attributes: see section 17.

protected document: see subsection 193(3).

protected information: see subsection 193(2).

public place means a place, or a part of a place, to which the
public, or a section of the public, ordinarily has access, whether or
not by payment or by invitation.

race includes:
(a) colour; and
(b) descent; and
(c) national or ethnic origin.

Race Discrimination Commissioner: see section 160.

racial vilification: see section 51.

reasonable adjustment: see section 25.

registered charity means an entity that is registered under the
Australian Charities and Not-for-profits Commission Act 2012 as
the type of entity mentioned in column 1 of item 1 of the table in
subsection 25-5(5) of that Act.

representative complaint: see section 89.

respondent, in relation to a complaint: see section 89.

review report: see subsection 64(3).
services means services of any kind, including (for example) the following:
(a) services relating to banking, insurance, superannuation and the provision of grants, loans, credit or finance;
(b) services relating to entertainment, recreation or refreshment;
(c) services relating to transport or travel;
(d) services relating to telecommunications;
(e) services of the kind provided by the members of any profession or trade;
(f) services of the kind provided by a government, a government authority or a local government body.

Sex Discrimination Commissioner: see section 160.

sexually harasses: see section 49.

Note: The expressions sexually harass and sexual harassment have corresponding meanings (see section 18A of the Acts Interpretation Act 1901).

sexual orientation means a person’s sexual orientation towards:
(a) persons of the same sex; or
(b) persons of the opposite sex; or
(c) persons of either sex.

special measure determination: see subsection 79(1).

special measure to achieve equality: see section 21.

Note: See also section 82 (effect of special measure determination).

State, except in subsections 12(4) and (5), includes the Australian Capital Territory and the Northern Territory.

State authority means:
(a) a body established for a public purpose by or under a State law; or
(b) an incorporated company over which any of the following is in a position to exercise control:
(i) a State;
(ii) a body referred to in paragraph (a); or
(c) a person who holds:
Section 6

(i) an office or position established by or under a State law; or
(ii) an appointment made under a State law; or
(iii) an appointment made by the Governor of a State, by a Minister of a State, or by any other person on behalf of the Government of a State; or
(iv) an office or appointment that is prescribed by the regulations for the purpose of this subparagraph.

State law means a law, other than a Commonwealth law, in force in a State (or a provision of such a law).

State or Territory anti-discrimination law: see subsection 14(3).

stepchild: without limiting who is a stepchild of a person for the purpose of this Act, someone who is a child of a de facto partner of the person is the stepchild of the person, if he or she would be the person’s stepchild except that the person is not legally married to the partner.

superannuation fund or scheme includes a provident fund or scheme.

surviving spouse or de facto partner of a person who has died means a person who was the person’s spouse or de facto partner immediately before the person died.

temporary exemption: see section 83.

Territory, except in subsection 12(4), does not include the Australian Capital Territory or the Northern Territory.

Territory authority means:

(a) a body established for a public purpose by or under a Territory law; or
(b) an incorporated company over which any of the following is in a position to exercise control:
   (i) the Administration of a Territory;
   (ii) a body referred to in paragraph (a);
(c) a person who holds:
Section 6

1. (i) an office or position established by or under a Territory law; or
2. (ii) an appointment made under a Territory law; or
3. (iii) an appointment made by a Minister of a Territory, or by any other person on behalf of the Administration of a Territory; or
4. (iv) an office or appointment that is prescribed by the regulations for the purpose of this subparagraph.

**Territory law** means any of the following (or a provision of any of the following):

(a) a Territory Act;
(b) regulations, or an instrument, made under a Territory Act;
(c) any other legislation that applies as a law of a Territory because of:
   (i) an Act relating to the administration or government of a Territory; or
   (ii) a Territory Act; or
   (iii) regulations or an instrument referred to in paragraph (b).

**Territory program** means a program conducted by or on behalf of the Administration of a Territory.

**Torres Strait Islander** means a descendant of an Indigenous inhabitant of the Torres Strait Islands.

**unfavourable**: for when treatment of a person is **unfavourable**, see subsection 19(2).

**unlawful conduct** means conduct that is unlawful under any of the following:

(a) Division 3 of Part 2-2 (unlawful discrimination);
(b) Division 2 of Part 2-3 (sexual harassment);
(c) Division 3 of Part 2-3 (racial vilification);
(d) Division 4 of Part 2-3 (requesting or requiring information that could be used to discriminate);
(e) Division 5 of Part 2-3 (publishing etc. intention to engage in unlawful conduct);
(f) Division 6 of Part 2-3 (victimisation);
(g) section 73 (contravention of a disability standard).

work and work-related areas includes:

(a) employment, including:
   (i) offering or terminating employment; and
   (ii) determining or applying terms and conditions of employment, and benefits or opportunities available to employees; and
   (iii) performing work as an employee; and

(b) membership of partnerships, including:
   (i) inviting people to become partners, or removing people from partnerships; and
   (ii) determining or applying terms and conditions on which people are partners, and benefits or opportunities available to partners; and
   (iii) performing work as a partner; and

(c) membership of industrial associations, including:
   (i) accepting people as members, or terminating their membership; and
   (ii) determining or applying terms and conditions of membership, and benefits or opportunities available to members; and

(d) the provision of services by employment agencies; and

(e) the conferral, renewal, extension, revocation or withdrawal of qualifications by occupational authorities.

(2) For the purposes of the definition of immediate family in subsection (1), if one person is the child of another person because of paragraph (b) of the definition of child in that subsection, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

7 Meaning of connected with an area of public life etc.

Conduct engaged in by a person (the first person) in relation to another person is connected with a particular area of public life or other activity if the conduct is engaged in:
Section 8

(a) in the course of, for the purpose of, or in relation to, that area of public life or other activity; or

(b) without limiting paragraph (a)—while the first person or the other person (or while each of them) is involved in an activity or undertaking in the course of, for the purpose of, or that is otherwise related to, that area of public life or other activity.

8 Multiple reasons or purposes for conduct

(1) For the purposes of this Act, a person or body engages in conduct (however described) for a particular reason, or for a particular purpose, if:

(a) that reason is the sole reason, or is one of the reasons, why the person or body engages in the conduct; or

(b) that purpose is the sole purpose, or is one of the purposes, for which the person engages in the conduct.

(2) Subsection (1) has effect subject to any express contrary intention appearing in a provision of this Act.
Part 1-3—Application of this Act

Division 1—Guide to this Part

9 Guide to this Part

This Part deals with matters related to the application of this Act.

Division 2 deals with the geographical application of this Act.

Division 3 deals with the constitutional basis of this Act.

Division 4 deals with how this Act interacts with State and Territory laws.

Division 5 deals with other miscellaneous matters.
Chapter 1  Introduction
Part 1-3  Application of this Act
Division 2  Geographical application

Section 10

Division 2—Geographical application

10  Act applies throughout Australia

(1) This Act applies throughout Australia.

(2) This Act applies to conduct engaged in in Australia, even if the
    conduct involves persons or things, or matters arising, outside
    Australia.
Division 3—Constitutional basis

11 Main constitutional basis: external affairs

This Act has effect to the extent that it:

(a) gives effect to the human rights instruments and the ILO instruments; or

(b) relates to:

(i) matters of international concern; or

(ii) matters external to Australia.

12 Other constitutional bases

Act also has effect as provided by this section

(1) Without limiting its effect as provided by section 11, this Act also has effect as provided by this section.

Constitutional corporations

(2) This Act also has the effect it would have if each reference in this Act to a person (the first person) engaging in conduct in relation to another person were, by express reference, limited so that it applies only if one or more of the following paragraphs applies:

(a) the first person is a constitutional corporation;

(b) the first person is an officer, employee or agent of a constitutional corporation, and the conduct is connected with the person’s duties as such an officer, employee or agent;

(c) the other person is an officer, employee or agent of a constitutional corporation, and the conduct is connected with the person’s duties as such an officer, employee or agent.

Commonwealth and Territory matters

(3) This Act also has the effect it would have if each reference in this Act to a person (the first person) engaging in conduct in relation to another person were, by express reference, limited so that it applies only if one or more of the following paragraphs applies:
Chapter 1 Introduction
Part 1-3 Application of this Act
Division 3 Constitutional basis

Section 12

(a) the first person is the Commonwealth, a Territory, a
Commonwealth authority or a Territory authority;
(b) the first person is an officer, employee or agent of the
Commonwealth, a Territory, a Commonwealth authority or a
Territory authority, and the conduct is connected with the
person’s duties as such an officer, employee or agent;
(c) the other person is an officer, employee or agent of the
Commonwealth, a Territory, a Commonwealth authority or a
Territory authority, and the conduct is connected with the
person’s duties as such an officer, employee or agent;
(d) the conduct occurs in the course of the first person, or the
other person, performing a function or exercising a power
under a Commonwealth law or a Territory law;
(e) the conduct is engaged in within a Territory.

Trade or commerce

(4) This Act also has the effect it would have if each reference in this
Act to a person (the first person) engaging in conduct in relation to
another person were, by express reference, confined to conduct
engaged in while the first person, or the other person, is acting in
the course of, or in relation to, trade or commerce:
(a) between Australia and places outside Australia; or
(b) among the States; or
(c) between a State and a Territory; or
(d) between 2 Territories.

Banking and insurance

(5) This Act also has the effect it would have if each reference in this
Act to a person (the first person) engaging in conduct in relation to
another person were, by express reference, confined to conduct
engaged in while the first person, or the other person, is acting in
the course of, or in relation to, the carrying on of:
(a) the business of banking, other than State banking (within the
meaning of paragraph 51(xiii) of the Constitution) not
extending beyond the limits of the State concerned; or

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(b) the business of insurance, other than State insurance (within
the meaning of paragraph 51(xiv) of the Constitution) not
extending beyond the limits of the State concerned.

Telecommunications

(6) This Act also has the effect it would have if each reference in this
Act to a person engaging in conduct in relation to another person
were, by express reference, confined to conduct engaged in by
means of a postal, telegraphic, telephonic or other like service
within the meaning of paragraph 51(v) of the Constitution.

13 Act not to apply so as to exceed Commonwealth power

(1) Unless the contrary intention appears, if a provision of this Act:
(a) would, apart from this section, have an application (an
invalid application) in relation to:
(i) one or more particular persons, things, matters, places,
circumstances or cases; or
(ii) one or more classes (however defined or determined) of
persons, things, matters, places, circumstances or cases;
because of which the provision exceeds the Commonwealth’s
legislative power; and
(b) also has at least one application (a valid application) in
relation to:
(i) one or more particular persons, things, matters, places,
circumstances or cases; or
(ii) one or more classes (however defined or determined) of
persons, things, matters, places, circumstances or cases;
that, if it were the provision’s only application, would be
within the Commonwealth’s legislative power;
it is the Parliament’s intention that the provision is not to have the
invalid application, but is to have every valid application.

(2) Despite subsection (1), the provision is not to have a particular
valid application if:
(a) apart from this section, it is clear, taking into account the
provision’s context and the purpose or object underlying this
Act, that the provision was intended to have that valid
Section 13

application only if every invalid application, or a particular
invalid application, of the provision had also been within the
Commonwealth’s legislative power; or

(b) the provision’s operation in relation to that valid application
would be different in a substantial respect from what would
have been its operation in relation to that valid application if
every invalid application of the provision had been within the
Commonwealth’s legislative power.

(3) Subsection (2) does not limit the cases where a contrary intention
may be taken to appear for the purposes of subsection (1).
Division 4—Interaction with State and Territory laws

14 Interaction with State and Territory anti-discrimination laws

(1) This Act is not intended to exclude or limit the operation of a State or Territory anti-discrimination law, to the extent that that law is capable of operating concurrently with this Act.

(2) Subsection (1) does not apply in relation to the provisions of this Act relating to disability standards and compliance codes.

Note: Disability standards and compliance codes may provide that they are, or are not, intended to affect the operation of State laws or Territory laws: see subsections 70(3) and 75(4).

(3) A State or Territory anti-discrimination law is a State law, or a Territory law, prescribed by the regulations for the purpose of this subsection.
Chapter 1  Introduction
Part 1-3  Application of this Act
Division 5  Miscellaneous

Section 15

Division 5—Miscellaneous

15 Act binds Crown

(1) This Act binds the Crown in each of its capacities.

(2) However, this Act does not make the Crown liable to be prosecuted for an offence.
Chapter 2—Unlawful conduct and equality before the law

Part 2-1—The protected attributes

Division 1—Guide to this Part

16 Guide to this Part

This Part deals with the protected attributes. In broad terms, Parts 2-2 and 2-3 make discrimination and certain other conduct unlawful if it is based on people’s protected attributes.

Division 2 specifies the protected attributes.
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(2) Each protected attribute is taken to include:

(a) characteristics that people who have the attribute generally
have or are generally assumed to have; and

(b) in relation to a particular person—characteristics that the
person has because he or she has the attribute.
Part 2-2—Unlawful discrimination

Division 1—Guide to this Part

18 Guide to this Part

This Part deals with unlawful discrimination.

Division 2 defines what constitutes discrimination.

Division 3 describes when discrimination is unlawful. In broad terms, discrimination is unlawful if it occurs in any area of public life.

Division 4 contains exceptions to unlawful discrimination.
Chapter 2  Unlawful conduct and equality before the law
Part 2-2  Unlawful discrimination
Division 2  Meaning of discrimination

Section 19

Division 2—Meaning of discrimination

19 When a person discriminates against another person, and related concepts

   Discrimination by unfavourable treatment

(1) A person (the first person) discriminates against another person if the first person treats, or proposes to treat, the other person unfavourably because the other person has a particular protected attribute, or a particular combination of 2 or more protected attributes.

    Note: This subsection has effect subject to section 21.

(2) To avoid doubt, unfavourable treatment of the other person includes (but is not limited to) the following:

   (a) harassing the other person;
   (b) other conduct that offends, insults or intimidates the other person.

   Discrimination by imposition of policies

(3) A person (the first person) discriminates against another person if:

   (a) the first person imposes, or proposes to impose, a policy; and
   (b) the policy has, or is likely to have, the effect of disadvantaging people who have a particular protected attribute, or a particular combination of 2 or more protected attributes; and
   (c) the other person has that attribute or combination of attributes.

    Note: This subsection has effect subject to section 21.

   Extended meaning of having a protected attribute

(4) A reference in subsection (1) or (3) to a person having a particular protected attribute (whether alone, or as part of a combination of 2 or more protected attributes) is taken also to include a reference to each of the following:

   (a) an associate of the person having the protected attribute;
(b) the person, or an associate of the person, having in the past
had the protected attribute;
(c) the possibility that the person, or an associate of the person,
may in the future have the protected attribute;
(d) the first person referred to in subsection (1) or (3) assuming
that the person, or an associate of the person:
   (i) has the protected attribute; or
   (ii) has in the past had the protected attribute; or
   (iii) may in the future have the protected attribute.

The ground of discrimination

(5) The ground of discrimination is:

   (a) if subsection (1) applies—the protected attribute, or the
       combination of protected attributes, referred to in that
       subsection; or
   (b) if subsection (3) applies—the protected attribute, or the
       combination of protected attributes, referred to in
       paragraph (3)(b).

The discriminatory effect of conduct

(6) The discriminatory effect of conduct is:

   (a) if subsection (1) applies—the unfavourable nature of the
       treatment or proposed treatment of the other person; and
   (b) if subsection (3) applies—the disadvantageous effect referred
       to in paragraph (3)(b).

Subsections (1) and (3) do not limit each other

(7) Subsections (1) and (3) do not limit each other.

20 Proposing to treat a person unfavourably, or to impose a policy

(1) This section applies to conduct of a person (the first person) that
consists of:

   (a) proposing to treat another person unfavourably; or
   (b) proposing to impose a policy.
(2) The question whether the conduct is discrimination (or unlawful
discrimination) is to be determined in the same way as it would be
if the first person had actually treated the other person, or had
actually imposed the policy, as proposed.

21 Special measures to achieve equality are not discrimination

Special measures to achieve equality are not discrimination

(1) None of the following is discrimination:
   (a) conduct that is a special measure to achieve equality;
   (b) conduct engaged in in accordance with a special measure to
       achieve equality.

Meaning of special measure to achieve equality

(2) Subject to subsections (3) and (4), a law, policy or program made,
developed or adopted, or other conduct engaged in, by a person or
body is a special measure to achieve equality if:
   (a) the person or body makes, develops or adopts the law, policy
       or program, or engages in the conduct, in good faith for the
       sole or dominant purpose of advancing or achieving
       substantive equality for people, or a class of people, who
       have a particular protected attribute or a particular
       combination of 2 or more protected attributes; and
   (b) a reasonable person in the circumstances of the person or
       body would have considered that making, developing or
       adopting the law, policy or program, or engaging in the
       conduct, was necessary in order to advance or achieve
       substantive equality.

(3) A law described in subsection 60(3) is not a special measure to
    achieve equality.

(4) A law, policy or program, or conduct, ceases to be a special
    measure to achieve equality after substantive equality for the
    people, or class of people, referred to in paragraph (2)(a) has been
    achieved.
Division 3—When discrimination is unlawful

22 When discrimination is unlawful

(1) It is unlawful for a person to discriminate against another person if the discrimination is connected with any area of public life.

Note: For exceptions to when discrimination is unlawful, see Division 4.

(2) The areas of public life include (but are not limited to) the following:

(a) work and work-related areas;
(b) education or training;
(c) the provision of goods, services or facilities;
(d) access to public places;
(e) provision of accommodation;
(f) dealings in estates or interests in land (otherwise than by, or to give effect to, a will or a gift);
(g) membership and activities of clubs or member-based associations;
(h) participation in sporting activities (including umpiring, coaching and administration of sporting activities);
(i) the administration of Commonwealth laws and Territory laws, and the administration or delivery of Commonwealth programs and Territory programs.

(3) Discrimination on the ground of any of the following protected attributes (or a combination of protected attributes that includes any of the following protected attributes) is only unlawful if the discrimination is connected with work and work-related areas:

(a) family responsibilities;
(b) industrial history;
(c) medical history;
(d) nationality or citizenship;
(e) political opinion;
(f) religion;
(g) social origin.
Division 4—Exceptions to unlawful discrimination

Subdivision A—Main exceptions

23 Exception for justifiable conduct

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to all protected attributes.

Exception for justifiable conduct

(2) It is not unlawful for a person to discriminate against another person if the conduct constituting the discrimination is justifiable.

When conduct is justifiable

(3) Subject to subsection (6), conduct of a person (the first person) is justifiable if:

(a) the first person engaged in the conduct, in good faith, for the purpose of achieving a particular aim; and
(b) that aim is a legitimate aim; and
(c) the first person considered, and a reasonable person in the circumstances of the first person would have considered, that engaging in the conduct would achieve that aim; and
(d) the conduct is a proportionate means of achieving that aim.

(4) In determining whether subsection (3) is satisfied in relation to conduct, the following matters must be taken into account:

(a) the objects of this Act;
(b) the nature and extent of the discriminatory effect of the conduct;
(c) whether the first person could instead have engaged in other conduct that would have had no, or a lesser, discriminatory effect;
(d) the cost and feasibility of engaging in other conduct as mentioned in paragraph (c).
(5) Any other matter that it is reasonable to take into account may also be taken into account.

Disability: conduct not justifiable if a reasonable adjustment could have been made

(6) In relation to discrimination on the ground of disability (or on the ground of a combination of disability and one or more other protected attributes), conduct of a person is not justifiable if:

(a) there is a reasonable adjustment that the person could have made; and

(b) if the person had made that adjustment:

(i) the conduct would have had no, or a lesser, discriminatory effect; or

(ii) the person would instead have engaged in other conduct that would have had no, or a lesser, discriminatory effect.

Note: The concept of reasonable adjustment is dealt with in section 25.

24 Exception for inherent requirements of work

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to all protected attributes.

Exception for inherent requirements of work

(2) Subject to subsection (4), it is not unlawful for a person (the first person) to discriminate against another person on the ground of a particular protected attribute, or a particular combination of 2 or more protected attributes, if:

(a) the discrimination is connected with work and work-related areas; and

(b) the other person is unable to carry out the inherent requirements of the particular work because he or she has that protected attribute or combination of protected attributes; and
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(c) the discrimination is necessary because the other person is unable to carry out those inherent requirements.

(3) In determining whether the other person is unable to carry out the inherent requirements of the particular work, the following matters are to be taken into account:

(a) the other person’s past training, qualifications and experience relevant to the particular work;
(b) the other person’s previous performance (if any) in working for the first person;
(c) any other factor that it is reasonable to take into account.

Disability: exception does not apply if reasonable adjustment could have been made

(4) In relation to discrimination on the ground of disability (or on the ground of a combination of disability and one or more other protected attributes), subsection (2) does not apply if:

(a) there is a reasonable adjustment that the first person could have made; and
(b) if the first person had made that adjustment, the other person would have been able to carry out the inherent requirements of the particular work.

Note: The concept of reasonable adjustment is dealt with in section 25.

25 Discrimination on ground of disability: meaning of reasonable adjustment

(1) This section applies in relation to discrimination on the ground of disability (or on the ground of a combination of disability and one or more other protected attributes).

(2) A person (the first person) could have made a reasonable adjustment if the person could have made the adjustment without unjustifiable hardship being caused to the person.

(3) In determining whether making an adjustment would cause the first person unjustifiable hardship, all relevant matters must be taken into account, including the following:
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(a) the nature of any benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
(b) the effect of any disability of any person concerned;
(c) the financial circumstances of the first person, and the estimated amount of expenditure that the first person would have to incur in order to make the adjustment;
(d) the availability of financial and other assistance to the first person;
(e) any relevant guidelines prepared by the Commission under section 62;
(f) any relevant action plans given to the Commission under section 68.

Subdivision B—Exceptions related to other laws, court orders etc.

26 Exception for conduct necessary to comply with Commonwealth Acts and instruments subject to disallowance

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to all protected attributes, other than race.

Exception for compliance with Commonwealth Acts and instruments subject to disallowance

(2) It is not unlawful for a person to discriminate against another person if:

(a) the conduct constituting the discrimination is necessary to comply with:
   (i) an Act; or
   (ii) an instrument made under an Act, being an instrument that could be, or could have been, disallowed by either House of the Parliament; and
(b) the discrimination is on the ground of a protected attribute to which this exception applies, or a combination of 2 or more protected attributes to which this section applies.
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27 Exceptions for discrimination in accordance with certain Commonwealth migration and health laws

Protected attributes to which these exceptions apply

(1) The exceptions in this section apply in relation to the protected attributes specified in the exceptions.

Exception for the Migration Act 1958

(2) It is not unlawful for a person to discriminate against another person if:

(a) the conduct constituting the discrimination is in accordance with the Migration Act 1958, or with regulations or another instrument of a legislative character made under that Act; and

(b) the discrimination is on the ground of any of the following protected attributes, or a combination of 2 or more of the following protected attributes:

(i) age;
(ii) disability;
(iii) marital or relationship status.

Exception for health laws

(3) It is not unlawful for a person to discriminate against another person if:

(a) the conduct constituting the discrimination is in accordance with any of the following Acts, or with regulations or another instrument of a legislative character made under any of the following Acts:

(i) the Health Insurance Act 1973;
(ii) the National Health Act 1953;
(iii) the Private Health Insurance Act 2007;
(iv) the Therapeutic Goods Act 1989; and

(b) the discrimination is on the ground of any of the following protected attributes, or a combination of 2 or more of the following protected attributes:

(i) age;
(ii) disability;
(iii) sex.

28 Exception for conduct in accordance with Commonwealth laws on ground of nationality or citizenship

Protected attribute to which this exception applies

(1) The exception in this section applies in relation to the protected attribute of nationality or citizenship.

Exception for Commonwealth laws and nationality or citizenship

(2) It is not unlawful for a person to discriminate against another person if:

(a) the conduct constituting the discrimination is in accordance with a Commonwealth law; and

(b) the discrimination is on the ground of nationality or citizenship.

29 Exception for conduct in accordance with laws that treat young people differently because of their vulnerability etc.

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to the protected attribute of age.

Exception for laws that treat young people differently because of their vulnerability etc.

(2) It is not unlawful for a person to discriminate against another person, on the ground of the other person’s age, if:

(a) the conduct constituting the discrimination is in accordance with a law that treats people under a specified age differently from other people; and

(b) the law provides for that different treatment because of the vulnerability, or lack of maturity or development, of people under the specified age.
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30 Exception for conduct in accordance with laws prescribed by the regulations

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to all protected attributes, other than race and sex.

Exception for conduct in accordance with prescribed laws

(2) It is not unlawful for a person to discriminate against another person if:
   (a) the discrimination is on the ground of a particular protected attribute, or a particular combination of 2 or more protected attributes; and
   (b) this section applies in relation to that attribute or those attributes; and
   (c) the conduct constituting the discrimination is in accordance with a law that is prescribed by the regulations, for the purpose of this paragraph, in relation to that attribute or those attributes.

31 Exception for court orders, determinations and industrial instruments

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to all protected attributes.

Exception for court orders, determinations and industrial instruments

(2) It is not unlawful for a person to discriminate against another person if the conduct constituting the discrimination is necessary to comply with any of the following:
   (a) an order of a court;
(b) without limiting paragraph (a)—an order, determination or award of a court or tribunal that has power to fix minimum wages or other terms and conditions of employment;

(c) an instrument that is:
   (i) a fair work instrument (within the meaning of the Fair Work Act 2009); or
   (ii) a transitional instrument or Division 2B State instrument (within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009); or
   (iii) a determination made by the Remuneration Tribunal under the Remuneration Tribunal Act 1973; or
   (iv) a determination made by the Defence Force Remuneration Tribunal under section 58H of the Defence Act 1903.

Note: This exception does not apply to compliance with a provision of an instrument referred to in paragraph (2)(c) if the provision has no effect.

Subdivision C—Exceptions related to religion

32 Exception for appointment of priests, ministers etc.

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to the following protected attributes:
   (a) age;
   (b) breastfeeding;
   (c) family responsibilities;
   (d) gender identity;
   (e) marital or relationship status;
   (f) potential pregnancy;
   (g) pregnancy;
   (h) religion;
   (i) sex;
   (j) sexual orientation.
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**Exception for appointment of priests, ministers etc.**

(2) It is not unlawful for a person to discriminate against another person if:

(a) the discrimination is connected with any of the following:

(i) the ordination or appointment of priests, ministers of religion or members of any religious order;

(ii) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of any religious order;

(iii) the selection or appointment of persons to perform duties or functions for the purposes of, or connected with, or otherwise to participate in, any religious observance or practice; and

(b) the discrimination is on the ground of a protected attribute to which this exception applies, or a combination of 2 or more protected attributes to which this exception applies.

33 **Exceptions for religious bodies and educational institutions**

**Protected attributes to which these exceptions apply**

(1) The exceptions in this section apply in relation to the following protected attributes:

(a) gender identity;

(b) marital or relationship status;

(c) potential pregnancy;

(d) pregnancy;

(e) religion;

(f) sexual orientation.

**Exception for conduct of body established for religious purposes**

(2) Subject to subsection (3), it is not unlawful for a person (the *first person*) to discriminate against another person if:

(a) the first person is a body established for religious purposes, or an officer, employee or agent of such a body; and

(b) the discrimination consists of conduct, engaged in in good faith, that:
(i) conforms to the doctrines, tenets or beliefs of that
    religion; or
(ii) is necessary to avoid injury to the religious sensitivities
    of adherents of that religion; and
(c) the discrimination is on the ground of a protected attribute to
    which this exception applies, or a combination of 2 or more
    protected attributes to which this exception applies.

(3) The exception in subsection (2) does not apply if:
(a) the discrimination is connected with the provision, by the
    first person, of Commonwealth-funded aged care; and
(b) the discrimination is not connected with the employment of
    persons to provide that aged care.

Exception for conduct of educational institution conducted in
accordance with tenets etc. of a religion

(4) It is not unlawful for a person (the first person) to discriminate
against another person if:
(a) the first person is an educational institution that is conducted
    in accordance with the doctrines, tenets, beliefs or teachings
    of a particular religion, or an officer, employee or agent of
    such an institution; and
(b) the discrimination is connected with employment by the
    educational institution, or with the provision of education or
    training by the institution; and
(c) the discrimination consists of conduct, engaged in in good
    faith, that:
    (i) conforms to the doctrines, tenets or beliefs of that
        religion; or
    (ii) is necessary to avoid injury to the religious sensitivities
        of adherents of that religion; and
    (d) the discrimination is on the ground of a protected attribute to
        which this exception applies, or a combination of 2 or more
        protected attributes to which this exception applies.
Subdivision D—Other exceptions

34 Exception for registered charities

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to all protected attributes.

Exception for registered charities

(2) None of the following is unlawful discrimination:

(a) a provision of the governing rules (within the meaning of the Australian Charities and Not-for-profits Commission Act 2012) of a registered charity, if the provision:

(i) confers charitable benefits; or

(ii) enables charitable benefits to be conferred;

(b) conduct engaged in to give effect to such a provision.

35 Exception for clubs and member-based associations

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to all protected attributes.

Clubs and member-based associations to which this exception applies

(2) The exception in this section applies in relation to a club or member-based association:

(a) if membership of the club or association is restricted wholly or primarily to people (the target group) who have a particular protected attribute, or a particular combination of 2 or more protected attributes; and

(b) restricting membership to the target group is consistent with the objects of this Act.

(3) If the target group is restricted wholly or primarily to people of one sex, that restriction is taken, for the purpose of paragraph (2)(b), to
be consistent with the objects of this Act. However, this does not affect how paragraph (2)(b) applies in relation to any other protected attributes.

**Exception for clubs and member-based associations**

(4) It is not unlawful to discriminate against a person who is not in the target group if:

(a) the discrimination consists of:

(i) excluding the person from membership of the club or association; or

(ii) restricting (whether wholly or partly) the person’s access to benefits or services provided by the club or association; and

(b) the discrimination is not on the ground of another protected attribute, or a combination of attributes that includes another protected attribute.

### 36 Exceptions for competitive sporting activities

**Protected attributes to which these exceptions apply**

(1) The exceptions in this section apply in relation to the protected attributes specified in the exceptions.

**Exception for competitive sport: sex and gender identity**

(2) It is not unlawful to discriminate against a person by excluding the person from participation in a competitive sporting activity if:

(a) the discrimination is on the ground of sex or gender identity, or a combination of those attributes; and

(b) the sporting activity is an activity in which the strength, stamina or physique of competitors is relevant; and

(c) the person is aged 12 or over.

**Exception for competitive sport: age or disability**

(3) It is not unlawful to discriminate against a person by excluding the person from participation in a competitive sporting activity if the discrimination is on the ground of age or disability, or a
combination of those attributes, and one or more of the following paragraphs applies:

(a) the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity;

(b) the sporting activity is conducted solely for people (the *target group*):
   (i) who are of a particular age; or
   (ii) who have a particular disability; or
   (iii) who are of a particular age and who have a particular disability;
and the person is not in the target group;

(c) the people who participate, or are to participate, in the sporting activity are selected by a method that is reasonably based on:
   (i) the skills and abilities relevant to the sporting activity; and
   (ii) the skills and abilities of the people, relative to each other.

*Limitations on the exceptions*

(4) Subsections (2) and (3) do not apply to excluding a person from participation in:
(a) coaching, umpiring or administration; or
(b) a sporting activity prescribed by the regulations for the purpose of this paragraph.

### 37 Exception for single sex or disability educational institutions

*Protected attributes to which this exception applies*

(1) The exception in this section applies in relation to the protected attributes of sex and disability.

*Educational institutions to which this section applies*

(2) This section applies to an educational institution that is conducted wholly or primarily for people (the *target group*):

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(a) of one sex; or
(b) who have a particular disability; or
(c) of one sex who have a particular disability.

**Exception for single sex or disability educational institutions**

(3) It is not unlawful to discriminate against a person who is not in the target group if:
(a) the discrimination consists of excluding the person from admission to the institution; and
(b) the discrimination is not on the ground of another protected attribute, or a combination of attributes that includes another protected attribute.

**38 Exception for single sex accommodation for students**

**Protected attributes to which this exception applies**

(1) The exception in this section applies in relation to the protected attribute of sex.

**Accommodation to which this section applies**

(2) This section applies to accommodation that is provided wholly or primarily for people of one sex who are students at an educational institution.

**Exception for single sex accommodation for students**

(3) It is not unlawful for a person to discriminate against another person who is not of the sex for which the accommodation is wholly or primarily provided, if:
(a) the discrimination consists of excluding the person from being provided with accommodation; and
(b) the discrimination is not on the ground of another protected attribute, or a combination of attributes that includes another protected attribute.
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39 Exceptions for insurance, superannuation and credit

Protected attributes to which these exceptions apply

(1) The exceptions in this section apply in relation to the protected attributes specified in the exceptions.

Exception for insurance

(2) It is not unlawful for a person (the first person) to discriminate against another person if:

(a) the discrimination is:

(i) in relation to the terms or conditions on which an insurance policy is offered or provided to, or may be obtained by, the other person; or

(ii) a refusal to offer an insurance policy to the other person; and

(b) the discrimination is on the ground of any of the following protected attributes, or a combination of 2 or more of the following protected attributes:

(i) age;

(ii) disability;

(iii) sex; and

(c) the condition specified in subsection (5) is satisfied.

Exception for superannuation

(3) It is not unlawful for a person (the first person) to discriminate against another person if:

(a) the discrimination is:

(i) in relation to the terms or conditions on which membership of a superannuation fund or scheme is offered to, or may be obtained by, the other person; or

(ii) a refusal to offer membership of a superannuation fund or scheme to the other person; and

(b) the discrimination is on the ground of any of the following protected attributes, or a combination of 2 or more of the following protected attributes:

(i) age;
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(ii) disability;
(iii) family responsibilities;
(iv) marital or relationship status;
(v) sex; and
(c) the condition specified in subsection (5) is satisfied.

Exception for credit

(4) It is not unlawful for a person (the first person) to discriminate against another person if:
(a) the discrimination is:
(i) in relation to the terms or conditions on which credit is offered or provided to, or may be obtained by, the other person; or
(ii) a refusal to offer credit to the other person; and
(b) the discrimination is on the ground of age; and
(c) the condition specified in subsection (5) is satisfied.

Condition to be satisfied for exceptions

(5) For the purpose of paragraphs (2)(c), (3)(c) and (4)(c), the condition is that either:
(a) the following subparagraphs are satisfied:
(i) the discrimination is based upon actuarial or statistical data on which it is reasonable for the first person to rely;
(ii) the discrimination is reasonable, having regard to the data and other relevant factors;
(iii) if the other person has given the first person a written request for access to the data—the first person has, within a reasonable period after the request is made, provided the other person with a copy of the data, or with reasonable access to the data; or
(b) if no such actuarial or statistical data is available and cannot reasonably be obtained—the discrimination is reasonable having regard to any other relevant factors.
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40 Exceptions for Defence Force and Australian Federal Police

Protected attributes to which these exceptions apply

(1) The exceptions in this section apply in relation to the protected attributes specified in the exceptions.

Defence combat duties etc.: exception for disability

(2) It is not unlawful for a person to discriminate against another person if:

(a) the discrimination is connected with employment, engagement or appointment in the Defence Force:

(i) in a position involving the performance of Defence combat duties, Defence combat-related duties or Defence peacekeeping service; or

(ii) in circumstances, prescribed by the regulations for the purpose of this sub paragraph, relating to Defence combat duties, Defence combat-related duties or Defence peacekeeping service; or

(iii) in a position involving the performance of duties as a chaplain, or a medical support person, in support of forces engaged or likely to be engaged in Defence combat duties, Defence combat-related duties or Defence peacekeeping service; and

(b) the discrimination is on the ground of disability.

Australian Federal Police peacekeeping duties: exception for disability

(3) It is not unlawful for a person to discriminate against another person if:

(a) the discrimination is connected with selection for duties involved in the provision, by the Australian Federal Police, of police services and police support services referred to in paragraph 8(1)(bg) of the Australian Federal Police Act 1979; and

(b) the discrimination is on the ground of disability.
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(4) It is not unlawful for a person to discriminate against another person if:

(a) the discrimination is connected with employment, engagement or appointment in the Defence Force:
   (i) in a position involving the performance of Defence combat duties or Defence combat-related duties; or
   (ii) in circumstances, prescribed by the regulations for the purpose of this subparagraph, relating to Defence combat duties or Defence combat-related duties; and
(b) the discrimination is against a woman, on the ground of her sex; and
(c) the conduct occurs before 1 September 2016.

41 Exception for accommodation for employees

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to the following protected attributes:
   (a) family responsibilities;
   (b) marital or relationship status;
   (c) sex.

Accommodation to which this exception applies

(2) The exception in this section applies to accommodation that an employer provides to employees if:
   (a) the standard of accommodation that the employer provides to each employee is determined having regard to one or more of the protected attributes to which this exception applies (whether or not it is also determined by reference to other factors); and
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(b) it is not reasonable to expect the employer to provide accommodation of the same standard for all employees.

Exception for accommodation for employees

(3) It is not unlawful for the employer to discriminate against an employee on the ground of a protected attribute to which this exception applies, or a combination of 2 or more protected attributes to which this exception applies, if the discrimination consists of providing the person with a standard of accommodation determined as mentioned in paragraph (2)(a).

42 Exception for junior rates

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to the protected attribute of age.

Exception for junior rates

(2) It is not unlawful for a person to discriminate against another person, on the ground of age:

(a) by paying the person junior rates because the person is under the age of 21; or

(b) if the discrimination is connected with determining who should be offered employment, and junior rates are a significant factor in making that determination.

43 Exception for employment to perform domestic duties

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to all protected attributes.

Exception for employment to perform domestic duties

(2) It is not unlawful for a person (the first person) to discriminate against another person if the discrimination is connected with
determining who should be offered employment to perform
domestic duties on premises in which the first person resides.

44 Exception for shared accommodation

Protected attributes to which this exception applies

(1) The exception in this section applies in relation to all protected
attributes.

Exception for shared accommodation

(2) It is not unlawful for a person to discriminate against another
person if:
   (a) the discrimination is connected with the provision, to the
       other person, of accommodation in particular premises; and
   (b) the person who provides or would provide the
       accommodation (the accommodation provider), or a member
       of the accommodation provider’s immediate family, resides,
       and intends to continue to reside on the premises.

(3) Subsection (2) does not apply if:
   (a) the total number of persons (other than persons residing as
       mentioned in subsection (2) and immediate family members
       of such persons) for whom accommodation is regularly
       provided in the premises is more than 3; or
   (b) the accommodation provider intends that that total should be
       more than 3.

Subdivision E—Other general provisions relating to exceptions

45 Exceptions (other than justifiable conduct) don’t apply to
discrimination because of attributes of associates,
assumptions etc.

Other than the exception in section 23 (justifiable conduct), the
exceptions in this Division do not apply in relation to conduct that
is discrimination because of subsection 19(4).
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46 Exceptions do not limit each other

The exceptions in this Division do not limit each other. In particular, the exception in section 23 (justifiable conduct) is not limited by any of the other exceptions.

47 Review of exceptions

(1) The Minister must arrange for a review of the exceptions in this Division to be conducted, and for a written report on that review to be given to the Minister.

(2) The review must be commenced within 3 years of the commencement of this section.

(3) The Minister must cause a copy of the report on the review to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

(4) The report on the review is not a legislative instrument.
Part 2-3—Other unlawful conduct

Division 1—Guide to this Part

48 Guide to this Part

This Part deals with other kinds of unlawful conduct.

Division 2 deals with sexual harassment.

Division 3 deals with racial vilification.

Division 4 deals with requesting or requiring information for a discriminatory purpose.

Division 5 deals with publishing etc. material indicating an intention to engage in unlawful conduct.

Division 6 deals with victimisation of people because they have made complaints or have had other dealings with the Commission.
Division 2—Sexual harassment

49 When a person sexually harasses another person

(1) A person (the first person) sexually harasses another person if:
   (a) the first person:
      (i) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
      (ii) engages in other unwelcome conduct of a sexual nature (including making a statement of a sexual nature to, or in the presence of, the other person) in relation to the other person; and
   (b) a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the other person would be offended, insulted, humiliated or intimidated by the first person’s conduct.

(2) For the purposes of paragraph (1)(b), the circumstances to be taken into account include (but are not limited to) the following:
   (a) the other person’s sex, age, marital or relationship status, sexual orientation, religion or race;
   (b) any disability of the other person;
   (c) any other relevant protected attribute of the other person;
   (d) the relationship between the first person and the other person.

50 When sexual harassment is unlawful

It is unlawful for a person (the first person) to sexually harass another person if the harassment is connected with any area of public life.

Note: The areas of public life include (but are not limited to) the areas specified in subsection 22(2).
Division 3—Racial vilification

51 Racial vilification is unlawful

When racial vilification is unlawful

(1) It is unlawful for a person (the first person) to engage in racial vilification.

(2) Conduct of a person is racial vilification if:

(a) the conduct is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and

(b) the first person engages in the conduct:

(i) because the other person, or one or more members of the group, is of a particular race, or because the first person assumes that to be the case; or

(ii) because the other person, or one or more members of the group, has an associate who is of a particular race, or because the first person assumes that to be the case; and

(c) the conduct is engaged in otherwise than in private.

(3) For the purpose of subsection (2), conduct is engaged in otherwise than in private if:

(a) it causes words, sounds, images or writing to be communicated to the public; or

(b) it is engaged in:

(i) in a public place; or

(ii) in the sight or hearing of people who are in a public place.

This subsection does not limit the circumstances that may constitute engaging in conduct otherwise than in private.

Exception

(4) Subsection (1) does not make it unlawful for a person to say or do something, reasonably and in good faith:

(a) in the performance, exhibition or distribution of an artistic work; or
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(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or

(c) in making or publishing:

(i) a fair and accurate report of any event or matter of public interest; or

(ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.
Division 4—Requesting or requiring information for discriminatory purpose

52 Requesting or requiring information for discriminatory purpose

It is unlawful for a person (the first person) to request or require another person to provide information if the first person requests or requires the information:

(a) for the purpose of engaging in conduct in relation to the other person that would constitute unlawful discrimination; or

(b) for the purpose of deciding whether to engage in such conduct.
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**Division 5—Publishing etc. intention to engage in unlawful conduct**

**53 Publishing etc. material indicating intention to engage in unlawful conduct**

*When publishing etc. material is unlawful*

1. It is unlawful for a person to publish or display material if:
   1. the material indicates, or could reasonably be understood as indicating, that the person, or one or more other persons, intends to engage in conduct; and
   2. the conduct would be unlawful conduct.

*Exception*

2. Subsection (1) does not make it unlawful for a person, reasonably and in good faith, to publish or display material:
   1. for the purpose of discouraging unlawful conduct; or
   2. in making or publishing:
      1. a fair and accurate report of any event or matter of public interest; or
      2. a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.
Division 6—Victimisation

54 Victimisation of person for making a complaint etc.

When victimisation is unlawful

(1) It is unlawful for a person (the first person) to treat, or propose or threaten to treat, another person unfavourably:
   (a) because the other person or an associate of the other person
       (or a person acting on behalf of the other person or an associate of the other person):
       (i) has made a complaint to the Commission; or
       (ii) has brought proceedings in a court under this Act; or
       (iii) has produced a document, provided information, made a submission or given evidence to the Commission or a Commission official, or to a court in which proceedings under this Act have been brought; or
       (iv) has attended or participated in a conference held under section 109; or
       (v) has asserted any right that he or she has under this Act; or
       (vi) has made an allegation that a person has engaged in unlawful conduct; or
   (b) because the other person or an associate of the other person
       (or a person acting on behalf of the other person or an associate of the other person) is proposing to engage in conduct as mentioned in any of the subparagraphs of paragraph (a); or
   (c) because the first person believes that the other person or an associate of the other person (or a person acting on behalf of the other person or an associate of the other person) has engaged, or is proposing to engage, in conduct as mentioned in any of the subparagraphs of paragraph (a).

Exception

(2) Subsection (1) does not make it unlawful for a person to treat, or propose or threaten to treat, another person unfavourably if:
Section 54

(a) the unfavourable treatment is, or would be, because the other
person or an associate of the other person (or a person acting
on behalf of the other person or an associate of the other
person) has engaged in conduct as mentioned in a
subparagraph of paragraph (1)(a); and

(b) that conduct was not engaged in in good faith.
Section 55

Part 2-4—Extensions of liability for unlawful conduct

Division 1—Guide to this Part

This Part deals with situations in which one person is liable for the unlawful conduct of another person.

Division 2 deals with liability for causing etc. unlawful conduct, liability for unlawful conduct of directors, officers, employees and agents, and liability of partnerships, unincorporated associations and trusts.
Chapter 2  Unlawful conduct and equality before the law
Part 2-4  Extensions of liability for unlawful conduct
Division 2  Extensions of liability for unlawful conduct

Section 56

Division 2—Extensions of liability for unlawful conduct

56 Causing etc. unlawful conduct

A person who causes, instructs, induces, aids or permits another person to engage in conduct is, for the purposes of the provisions of this Act relating to unlawful conduct, taken also to have engaged in the conduct, and to have engaged in it for the same reasons, or for the same purposes, as it was engaged in by the other person.

57 Liability for unlawful conduct of directors, officers, employees and agents etc.

Principal taken to have engaged in conduct of directors, officers, employees or agents

(1) This section applies if a person (the first person) who is a director, officer, employee or agent of another person (the principal) engages in conduct connected with the first person’s duties as a director, officer or agent, or connected with the first person’s employment.

(2) The principal is, for the purposes of the provisions of this Act relating to unlawful conduct, taken also to have engaged in the conduct, and to have engaged in it for the same reasons, or for the same purposes, as it was engaged in by the first person.

Exception for principal who took reasonable precautions

(3) However, the principal is not taken to have engaged in the conduct if the principal took reasonable precautions, and exercised due diligence, to avoid the conduct.
58 Liability of partnerships, unincorporated associations and trusts
for unlawful conduct

Act applies to partnerships etc. as if they were persons

(1) The provisions of this Act relating to unlawful conduct (including
the other provisions of this Division) apply in relation to a
partnership as if:
(a) the partnership were a person; and
(b) a partner in the partnership were an agent of the partnership
for the purpose of section 57.

(2) The provisions of this Act relating to unlawful conduct (including
the other provisions of this Division) apply in relation to an
unincorporated association as if:
(a) the association were a person; and
(b) a member of the committee of management of the association
were an agent of the association for the purpose of
section 57.

(3) The provisions of this Act relating to unlawful conduct (including
the other provisions of this Division) apply in relation to a trust that
has 2 or more trustees as if:
(a) the trust were a person; and
(b) a trustee of the trust were an agent of the trust for the purpose
of section 57.

Liability of partners etc.

(4) The following provisions apply to any liability imposed, by an
order of a court under this Act, on a partnership, unincorporated
association or trust in relation to unlawful conduct, unless the court
orders otherwise:
(a) in the case of a partnership—the liability is a liability of each
member of the partnership, but may be discharged by any of
them;
(b) in the case of an unincorporated association—the liability is a
liability of each member of the committee of management of
the association, but may be discharged by any of them;
(c) in the case of a trust—the liability is a liability of each of the trustees, but may be discharged by any of them.

*Exception for partner etc. who took reasonable precautions*

(5) However, a partner, a member of a committee of management, or a trustee, does not have a liability in relation to unlawful conduct because of subsection (4) if the partner, member or trustee took reasonable precautions, and exercised due diligence, to avoid the conduct.
Part 2-5—Equality before the law

Division 1—Guide to this Part

59 Guide to this Part

This Part deals with equality before the law.

Division 2 provides for equality before the law for people of all races.
Chapter 2 Unlawful conduct and equality before the law
Part 2-5 Equality before the law
Division 2 Equality before the law for people of all races

Section 60

Division 2—Equality before the law for people of all races

60 Equality before the law for people of all races

(1) If, because of a law, persons of a particular race:
   (a) do not enjoy a right (whether a human right or some other
       right) that is enjoyed by persons of another race; or
   (b) enjoy a right (whether a human right or some other right) to a
       more limited extent than persons of another race;

   then, by force of this section (and despite anything in that law),
   persons of the first-mentioned race enjoy that right to the same
   extent as persons of that other race.

(2) Subsection (1) does not apply to a law that is a special measure to
    achieve equality.

(3) If:
   (a) a law:
       (i) authorises property owned by an Aboriginal person or a
           Torres Strait Islander to be managed by another person
           without the consent of the Aboriginal person or the
           Torres Strait Islander; or
       (ii) prevents or restricts an Aboriginal person or a Torres
           Strait Islander from terminating the management by
           another person of property owned by the Aboriginal
           person or the Torres Strait Islander; and
   (b) the law does not apply to persons generally, regardless of
       their race;

   then:
   (c) subsection (1) applies to the law; and
   (d) for the purpose of subsection (1) as so applying, a reference
       to a right includes a reference to a right of a person to
       manage property he or she owns.

Note: A law described in subsection (3) is not a special measure to achieve
   equality: see subsection 21(3).
Chapter 3—Measures to assist compliance

Part 3-1—Measures to assist compliance

Division 1—Guide to this Part

61 Guide to this Part

This Part deals with various measures to assist people to comply with this Act.

Division 2 provides for the Commission to make guidelines to assist people to avoid engaging in unlawful conduct, or in Commonwealth conduct that is contrary to human rights.

Division 3 provides for the Commission (on application) to review people’s policies or programs to determine whether they constitute, or may give rise to, unlawful conduct, or Commonwealth conduct that is contrary to human rights.

Division 4 provides for people to develop action plans to assist them and their employees etc. to avoid engaging in unlawful conduct.

Division 5 provides for the Minister to make disability standards. In broad terms, conduct in accordance with a disability standard is not unlawful discrimination. It is unlawful to contravene a disability standard.

Division 6 provides for the Commission to make compliance codes. In broad terms, conduct in accordance with a compliance code is not unlawful conduct.

Division 7 provides for the Commission to make special measure determinations. The measure identified in a determination is taken to be a special measure to achieve equality. For the significance of a measure being a special measure to achieve equality, see section 21.
Division 8 provides for the Commission to grant temporary exemptions from conduct being unlawful discrimination.
Division 2—Guidelines to assist compliance

62 Commission may prepare guidelines

(1) The Commission may:
   (a) prepare written guidelines to assist people to avoid engaging in conduct that would be:
       (i) unlawful conduct; or
       (ii) Commonwealth conduct that is contrary to human rights; and
   (b) amend or revoke guidelines.

(2) The Commission may publish guidelines in any manner that it considers appropriate.

(3) Guidelines (and amendments or revocations of guidelines) are not legislative instruments.

63 Effect of guidelines

(1) Nothing in this Act:
   (a) makes guidelines prepared under section 62 binding; or
   (b) causes guidelines to give rise to any right, defence, expectation, duty or obligation.

(2) A court hearing proceedings under this Act, or the Commission when dealing with a complaint, may have regard to a person’s compliance with guidelines prepared under section 62 if the court, or the Commission, considers it appropriate to do so.
Division 3—Review of policies or programs for compliance

64 Commission may review policies or programs for compliance

(1) A person or body may apply to the Commission for a review, by the Commission, of whether particular policies or programs of the person or body constitute, or may give rise to:
   (a) unlawful conduct; or
   (b) Commonwealth conduct that is contrary to human rights.

(2) The Commission may (but is not required to) conduct the review. If the Commission decides not to conduct the review, it does not have to provide reasons for that decision.

(3) If the Commission conducts the review, it must provide the person or body that applied for the review with a written report (a review report) on the outcomes of the review. The report may also include any advice that the Commission considers appropriate.

(4) A review report is not a legislative instrument.

65 Review reports not to be published

The Commission must not publish (whether in its annual report or otherwise):
   (a) a review report; or
   (b) any findings or outcomes of a review;
unless the person or body that applied for the review consents to the publication.

66 Effect of review reports

(1) Nothing in this Act:
   (a) makes a review report binding; or
   (b) causes a review report to give rise to any right, defence, expectation, duty or obligation.

(2) A court hearing proceedings under this Act, or the Commission when dealing with a complaint, may have regard to a review report if the court, or the Commission, considers it appropriate to do so.
División 4—Acciones

67 Desarrollo etc. de planes de acción

1. Un individuo o cuerpo puede desarrollar e implementar un plan escrito (un **plan de acción**) para ayudar al individuo o cuerpo (y a los oficiales, empleados, miembros o agentes del individuo o cuerpo) para evitar comportarse de manera ilegal.

2. Un plan de acción debe incluir provisiones relacionadas con:
   (a) la revisión de las políticas y programas del individuo o cuerpo, con miras a determinar si constituyen o dar lugar a comportamiento ilegal; y
   (b) el desarrollo de políticas o programas para ayudar al individuo o cuerpo (y a los oficiales, empleados, miembros o agentes del individuo o cuerpo) como se menciona en la sección 1; y
   (c) la comunicación de las políticas o programas desarrollados a los oficiales, empleados, miembros o agentes del individuo o cuerpo; y
   (d) la evaluación del éxito de las políticas o programas desarrollados, y del plan (que sea por referencia a objetivos o metas especificados en el plan, o de otro modo); y
   (e) la designación de personas para implementar las provisiones mencionadas en los párrafos (a) a (d).

3. Un plan de acción también puede incluir otras provisiones que estén consistentes con los fines de esta Ley.

4. Un individuo o cuerpo que desarrolla un plan de acción puede, en cualquier momento, modificar o revocar el plan.

5. Un plan de acción (o una modificación o revocación de un plan de acción) no es un instrumento legislativo.

68 Planes de acción pueden dar a la Comisión

1. Un individuo o cuerpo que desarrolla un plan de acción puede dar una copia del plan (y cualquier modificación subsecuente del plan) a la Comisión.
Section 69

(2) The Commission must publish action plans (and amendments of action plans) that are given to it in such manner as the Commission considers appropriate.

Note: The Commission is not required to continue to publish an action plan if the Commission becomes aware that the action plan has been revoked.

69 Effect of action plans

(1) Nothing in this Act:

(a) makes an action plan binding; or

(b) causes an action plan to give rise to any right, defence, expectation, duty or obligation.

(2) A court hearing proceedings under this Act, or the Commission when dealing with a complaint, may have regard to an action plan if the court, or the Commission, considers it appropriate to do so.

Note: Subsection (2) applies whether or not the action plan has been given to the Commission.
Chapter 3  Measures to assist compliance
Part 3-1  Measures to assist compliance
Division 5  Disability standards

Section 70

Division 5—Disability standards

70 Meaning of disability standard

(1) A *disability standard* is a standard, made by the Minister in accordance with this Division, the purpose of which is to specify requirements to be complied with in relation to disability and one or more areas of public life.

(2) A disability standard must make the following clear in relation to each requirement specified in the standard:

   (a) the persons who are covered by the requirement;
   (b) whether the requirement covers all kinds of disability, or whether it only covers specified kinds of disability.

(3) A disability standard may also:

   (a) provide for exceptions, or for the Commission to grant exemptions, from requirements specified in the standard; or
   (b) provide that the standard, in whole or in part, is or is not intended to affect the operation of State laws or Territory laws, or particular State laws or Territory laws; or
   (c) provide for enforcement mechanisms, or dispute resolution mechanisms, in relation to the requirements of the standard.

(4) A disability standard must provide for the standard to be reviewed every 5 years.

(5) Nothing in this Act requires a person to comply with, or participate in, mechanisms included in a disability standard under paragraph (3)(c).

71 Process for making etc. disability standards

Minister may make etc. disability standards

(1) The Minister may, in writing:

   (a) make one or more disability standards; and
   (b) amend or revoke disability standards.
(2) The Minister must not make (or amend) a disability standard unless the Minister is satisfied that the standard (or the standard as amended):
   (a) complies with section 70; and
   (b) is consistent with the objects of this Act.

Consultation

(3) The Minister must not make (or amend) a disability standard unless the Minister has (in addition to the requirements of Part 3 of the Legislative Instruments Act 2003) consulted the Ministers of the States who have responsibility for matters related to discrimination about the proposed standard (or amendment).

(4) A failure to comply with subsection (3) does not invalidate a disability standard (or an amendment).

Disability standards are legislative instruments

(5) A disability standard (or an amendment or revocation of a disability standard) is a legislative instrument.

(6) The Legislative Instruments Act 2003 applies in relation to a disability standard (or an amendment of a disability standard) subject to the following paragraphs:
   (a) despite subsection 12(1) of that Act, a disability standard (or an amendment) does not take effect before the end of the period in which it could be disallowed in either House of the Parliament;
   (b) Part 6 (sunsetting) of that Act does not apply to a disability standard (or an amendment).

72 Effect of disability standards: conduct in accordance with standard is not unlawful discrimination

If, while a disability standard has effect, a person who is covered by a requirement in the standard engages in conduct in accordance with the requirement, then the conduct is taken not to be unlawful discrimination on the ground of a disability that is covered by the requirement.
Chapter 3 Measures to assist compliance
Part 3-1 Measures to assist compliance
Division 5 Disability standards

Section 73

73 Effect of disability standards: unlawful to contravene standard

It is unlawful for a person to contravene a requirement in a disability standard.

74 Exceptions and exemptions do not apply to disability standards

Unless a disability standard provides otherwise, the exceptions in Part 2-2, and exemptions under Division 8 of this Part, do not apply in relation to requirements in a disability standard.
Division 6—Compliance codes

75 Meaning of compliance code

(1) A compliance code is a code, made by the Commission in accordance with this Division, that includes provisions of either or both of the following kinds:

(a) provisions to the effect that if specified persons or bodies engage in specified conduct (whether or not the provisions require the persons or bodies to engage in the conduct), that conduct is taken, for the purposes of this Act, not to be unlawful conduct of one or more specified kinds;

(b) provisions to the effect that if specified persons take specified steps or measures (whether or not the provisions require the persons to take the steps or measures), those steps or measures are taken, for the purpose of subsection 57(3) or 58(5), to constitute taking reasonable precautions, and exercising due diligence, to avoid specified other persons engaging in unlawful conduct of one or more specified kinds.

(2) For a provision that is to apply in relation to discrimination, the code must make it clear whether the provision applies to discrimination on the ground of any protected attribute or combination of protected attributes, or whether it only applies to discrimination on the ground of a particular protected attribute or a particular combination of 2 or more protected attributes.

(3) A compliance code must be expressed to have effect for the period specified in the code.

Note: There is no limit on the period that may be specified.

(4) A compliance code may also do any of the following:

(a) provide that the code, in whole or in part, is or is not intended to affect the operation of State laws or Territory laws, or particular State laws or Territory laws;

(b) provide for enforcement mechanisms, or dispute resolution mechanisms, in relation to the requirements of the code;

(c) subject to subsection (5)—provide for the code to be reviewed from time to time.
(5) If the period specified in a compliance code under subsection (3) is more than 5 years, the code must provide for the code to be reviewed at least once in every 5 year period while the code continues to have effect.

(6) Nothing in this Act requires a person to comply with, or participate in, mechanisms included in a compliance code under paragraph (4)(b).

76 Process for making etc. compliance codes

Commission may make etc. compliance codes

(1) The Commission may, in writing:
   (a) make one or more compliance codes; and
   (b) amend or revoke compliance codes.

(2) The Commission must not make (or amend) a compliance code unless the Commission is satisfied that the code (or the code as amended):
   (a) complies with section 75; and
   (b) is consistent with the objects of this Act.

Note: The Commission must comply with the consultation requirements of Part 3 of the Legislative Instruments Act 2003.

Compliance codes may be made etc. on Commission’s own initiative or on application

(3) Subject to subsection (2), the Commission may make a compliance code on its own initiative and may, on its own initiative, amend or revoke that compliance code.

(4) Subject to subsection (2), the Commission may make a compliance code on application by one or more persons or bodies (each of whom is an original applicant) and may:
   (a) amend the code on application by one or more original applicants; or
   (b) revoke the code: (i) on application by one or more original applicants; or
(ii) on its own initiative, if the Commission is no longer satisfied as mentioned in subsection (2), and has consulted each original applicant about the proposed revocation.

(5) An application to make (or amend) a compliance code must be accompanied by a draft of the code (or amendment) that it is proposed should be made by the Commission.

(6) A compliance code (or an amendment of a compliance code) made pursuant to an application must be in the same terms as the draft code (or the draft amendment) that accompanied the application, subject to:

(a) any changes that have been agreed to by the persons or bodies that made the application; and

(b) any changes that the Commission considers appropriate to ensure that the code (or the code as amended) complies with subsections 75(3) and (5).

Consultation

(7) The Commission must not make (or amend) a compliance code that is expressed to affect the operation of State laws, or particular State laws, unless the Minister has (in addition to the requirements of Part 3 of the Legislative Instruments Act 2003) consulted the Ministers of the relevant States who have responsibility for matters related to discrimination about the proposed code (or amendment).

Compliance codes are legislative instruments

(8) A compliance code (or an amendment or revocation of a compliance code) is a legislative instrument. However, Part 6 (sunsetting) of the Legislative Instruments Act 2003 does not apply to a compliance code (or an amendment).

77 Duration of compliance code

(1) A compliance code continues to have effect (unless revoked earlier) until the end of the period specified in the code in accordance with subsection 75(3).
Section 78

(2) Immediately after the end of the specified period, the code is taken to be revoked by the Commission (with effect from that time) under subsection 76(1).

78 Effect of compliance codes

While a compliance code has effect, provisions in the code of the kind mentioned in paragraph 75(1)(a) or (b) have effect, for the purpose of this Act, in accordance with their terms.
Division 7—Special measure determinations

79 Meaning of special measure determination

(1) A special measure determination is a determination, made by the Commission in accordance with this Division, that a policy or program made, developed or adopted (or proposed to be made, developed or adopted), or other conduct engaged in (or proposed to be engaged in), by a person or body (the measure taker) is a special measure to achieve equality for people, or a class of people, who have a particular protected attribute or a particular combination of 2 or more protected attributes (the target attribute or combination of attributes).

Note 1: For the significance of a special measure to achieve equality, see section 21.

Note 2: A special measure determination cannot be made in relation to a law.

(2) A special measure determination must:
   (a) identify the measure covered by the determination, and the measure taker; and
   (b) specify the target attribute or combination of attributes; and
   (c) be expressed to have effect for the period specified in the determination.

The period specified under paragraph (c) must not exceed 5 years (starting from when the determination takes effect).

Note: This does not prevent one or more subsequent determinations being made, on application, in relation to the same measure.

80 Process for making etc. special measure determinations

Applying for a special measure determination

(1) One or more persons or bodies (each of whom is an original applicant) may apply to the Commission for the making of a special measure determination in relation to a particular policy or program, or particular conduct.
Commission may make etc. special measure determination

(2) The Commission may, in writing, make the special measure
determination if the Commission is satisfied that the policy,
program or conduct is a special measure to achieve equality (as
defined in section 21) for people who have the target attribute or
combination of attributes.

Note: The Commission must comply with the consultation requirements of

(3) The Commission may, in writing, amend the special measure
determination if:
(a) one or more original applicants apply for the amendment of
the determination; and
(b) the Commission is satisfied as mentioned in subsection (2) in
relation to the policy, program or conduct, as proposed to be
amended.

(4) The Commission may, in writing, revoke the special measure
determination if:
(a) one or more original applicants apply for the revocation of
the determination; or
(b) the Commission is no longer satisfied as mentioned in
subsection (2), and the Commission has consulted each
original applicant about the proposed revocation.

Special measure determinations are legislative instruments

(5) A special measure determination (or an amendment or revocation
of a special measure determination) is a legislative instrument.

81 Duration of special measure determinations

(1) A special measure determination continues to have effect (unless
revoked earlier) until the end of the period specified in the
determination in accordance with paragraph 79(2)(c).

(2) Immediately after the end of the specified period, the determination
is taken to be revoked (with effect from that time) by the
Commission under subsection 80(4).
82  Effect of special measure determinations

(1) While a special measure determination has effect, the measure identified in the determination is taken to be a special measure to achieve equality (taken by the measure taker identified in the determination) for people who have the target attribute or combination of attributes specified in the determination.

(2) Subsection 21(4) (cessation of special measure when substantive equality has been achieved) does not apply in relation to a special measure determination, except that the Commission must take that subsection into account in deciding whether to revoke the determination.
Division 8—Temporary exemptions

83 Meaning of temporary exemption

(1) A temporary exemption is an exemption, granted by the Commission in accordance with this Division, that exempts particular conduct of one or more persons or bodies (or classes of persons or bodies) from being unlawful discrimination.

(2) A temporary exemption must:

(a) specify:

(i) the conduct that is covered by the exemption; and
(ii) the persons or bodies (or classes of persons or bodies) covered by the exemption; and

(b) be expressed to have effect for the period specified in the exemption.

The period specified under paragraph (b) must not exceed 5 years (starting from when the exemption takes effect).

Note: This does not prevent one or more subsequent temporary exemptions being granted, on application, in relation to the same conduct.

(3) A temporary exemption must make it clear whether the exemption covers discrimination on the ground of any protected attribute or combination of protected attributes, or whether it only covers discrimination on the ground of a particular protected attribute or a particular combination of 2 or more protected attributes.

(4) A temporary exemption may be granted subject to terms and conditions that are specified in the exemption.

84 Process for granting etc. temporary exemptions

Applying for a temporary exemption

(1) One or more persons or bodies (each of whom is an original applicant) may apply to the Commission for the granting of a temporary exemption in relation to particular conduct of particular persons or bodies (or classes of persons or bodies).
Commission may grant etc. temporary exemption

(2) The Commission may, in writing, grant the temporary exemption if
the Commission is satisfied that the exemption is consistent with
the objects of this Act.

Note: The Commission must comply with the consultation requirements of

(3) The Commission may, in writing, amend the temporary exemption
if:
   (a) one or more original applicants apply for the amendment of
   the exemption; and
   (b) the Commission is satisfied as mentioned in subsection (2) in
       relation to the exemption, as proposed to be amended.

(4) The Commission may, in writing, revoke the temporary exemption
if:
   (a) one or more original applicants apply for the revocation of
   the exemption; or
   (b) the Commission is no longer satisfied as mentioned in
       subsection (2), and the Commission has consulted each
       original applicant about the proposed revocation.

Temporary exemptions are legislative instruments

(5) A temporary exemption (or an amendment or revocation of a
temporary exemption) is a legislative instrument.

85 Duration of temporary exemptions

(1) A temporary exemption continues to have effect (unless revoked
earlier) until the end of the period specified in the exemption in
accordance with paragraph 83(2)(b).

(2) Immediately after the end of the specified period, the exemption is
taken to be revoked (with effect from that time) by the
Commission under subsection 84(4).

86 Effect of temporary exemptions

If, while a temporary exemption has effect:
Section 86

(a) a person or body that is covered by the exemption engages in conduct that is covered by the exemption; and

(b) the terms and conditions (if any) of the exemption have been complied with;

that conduct is taken not to be unlawful discrimination on the ground of a protected attribute, or a combination of 2 or more protected attributes, covered by the exemption.
Chapter 4—Complaints

Part 4-1—Making a complaint to the Commission

Division 1—Guide to this Part

87 Guide to this Part

This Part deals with making complaints to the Commission about unlawful conduct, or about Commonwealth conduct that is contrary to human rights.

Division 2 deals with the kinds of conduct that may be the subject of a complaint.

Division 3 deals with how to make a complaint.
Division 2—The conduct that may be the subject of a complaint

88 The conduct that may be the subject of a complaint

Categories of conduct that may be the subject of a complaint

(1) Subject to subsection (2), a complaint may be made to the Commission alleging that:
   (a) a person has engaged in particular conduct; and
   (b) the conduct is either or both of the following:
      (i) unlawful conduct;
      (ii) Commonwealth conduct that is contrary to human rights.

Note 1: The functions and powers conferred on the Commission by this Chapter are to be performed or exercised, on behalf of the Commission, by the President: see section 152.

Note 2: A complaint may be made in respect of conduct that another person is taken, by section 56, 57 or 58, to have engaged in.

(2) A complaint cannot be made in relation to Commonwealth conduct that is contrary to rights or freedoms that are human rights only because of the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5).

Certain complaints to be treated as if they were 2 separate complaints

(3) If a complaint alleges that the conduct to which it relates falls into both of the categories specified in paragraph (1)(b), this Chapter applies in relation to the complaint as if it were a separate complaint in relation to each of the alleged categories of conduct.

Note: A single investigation or conciliation may be held in relation to the separate complaints: see subsection 105(2).
**Division 3—Making etc. a complaint**

**Subdivision A—Who may make a complaint**

89 Who may make a complaint

(1) A complaint relating to particular conduct may be made:

(a) by one or more persons who are aggrieved by the conduct:

(i) solely on their own behalf; or

(ii) on their own behalf, and on behalf of one or more other persons who are also aggrieved by the conduct; or

(b) by another person, or by an industrial association, on behalf of one or more persons who are aggrieved by the conduct.

(2) A person or industrial association that makes a complaint is a complainant in relation to the complaint.

(3) A person who is alleged in a complaint to have engaged in the conduct to which the complaint relates is a respondent in relation to the complaint.

(4) A person on whose behalf a complaint is made is an affected party in relation to the complaint (including a complainant who makes a complaint on his or her own behalf).

(5) A complaint is a representative complaint if it is made on behalf of at least one person who is not a complainant.

Note: Subdivision B contains additional provisions relating to making etc. representative complaints.

(6) Subsections (2) to (5) have effect subject to other provisions of this Division under which people can become, or cease to be, complainants, respondents or affected parties.

90 Person must not make complaint if another complaint has already been made

(1) Subject to subsection (2), a person must not make a complaint to the Commission in relation to conduct if:
(a) a complaint or application has already been made by, or on behalf of, the person in relation to the conduct under:

(i) this Act; or

(ii) the *Australian Human Rights Commission Act 1986* (as in force before the commencement of this Part); or

(iii) Part 3-1 of the *Fair Work Act 2009*; or

(iv) a State or Territory anti-discrimination law; and

(b) the complaint or application has not failed for want of jurisdiction.

(2) The Commission may, despite subsection (1), permit a person to make a complaint if the Commission is satisfied that there are exceptional circumstances that warrant permitting the person to make the complaint.

Subdivision B—Additional provisions relating to making etc. representative complaints

**91 Complaint must identify the affected parties**

(1) A representative complaint must describe or otherwise identify the affected parties.

(2) In describing or otherwise identifying the affected parties, it is not necessary to name them or specify how many there are.

**92 Withdrawal of affected party**

(1) A person (other than a claimant) ceases to be an affected party in relation to a representative complaint if the person withdraws from the complaint, by notice in writing to the Commission.

(2) However, a person cannot withdraw under subsection (1) after the complaint has been closed by the Commission under section 117, unless the closure has been revoked under that section.

(3) If a person (other than a claimant) ceases, under subsection (1), to be an affected party in relation to a representative complaint, section 90 does not prevent the person from making a complaint to the Commission in relation to the same conduct.
93 Replacement of complainant

(1) The Commission may, in relation to a representative complaint, replace any complainant with another person as a complainant on application in writing by any affected party.

(2) However, the Commission can only do so if the other person consents to becoming a complainant.

94 Directions requiring complainant to notify affected party of a matter

(1) The Commission may, in relation to a representative complaint, at any stage direct a complainant to give notice of any matter to one or more affected parties.

(2) A direction under subsection (1) that is made in writing is not a legislative instrument.

Subdivision C—Other matters relating to making etc. complaints

95 Formal requirements for making a complaint

A complaint must be in writing, and be given or sent to the Commission.

96 Preparation of complaints: assistance from the Commission

If the Commission is aware that:

(a) a person wishes to make a complaint; and

(b) the person needs assistance to put the complaint in writing;

the Commission must take reasonable steps to provide appropriate assistance to the person.
Section 97

97 Preparation of complaints: people in custody

When this section applies

(1) This section applies if a person (the detaine) is being detained in custody.

(2) A custodian is:
   (a) a person in whose custody the detaine is being detained; or
   (b) any other person performing duties connected with the detaine’s detention.

Entitlements of detaine relating to communications with Commission

(3) The detaine has the following entitlements:
   (a) the detaine is, on request made to a custodian, entitled to be provided with facilities for:
      (i) preparing a written complaint; or
      (ii) giving information to the Commission in relation to a complaint that has been made to the Commission; or
      (iii) enclosing a complaint, or such information, in a sealed envelope for the Commission;
   (b) the detaine is, on request made to a custodian, entitled to have sent to the Commission, without undue delay, a sealed envelope that is:
      (i) delivered by the detaine to the custodian; and
      (ii) addressed to the Commission;
   (c) the detaine is entitled to have delivered to the detaine, without undue delay, any sealed envelope that:
      (i) is addressed to the detaine and sent by the Commission; and
      (ii) comes into the possession, or under the control, of a custodian.

Privacy

(4) A custodian is not entitled to open, or inspect any document enclosed in, a sealed envelope that:
(a) is addressed to the Commission and delivered by the detainee to a custodian for sending to the Commission; or
(b) is addressed to the detainee and sent by the Commission.

Arrangements with State and Territory authorities

(5) For the purposes of this section, the Commission may make arrangements, with the appropriate authority of a State or a Territory, for the identification and delivery of sealed envelopes sent by the Commission to people detained in custody in that State or Territory.

98 Amending a complaint

(1) With the leave of the Commission, a complaint may be amended by any complainant in any respect.

Note: For example, a complaint may be amended to add another person as a respondent.

(2) However, a complaint cannot be amended after it is closed by the Commission under section 117 unless the closure has been revoked under that section.

(3) An amendment of a complaint must be in writing.

99 Withdrawing a complaint

(1) With the leave of the Commission, a complaint may be withdrawn by any complainant.

(2) The Commission:
   (a) must grant leave if it is satisfied that all the affected parties agree to the withdrawal of the complaint; and
   (b) must not grant leave unless it is so satisfied.
Part 4-2—How the Commission deals with complaints

Division 1—Guide to this Part

100 Guide to this Part

This Part deals with how the Commission deals with complaints.

Division 2 deals with the duration of the Commission’s obligations to deal with a complaint.

Division 3 deals with the Commission referring complaints and instruments to other bodies.

Division 4 deals with the investigation and conciliation of complaints.

Division 5 deals with complaints that allege that Commonwealth conduct is contrary to human rights and that cannot be settled by conciliation.

Division 6 deals with the closure of complaints by the Commission.
Division 2—Duration of Commission’s obligations to deal with complaints

101 Duration of Commission’s obligations to deal with complaint

(1) The Commission’s obligations to deal with a complaint under this Part continue until:

(a) the complaint is withdrawn under section 99; or
(b) because of the complaint, the Commission refers an instrument to another body under section 102; or
(c) the Commission refers the complaint to the Inspector-General of Intelligence and Security under section 103; or
(d) the Commission refers the complaint to the Information Commissioner under section 104; or
(e) the Commission has complied with Division 5 in relation to the complaint; or
(f) the Commission closes the complaint under section 117 and the closure has not been revoked under that section.

Note: See also subsection 88(3) (certain complaints to be treated as if they were 2 separate complaints).

(2) Unless otherwise expressly stated, the Commission is not obliged to deal in any way with a purported complaint that is not properly made.

(3) A complaint is properly made if it is made in accordance with the requirements of Part 4-1.
Division 3—Referral of complaints and instruments to other bodies

102 Referral of industrial instruments that authorise or require conduct that would otherwise be unlawful discrimination

Referral of instrument in connection with a complaint

(1) If the Commission considers that the conduct to which a complaint (whether or not properly made) relates would be unlawful discrimination, but for the fact that the conduct is necessary to comply with an instrument of a kind referred to in paragraph 31(2)(c), the Commission must refer the instrument as follows:

(a) if the instrument is of a kind referred to in subparagraph 31(2)(c)(i) or (ii)—the Commission must refer the instrument to Fair Work Australia;

(b) if the instrument is of a kind referred to in subparagraph 31(2)(c)(iii)—the Commission must refer the instrument to the Remuneration Tribunal;

(c) if the instrument is of a kind referred to in subparagraph 31(2)(c)(iv)—the Commission must refer the instrument to the Defence Force Remuneration Tribunal.

Note: Referral of the instrument under this subsection ends the Commission’s obligations to deal with the complaint under this Part: see subsection 101(1).

(2) If the Commission refers an instrument under subsection (1), the Commission must:

(a) give the body to which the instrument is referred a statement of the reasons why the instrument is referred; and

(b) notify each complainant:

(i) of the referral, and the reasons for the referral; and

(ii) that the Commission will not be dealing further with the complaint.

Referral of instrument in other circumstances

(3) If the Commission otherwise becomes aware that an instrument of a kind referred to in paragraph 31(2)(c) requires a person to engage
in conduct that would be unlawful discrimination, but for the fact
that the conduct is necessary to comply with that instrument, the
Commission may refer the instrument in accordance with the
appropriate paragraph of subsection (1).

Determining whether conduct would be unlawful discrimination

(4) In determining whether conduct would be unlawful discrimination
as mentioned in subsection (1) or (3), the fact that the conduct is
engaged in in accordance with an instrument mentioned in that
subsection does not of itself mean that the conduct is justifiable.

103 Referral of complaints to Inspector-General of Intelligence and
Security

(1) If the conduct to which a complaint relates is conduct engaged in
by an intelligence agency, or that is otherwise related to the
activities of an intelligence agency, the Commission must refer the
complaint to the Inspector-General of Intelligence and Security.

Note: Referral of the complaint under this subsection ends the
Commission’s obligations to deal with the complaint under this Part:
see subsection 101(1).

(2) If the Commission refers a complaint to the Inspector-General of
Intelligence and Security, the Commission must:

(a) give the Inspector-General:

(i) a statement of the reasons why the complaint is referred;
and

(ii) any information or documents that relate to the
complaint and are in the possession, or under the
control, of the Commission; and

(b) notify each complainant:

(i) of the referral, and the reasons for the referral; and

(ii) that the Commission will not be dealing further with the
complaint.

104 Referral of complaints to Information Commissioner

(1) This section applies to a complaint that alleges that
Commonwealth conduct is contrary to human rights.
Section 104

(2) The Commission may refer the complaint to the Information Commissioner if the Commission considers that the alleged conduct could be more effectively or conveniently dealt with by the Information Commissioner in the performance of the functions referred to in paragraph 27(1)(a) or 28(1)(b) or (c) of the Privacy Act 1988.

(3) A complaint referred under subsection (2) is taken to be a complaint made to the Information Commissioner under Part V of the Privacy Act 1988.

(4) If the Commission refers a complaint to the Information Commissioner, the Commission must:

(a) give the Information Commissioner:

(i) a statement of the reasons why the complaint is referred; and

(ii) any information or documents that relate to the complaint and are in the possession, or under the control, of the Commission; and

(b) notify each complainant:

(i) of the referral, and the reasons for the referral; and

(ii) that the Commission will not be dealing further with the complaint.
Division 4—Investigation and conciliation of complaints

Subdivision A—General provisions

105 Commission to investigate and/or conciliate complaints

(1) The Commission must do whichever of the following the Commission considers appropriate in relation to a complaint that has been made to the Commission:
   (a) investigate the complaint;
   (b) attempt to conciliate the complaint;
   (c) both investigate, and attempt to conciliate, the complaint.

(2) If the Commission considers that 2 or more complaints arise out of the same (or substantially the same) circumstances or subject, the Commission may conduct a single investigation or conciliation in relation to those complaints.

106 Commission’s general discretion as to how to conduct investigation or conciliation

(1) The Commission may conduct the investigation or conciliation of a complaint in any way that the Commission considers to be appropriate.

(2) The Commission is not bound by the rules of evidence when investigating or conciliating a complaint.

Subdivision B—Additional provisions relating to investigation

107 Power to obtain information etc.

When this section applies

(1) This section applies if the Commission reasonably believes that a person is capable of giving information or producing a document that is relevant to the investigation of a complaint.
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Part 4-2 How the Commission deals with complaints
Division 4 Investigation and conciliation of complaints

Section 108

1 Notice requiring provision of information or production of documents

(2) The Commission may, by written notice given to the person, require the person:
   (a) to give the Commission the information by the time, and in the manner, specified in the notice; or
   (b) to produce the document to the Commission by the time, and in the manner, specified in the notice.

Note 1: Failure to comply with a notice is an offence: see section 201.

Note 2: Requirements under this subsection have effect subject to any certificate given to the Commission by the Attorney-General under section 198.

Note 3: If a person is required to provide information or produce a document relating to an intelligence agency, the person must notify that agency: see section 199.

Note 4: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents.

(3) A notice under subsection (2):
   (a) must not specify a time that is less than 14 days after the notice is given; and
   (b) must set out the effect of section 201.

108 Inspection, retention etc. of documents

(1) This section applies to a document produced by a person pursuant to a requirement made under section 107.

(2) The Commission may:
   (a) inspect the document; and
   (b) make and retain copies of the whole or a part of the document.

(3) The Commission may take possession of the document and retain it for as long as is necessary.

(4) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy of the
document that is certified by a Commission official to be a true copy.

(5) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(6) Until the certified copy is supplied, the Commission must, at such times and places as the Commission considers appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

Subdivision C—Additional provisions relating to conciliation

109 Commission may hold conferences

Commission may decide to hold a conference

(1) For the purpose of attempting to conciliate a complaint, the Commission may decide to hold a conference, to be presided over by:
   (a) the Commission; or
   (b) a suitable person (other than a Commission member) determined by the Commission.

Commission may invite people to attend

(2) The Commission may:
   (a) invite any or all of the complainants or respondents to attend the conference; and
   (b) invite any other person to attend the conference, if:
      (i) the Commission reasonably believes that the person is capable of giving information that is relevant to the conciliation of the complaint; or
      (ii) the Commission considers that the person’s presence at the conference is likely to be conducive to the conciliation of the complaint.
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Division 4 Investigation and conciliation of complaints

Section 110

Commission may require people to attend

(3) The Commission may, by written notice given to a person referred to in subsection (2), require the person to attend the conference (whether or not the person has already been invited to attend the conference).

Note: Failure to comply with a notice is an offence: see section 202.

(4) A notice under subsection (3):
   (a) must specify the place and time of the conference, not being a time that is less than 14 days after the notice is given; and
   (b) must set out the effect of section 202.

(5) A person who is required to attend the conference is entitled to be paid, by the Commonwealth, a reasonable sum for the person’s expenses of attendance.

110 Proceedings at conferences

(1) Subject to this section, a conference is to be conducted in such manner as the person presiding at the conference considers appropriate.

(2) The conference is to be conducted in private.

(3) The person presiding at the conference must take all reasonable steps to ensure that the conduct of the conference does not disadvantage any complainant or respondent.

(4) Unless the person presiding at the conference consents:
   (a) an individual is not entitled to be represented at the conference by another person; and
   (b) a body (whether or not incorporated) is not entitled to be represented at the conference otherwise than by a person who is an officer or employee of that body.

(5) Despite paragraph (4)(a), an individual who is unable to attend the conference because the individual has a disability is entitled to nominate another person to attend instead on his or her behalf.
(6) If the person presiding at the compulsory conference considers that an individual is unable to participate fully in the conference because the individual has a disability, the individual is entitled to nominate another person to assist him or her at the conference.

111 Things said in conciliation are not admissible in evidence

Evidence of anything said or done by a person in the course of the conciliation of a complaint is not admissible:

(a) in any court (whether or not exercising federal jurisdiction); or

(b) in any proceedings before a person authorised to hear evidence (whether the person is authorised by a law, or by the consent of the parties).
Chapter 4 Complaints
Part 4-2 How the Commission deals with complaints
Division 5 Complaints alleging Commonwealth conduct contrary to human rights that cannot be settled by conciliation

Section 112

Division 5—Complaints alleging Commonwealth conduct contrary to human rights that cannot be settled by conciliation

112 Complaints to which this Division applies

This Division applies to a complaint that alleges Commonwealth conduct is contrary to human rights if:

(a) the Commission is satisfied that there is no reasonable prospect of the complaint being settled by conciliation; and

(b) the Commission’s obligations to deal with the complaint have not already ended under section 101.

113 Commission to make a finding

(1) The Commission must make a finding on the question whether the conduct is Commonwealth conduct that is contrary to human rights. For this purpose, the Commission may conduct any investigation (or further investigation) of the complaint that the Commission considers appropriate.

(2) The Commission must not make a finding that the conduct is Commonwealth conduct that is contrary to human rights unless the Commission has given each respondent a reasonable opportunity to make submissions on the matter to the Commission.

114 Report to complainants and respondents

(1) The Commission must give a written report to each complainant and each respondent. The report:

(a) must set out the Commission’s finding on the question referred to in subsection 113(1), and the reasons for that finding; and

(b) may set out any recommendations that the Commission considers it appropriate to make to any respondent.

Note: The Commission may (for example) recommend that a respondent should:

(a) compensate affected parties for loss or damage they have suffered; or

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Section 115

(b) take some other action to remedy or reduce loss or damage suffered by affected parties; or

c) take particular measures to ensure that similar conduct does not occur in the future.

(2) A report under subsection (1) is not a legislative instrument.

115 Report to Minister

(1) If the Commission finds that the conduct is Commonwealth conduct that is contrary to human rights, the Commission may give the Minister a report.

Note: Reports given to the Minister under this subsection must be tabled in Parliament: see section 192.

(2) A report under subsection (1) must be in writing, and include:

(a) the finding that the Commission has made, and the reasons for that finding; and

(b) any recommendations that the Commission has made in a report under paragraph 114(b); and

(c) a statement whether, to the Commission’s knowledge, any respondent has taken or is taking any action as a result of the finding or recommendations, and information about the nature of any action that has been or is being so taken.

(3) If the Commission gives the Minister a report under subsection (1), the Commission:

(a) must give a copy of the report to each respondent who has been found by the Commission to have engaged in Commonwealth conduct that is contrary to human rights; and

(b) must give a copy of the report to each complainant who is an affected party; and

(c) may give a copy of the report to any other complainant.

(4) A report under subsection (1) is not a legislative instrument.

116 Omission of certain material from reports

(1) The Commission may exclude material from a report under section 114 or 115 if the Commission considers it desirable to do so having regard to any of the matters mentioned in subsection
Chapter 4 Complaints
Part 4-2 How the Commission deals with complaints
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1 197(3) and to the obligations of the Commission under subsection 197(4).
2
3 (2) If, under subsection (1), the Commission excludes material from a report under section 115, the Commission must give the Minister a written report setting out the excluded material and the reasons for excluding the material.
4
5 Note: Reports under subsection (2) do not have to be tabled: see section 192.
6
7 (3) A report under subsection (2) is not a legislative instrument.
8
9
Division 6—Closing complaints

117 Closing a complaint

Complaints requiring no further action

(1) The Commission may close a complaint if:
   (a) the Commission is satisfied that the complaint has been settled; or
   (b) the Commission is satisfied that the affected parties do not want the Commission to deal with the complaint, or to continue to deal with it.

Other circumstances in which Commission may close complaints

(2) The Commission may close a complaint if:
   (a) the Commission is satisfied that the conduct to which the complaint relates is not unlawful conduct, or is not Commonwealth conduct that is contrary to human rights; or
   (b) the complaint was made more than 12 months after the alleged conduct occurred (or most recently occurred); or
   (c) the Commission is satisfied that the complaint is frivolous, vexatious, misconceived or lacking in substance; or
   (d) if some other remedy has been sought in relation to the subject matter of the complaint—the Commission is satisfied that the subject matter of the complaint has been adequately dealt with; or
   (e) the Commission is satisfied that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the affected parties; or
   (f) if the complaint alleges unlawful conduct—the Commission is satisfied that the subject matter of the complaint involves an issue of public importance that should be considered by the Federal Court or the Federal Magistrates Court; or
   (g) if the complaint alleges unlawful conduct—the Commission is satisfied that there is no reasonable prospect of the complaint being settled by conciliation; or
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(h) if the complaint alleges that Commonwealth conduct is
contrary to human rights—the Commission is satisfied that:

(i) there is no reasonable prospect of the complaint being
settled by conciliation; and

(ii) having regard to all the circumstances, no action, or
further action, is warranted in relation to the complaint.

Note: If a complaint alleging unlawful conduct is closed under this
subsection, application may (subject to leave of the court, if the
complaint is closed under any of paragraphs (a) to (e)) be made to the
Federal Court or the Federal Magistrates Court in relation to the
conduct to which the complaint relates: see Division 2 of Part 4-3.

Complainant may request closure of unlawful conduct complaint
made against President, Commission or other Commission member

(3) The Commission must close a complaint if:

(a) the complaint alleges unlawful conduct; and

(b) any of the respondents to the complaint is:

(i) the Commission; or

(ii) the President; or

(iii) another Commission member; and

(c) a complainant has made a written request to the Commission
for closure of the complaint; and

(d) the Commission is satisfied that all the affected parties agree
to the complaint being closed.

Note: If a complaint alleging unlawful conduct is closed under this
subsection, application may be made to the Federal Court or the
Federal Magistrates Court in relation to the conduct to which the
complaint relates: see Division 2 of Part 4-3.

Obligation to give notice of closure of complaint

(4) If the Commission closes a complaint under subsection (1), (2) or
(3), the Commission must give each complainant written notice of
the closure and of the reasons for the closure.

(5) On request by an affected party who is not a complainant, the
Commission must give the affected party a copy of the notice
given under subsection (4).

Revocation of closure of complaint

(6) The Commission may revoke the closure of a complaint, but not after an application is made to the Federal Court or the Federal Magistrates Court under section 120.
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Part 4-3  Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct

Division 1  Guide to this Part

Section 118

Part 4-3—Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct

Division 1—Guide to this Part

118  Guide to this Part

This Part deals with when an application may be made to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct.

Division 2 deals with making an application after a complaint alleging unlawful conduct has been closed.

Division 3 deals with the general power to grant an interim injunction etc.

Division 4 deals with other general provisions relating to proceedings brought in a court under this Part.
Division 2—Application to court if unlawful conduct complaint closed

119 When this Division applies

This Division applies if a complaint alleging unlawful conduct has been closed under subsection 117(2) or (3).

120 Application to court alleging unlawful conduct

(1) Subject to sections 121, 122 and 123, a person may make an application to the Federal Court, or the Federal Magistrates Court, alleging unlawful conduct by one or more of the respondents to the complaint.

Note: Part IVA of the Federal Court of Australia Act 1976 allows representative proceedings to be commenced in the Federal Court in certain circumstances.

(2) The unlawful conduct alleged in the application:
(a) must be the same as (or the same in substance as) the unlawful conduct to which the complaint related; or
(b) must arise out of the same (or substantially the same) conduct to which the complaint related.

121 Leave required in some circumstances

(1) If the complaint was closed under subsection 117(2) on the ground specified in any of paragraphs (a) to (e) of that subsection, an application cannot be made to the Federal Court, or the Federal Magistrates Court, unless that court grants leave to make the application.

(2) The court to which an application for leave is made may deal with the application without a hearing. This does not limit how the court may decide to deal with the application.
Chapter 4 Complaints

Part 4-3 Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct

Division 2 Application to court if unlawful conduct complaint closed

Section 122

122 Persons who may make an application

An application under section 120, or for leave under section 121, may be made by a person who is an affected party in relation to the complaint.

123 Time limits

(1) An application under section 120 (other than an application to which section 121 applies) must be made within 60 days after the day (or the last day) on which notice was given as required by subsection 117(4), or within such further time as the court concerned allows.

(2) An application for leave under section 121 must be made within 60 days after the day (or the last day) on which notice was given as required by subsection 117(4), or within such further time as the court concerned allows.

(3) The court concerned may allow further time either before or after the end of the period of 60 days referred to in subsection (1) or (2).

124 Burden of proof in proceedings under section 120 etc.

**Burden of proof for reason or purpose for conduct**

(1) If, in proceedings against a person under section 120, the applicant:

(a) alleges that another person engaged, or proposed to engage, in conduct for a particular reason or purpose (the **alleged reason or purpose**); and

(b) adduces evidence from which the court could decide, in the absence of any other explanation, that the alleged reason or purpose is the reason or purpose (or one of the reasons or purposes) why or for which the other person engaged, or proposed to engage, in the conduct;

it is to be presumed in the proceedings that the alleged reason or purpose is the reason or purpose (or one of the reasons or purposes) why or for which the other person engaged, or proposed to engage, in the conduct, unless the contrary is proved.

Note: See also section 8 (multiple reasons or purposes for conduct).
Burden of proof for exceptions etc.

(2) In proceedings against a person under section 120, the burden of proving that conduct is not unlawful conduct because of any of the following provisions lies on that person:
   (a) subsection 21(1) (special measures to achieve equality are not discrimination);
   (b) an exception in Part 2-2 or 2-3;
   (c) section 72 (effect of disability standards);
   (d) section 78 (effect of compliance codes);
   (e) section 82 (effect of special measure determinations);
   (f) section 86 (effect of temporary exemptions).

(3) In proceedings against a person under section 120, the burden of proving that the person is not taken to have engaged in conduct because of either of the following provisions lies on that person:
   (a) subsection 57(3) (exception for principal who took reasonable precautions);
   (b) section 78 (effect of compliance codes).

(4) In any proceedings against a person, the burden of proving that the person does not have a liability for conduct because of either of the following provisions lies on that person:
   (a) subsection 58(5) (exception for partner etc. who took reasonable precautions);
   (b) section 78 (effect of compliance codes).

125 Orders that court may make on application under section 120

(1) If the court to which an application is made under section 120 is satisfied that there has been unlawful conduct by a respondent to the complaint, the court may make such orders (including a declaration of right) as it considers appropriate.

(2) Without limiting subsection (1), the orders that the court may make include any of the following orders, or any orders to a similar effect:
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Section 126

(a) an order declaring that a respondent has engaged in unlawful conduct, and directing the respondent not to repeat or continue such conduct;

(b) an order requiring a respondent to perform any reasonable act or course of conduct aimed at ensuring that the respondent does not again engage in the same or similar unlawful conduct;

(c) an order requiring a respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by an affected party;

(d) an order requiring a respondent to employ or re-employ an affected party;

(e) an order requiring a respondent to pay damages to an affected party;

(f) an order requiring a respondent to vary the termination of a contract or agreement to redress any loss or damage suffered by an affected party;

(g) an order declaring that it would be inappropriate for any further action to be taken in the matter.

(3) In the case of a representative proceeding under Part IVA of the Federal Court of Australia Act 1976, subsections (1) and (2) of this section apply as if a reference to an affected party included a reference to each person who is a group member (within the meaning of Part IVA of the Federal Court of Australia Act 1976).

126 Interim injunctions etc, by court to which application is made under section 120

(1) The court to which an application is made under section 120 may, if the court considers it appropriate to do so, grant an interim injunction, or other interim order, pending the determination of the proceedings.

(2) The court cannot, as a condition of granting an interim injunction or other interim order, require a person to give an undertaking as to damages.
127 Report by Commission to court

(1) If an application for an order or injunction has been made under this Division to the Federal Court or the Federal Magistrates Court, that court may request the Commission to give the court a written report on the complaint. The Commission must comply with the request.

(2) The report must not set out or describe anything said or done in the course of the conciliation of the complaint.

(3) The Commission may exclude material from the report if the Commission considers it desirable to do so having regard to any of the matters mentioned in subsection 197(3) and to the obligations of the Commission under subsection 197(4).

(4) The Commission may give a copy of the report to any party to the proceedings on the application.

(5) A report under this section is not a legislative instrument.
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Division 3  General power of court to grant interim injunction etc. if complaint of unlawful conduct has been made

Section 128

Division 3—General power of court to grant interim injunction etc. if complaint of unlawful conduct has been made

128  Interim injunction etc. to maintain status quo

(1) Subject to this section, if a complaint alleging unlawful conduct has been made to the Commission, the Federal Court or the Federal Magistrates Court may grant or make an interim injunction, or other interim order:

(a) to maintain, or re-establish, the status quo as it existed immediately before:

(i) the conduct to which the complaint relates was engaged in; or

(ii) the complaint was made; or

(b) to maintain, or re-establish, the rights of any complainant, respondent or affected party as they existed immediately before:

(i) the conduct to which the complaint relates was engaged in; or

(ii) the complaint was made.

(2) An application for an interim injunction or other order under subsection (1) may be made by a complainant, a respondent or an affected party.

(3) An interim injunction or other order cannot be granted or made under subsection (1) after any of the following has occurred:

(a) the complaint has been withdrawn under section 99;

(b) because of the complaint, the Commission has referred an instrument to another body under section 102;

(c) the Commission has referred the complaint to the Inspector-General of Intelligence and Security under section 103;

(d) the Commission has referred the complaint to the Information Commissioner under section 104;

(e) the complaint has been closed under section 117.
(4) The court cannot, as a condition of granting an interim injunction or other order under subsection (1), require a person to give an undertaking as to damages.
Chapter 4 Complaints

Part 4-3 Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct

Division 4 Other general provisions

Section 129

Division 4—Other general provisions

129 Right of representation

(1) A party in proceedings under this Part:
   (a) may appear in person; or
   (b) may be represented by a legal practitioner; or
   (c) may be represented by another person who is not a legal practitioner, unless the court concerned is of the opinion that it is inappropriate in the circumstances for the other person to appear.

(2) A person, other than a legal practitioner, is not entitled to demand or receive any fee or reward, or any payment for expenses, for representing a party in proceedings under this Part.

130 Assistance in proceedings before the court

(1) A person who:
   (a) has commenced or proposes to commence proceedings in the Federal Court or the Federal Magistrates Court under this Part; or
   (b) is a respondent in proceedings in the Federal Court or the Federal Magistrates Court under this Part;

may apply to the Attorney-General for the provision of assistance under this section in respect of the proceedings.

(2) If:
   (a) a person makes an application for assistance; and
   (b) the Attorney-General is satisfied that:
      (i) it will involve hardship to that person to refuse the application; and
      (ii) in all the circumstances, it is reasonable to grant the application;

the Attorney-General may authorise the provision by the Commonwealth to that person, on such conditions (if any) as the Attorney-General determines, of such legal or financial assistance in respect of the proceedings as the Attorney-General determines.
(3) If an authorisation or determination under subsection (2) is made in writing, the authorisation or determination is not a legislative instrument.

131 Court not bound by technicalities

(1) In proceedings under this Part, the Federal Court and the Federal Magistrates Court are not bound by technicalities or legal forms.

(2) This section has effect subject to Chapter III of the Constitution.

132 Discharge or variation of order or injunction under this Part

A court that grants or makes an order or injunction under this Part may discharge or vary the order or injunction.

133 Costs

(1) Subject to subsection (2), in proceedings under this Part in the Federal Court or the Federal Magistrates Court, each party is to bear that party’s own costs.

(2) If the court concerned considers that there are circumstances that justify it in doing so, the court may make such order as to costs, and security for costs, whether by way of interlocutory order or otherwise, as the court considers just.

(3) In considering whether there are circumstances justifying the making of an order under subsection (2), the court must have regard to the following matters:

(a) the financial circumstances of each of the parties to the proceedings;

(b) whether any party to the proceedings is receiving assistance under section 130, or is receiving assistance by way of legal aid (and, if a party is receiving any such assistance, the nature and terms of that assistance);

(c) the conduct of the parties to the proceedings (including any conduct of the parties in dealings with the Commission);

(d) whether any party to the proceedings has been wholly unsuccessful in the proceedings;
Chapter 4 Complaints

Part 4-3 Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct

Division 4 Other general provisions

Section 133

(e) whether any party to the proceedings has made an offer in writing to another party to the proceedings to settle the proceedings and the terms of any such offer;

(f) any other matters that the court considers relevant.
Chapter 5—Inquiries

Part 5-1—Inquiries

Division 1—Guide to this Part

134 Guide to this Part

This Part deals with inquiries by the Commission.

Division 2 deals with the matters in relation to which the Commission may conduct inquiries, and the initiation etc. of inquiries.

Division 3 deals with how inquiries are conducted.

Division 4 deals with reporting to the Minister on inquiries.
Chapter 5  Inquiries
Part 5-1  Inquiries
Division 2  Commission may conduct inquiries

Section 135

Division 2—Commission may conduct inquiries

135 Matters in relation to which the Commission may conduct inquiries

Subject to section 136, the Commission may conduct inquiries into any of the following matters:

(a) whether Commonwealth conduct is unlawful conduct or is contrary to human rights;

(b) the laws that should be made by the Commonwealth Parliament:
   (i) in relation to a matter covered by the objects of this Act;
   or
   (ii) to better respect or promote human rights;

(c) any action that should be taken by the Commonwealth, or by the Administration of a Territory:
   (i) in relation to a matter covered by the objects of this Act;
   or
   (ii) to better respect or promote human rights;

(d) any other action that should be taken by Australia to better comply with the human rights instruments or the ILO instruments.

136 Commission not to inquire into conduct of intelligence agencies

The Commission must not conduct an inquiry into conduct:

(a) engaged in by an intelligence agency; or

(b) that is otherwise related to the activities of an intelligence agency.

Note: The functions of the Inspector-General of Intelligence and Security include inquiring into conduct of intelligence agencies that is inconsistent with, or contrary to, any human right: see section 8 of the Inspector-General of Intelligence and Security Act 1986.

137 Main purpose of inquiry is to make recommendations

The main purpose of an inquiry is for the Commission:
Commission may conduct inquiries

**Section 138**

(a) to consider whether any recommendations should be made in relation to the matter that is the subject of the inquiry; and
(b) if the Commission considers that recommendations should be made—to include those recommendations in a report to the Minister under section 142.

138 Initiating inquiries

*Commission may initiate inquiries*

(1) The Commission may, on its own initiative, conduct an inquiry into a particular matter covered by section 135 if the Commission considers that conducting the inquiry:
   (a) will or may advance the objects of this Act; and
   (b) is in the public interest.

*Minister may initiate inquiries*

(2) The Minister may, in writing, request the Commission to conduct an inquiry into a particular matter covered by section 135 if the Minister considers that conducting the inquiry:
   (a) will or may advance the objects of this Act; and
   (b) is in the public interest.

   The Commission must comply with the request.

(3) If:
   (a) the Minister makes a request under subsection (2) for the Commission to conduct an inquiry into a particular matter;
   and
   (b) the Minister, in writing, requests that the inquiry be conducted by a particular Commission member or particular Commission members;

   the Commission must, under section 183, delegate the function of conducting the inquiry, and associated powers, to that Commission member or those Commission members.

(4) A request under subsection (2) or paragraph (3)(b) is not a legislative instrument.
Chapter 5 Inquiries
Part 5-1 Inquiries
Division 3 How inquiries are conducted

Section 139

Division 3—How inquiries are conducted

Subdivision A—General matters

139 Commission’s general discretion as to how to conduct an inquiry

(1) The Commission may conduct an inquiry in any way that the Commission considers appropriate.

(2) The Commission is not bound by the rules of evidence when conducting an inquiry.

Subdivision B—Additional provisions relating to inquiries about Commonwealth conduct

140 Power to obtain information etc.

When this section applies

(1) This section applies if the Commission reasonably believes that a person is capable of:

(a) giving information or producing a document that is relevant to an inquiry conducted under paragraph 135(a); or

(b) answering questions relevant to such an inquiry.

Notice requiring provision of information, production of documents or attendance to answer questions

(2) The Commission may, by written notice given to the person, require the person:

(a) to give the Commission the information by the time, and in the manner, specified in the notice; or

(b) to produce the document to the Commission by the time, and in the manner, specified in the notice; or

(c) to attend before the Commission at the time and place specified in the notice, and answer questions relevant to the inquiry.

Note 1: Failure to comply with a notice is an offence: see section 201.
Section 141

141 Inspection, retention etc. of documents

(1) This section applies to a document produced by a person pursuant to a requirement made under section 140.

(2) The Commission may:

(a) inspect the document; and
(b) make and retain copies of the whole or a part of the document.

(3) The Commission may take possession of the document and retain it for as long as is necessary.

(4) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy of the document that is certified by a Commission official to be a true copy.

(5) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(6) Until the certified copy is supplied, the Commission must, at such times and places as the Commission considers appropriate, permit the person otherwise entitled to possession of the document, or a
person authorised by that person, to inspect and make copies of, or take extracts from, the document.
Division 4—Reports to Minister

142 Commission to report to Minister on inquiry

(1) As soon as practicable after completing an inquiry, the Commission must give the Minister a written report on the inquiry.

(2) Without limiting the generality of subsection (1), the report must include any recommendations that the Commission considers should be made in relation to the matter that was the subject of the inquiry.

(3) The Commission may exclude material from the report if the Commission considers it desirable to do so having regard to any of the matters mentioned in subsection 197(3) and to the obligations of the Commission under subsection 197(4).

(4) If, under subsection (3), the Commission excludes material from the report, the Commission must give the Minister a written report setting out the excluded material and the reasons for excluding the material.

Note: Reports under subsection (1) have to be tabled in Parliament, but reports under subsection (4) do not have to be tabled: see section 192.

(5) A report under subsection (1) or (4) is not a legislative instrument.

143 Commission to give person opportunity to make submissions about their conduct

The Commission must not give the Minister a report under section 142 that states or suggests that a person has engaged in Commonwealth conduct that is:

(a) unlawful conduct; or

(b) contrary to human rights;

unless the Commission has given the person a copy of a draft of the report, and allowed the person a reasonable opportunity to make submissions to the Commission in relation to the conduct.
Chapter 6—Australian Human Rights Commission

Part 6-1—Establishment, functions, powers and liabilities of the Commission

Division 1—Guide to this Part

144 Guide to this Part

This Part deals with the establishment, functions, powers and liabilities of the Commission.

Division 2 deals with the establishment of the Commission (by continuing the existence of the Australian Human Rights Commission).

Division 3 deals with the functions of the Commission.

Division 4 deals with the powers of the Commission.

Division 5 deals with the liabilities of the Commission.
Division 2—Establishment

145 Australian Human Rights Commission

(1) This section applies to the body corporate that was established by section 7 of the Australian Human Rights Commission Act 1986 (as in force before the commencement of this Part).

(2) That body corporate continues in existence by force of this section as a body corporate, under and subject to the provisions of this Act, under the name Australian Human Rights Commission.

Note: See also section 25B of the Acts Interpretation Act 1901.
Chapter 6  Australian Human Rights Commission

Part 6-1  Establishment, functions, powers and liabilities of the Commission

Division 3  Functions

Section 146

Division 3—Functions

Subdivision A—General provisions

146  Functions of the Commission

The Commission has the following functions:

(a) the functions conferred on the Commission by Chapter 3 in relation to measures to assist compliance;

(b) the functions conferred on the Commission by Chapter 4 in relation to complaints;

(c) the functions conferred on the Commission by Chapter 5 in relation to inquiries;

(d) to promote an understanding of, and compliance with, this Act;

(e) to undertake education, and research, for the purpose of promoting human rights;

(f) to intervene in:
   (i) any proceedings before a court under this Act (including an appeal from a decision made in such proceedings); or
   (ii) any other proceedings before a court that involve human rights issues (including an appeal that involves such issues);

   if:
   (iii) the Commission considers it appropriate to intervene; and

   (iv) the intervention is with the leave of the court;

(g) to report to the Minister, in accordance with section 147, on the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders;

(h) to report to the Minister, in accordance with section 148, on the enjoyment and exercise of human rights by children in Australia;

(i) the other functions conferred on the Commission by or under:
   (i) other provisions of this Act; or
   (ii) any other Commonwealth law;

(j) any other functions prescribed by the regulations;
Section 147

(k) to do anything incidental or conducive to the performance of any of the preceding functions.

Note 1: The functions of the Commission referred to in paragraph (b) are to be performed, on behalf of the Commission, by the President: see section 152.

Note 2: The functions of the Commission referred to in paragraph (g) are to be performed, on behalf of the Commission, by the Aboriginal and Torres Strait Islander Social Justice Commissioner: see section 153.

Note 3: The functions of the Commission referred to in paragraph (h) are to be performed, on behalf of the Commission, by the National Children’s Commissioner: see section 154.

147 The Commission’s functions: reports relating to enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders

(1) The Commission may at any time give the Minister a written report on the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders (either generally or in relation to a particular matter or matters).

Note 1: The functions of the Commission under this section are to be performed, on behalf of the Commission, by the Aboriginal and Torres Strait Islander Social Justice Commissioner: see section 153.

Note 2: A report given to the Minister under this subsection or subsection (2) must be tabled in Parliament: see section 192.

(2) The Minister may at any time, in writing, request the Commission to give the Minister a written report on the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders (either generally or in relation to a particular matter or matters). The Commission must comply with the request.

(3) A report under subsection (1) or (2) may include recommendations about actions that the Commission considers should be taken to ensure the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders.

(4) For the purpose of reporting under subsection (1) or (2), the Commission may consult any of the following:

(a) organisations established by Aboriginal or Torres Strait Islander communities;
(b) organisations of indigenous peoples in other countries;
(c) Departments and authorities of the Commonwealth, and of the States and Territories;
(d) non-governmental organisations;
(e) international organisations and agencies;
(f) any other organisations, agencies or persons that the Commission considers appropriate.

(5) The Minister must cause a copy of each report given to the Minister under this section to be sent to the Attorney-General of each State and Territory within 7 days after a copy of the report is first laid before a House of the Parliament under section 192.

(6) None of the following is a legislative instrument:
(a) a report under subsection (1) or (2);
(b) a request under subsection (2).

148 The Commission’s functions: reports relating to the enjoyment and exercise of human rights by children in Australia

(1) The Commission may at any time give the Minister a written report on the enjoyment and exercise of human rights by children in Australia (either generally or in relation to a particular matter or matters).

Note 1: The functions of the Commission under this section are to be performed, on behalf of the Commission, by the National Children’s Commissioner: see section 154.

Note 2: In performing functions under this section, the National Children’s Commissioner may give particular attention to children who are at risk or vulnerable.

Note 3: A report given to the Minister under this subsection or subsection (2) must be tabled in Parliament: see section 192.

(2) The Minister may at any time, in writing, request the Commission to give the Minister a written report on the enjoyment and exercise of human rights by children in Australia (either generally or in relation to a particular matter or matters). The Commission must comply with the request.
(3) A report under subsection (1) or (2) may include recommendations about actions that the Commission considers should be taken to ensure the enjoyment and exercise of human rights by children in Australia.

(4) For the purpose of reporting under subsection (1) or (2), the Commission may consult any of the following:
   (a) children;
   (b) Departments and authorities of the Commonwealth, and of the States and Territories;
   (c) non-governmental organisations;
   (d) international organisations and agencies;
   (e) any other organisations, agencies or persons that the Commission considers appropriate.

(5) None of the following is a legislative instrument:
   (a) a report under subsection (1) or (2);
   (b) a request under subsection (2).

149 The Commission’s functions: arrangements with States

Minister may make arrangements

(1) The Minister may make an arrangement, in writing, with a Minister of a State for or in relation to any of the following:
   (a) the performance of functions of the Commission by the State or a State authority;
   (b) the performance by the Commission, on behalf of the State or a State authority, of functions relating to human rights;
   (c) the performance of functions of the Commission on a joint basis by the Commission and by the State or a State authority.

Note: This subsection applies to any functions of the Commission under this Act, including the following:
   (a) functions that are to be performed, on behalf of the Commission, by the President: see section 152;
   (b) functions that are to be performed, on behalf of the Commission, by the Aboriginal and Torres Strait Islander Social Justice Commissioner: see section 153;
Section 150

(c) functions that are to be performed, on behalf of the Commission, by the National Children’s Commissioner: see section 154.

Conduct by State or State authority taken to be by the Commission

(2) Conduct engaged in by or in relation to a State, or a State authority, in the performance of functions under an arrangement as mentioned in paragraph (1)(a) or (c) is taken, for the purposes of this Act, to have been engaged in by, or in relation to, the Commission.

Arrangements may be varied or revoked

(3) The Minister may arrange with a Minister of a State for the variation or revocation of an arrangement made under subsection (1).

Commission’s functions include functions under arrangements

(4) The Commission’s functions include any functions that are to be performed by the Commission pursuant to an arrangement in force under subsection (1). However, the Commission is not under a duty to perform such functions.

Arrangements are legislative instruments

(5) An arrangement under subsection (1) or (3):
   (a) is a legislative instrument; and
   (b) is taken to be made by the Minister on the day on which the Minister makes the arrangement with the Minister of the State;
   but neither section 42 (disallowance) nor Part 6 (sunsetting) of the Legislative Instruments Act 2003 applies to the arrangement.

150 Reporting to Minister about matters arising in performing functions

(1) The Commission may, at any time, give the Minister a written report on any matter arising in the course of the performance of its functions.
Section 151

151 General matters relating to performance of Commission’s functions and powers

(1) In performing its functions and exercising its powers, the Commission must have regard to the following:
   (a) the objects of this Act;
   (b) the indivisibility and universality of human rights;
   (c) the principle that every person is free and equal in dignity and rights.

(2) For the purpose of performing its functions, the Commission may work with and consult any other organisations, agencies or persons that the Commission considers appropriate.

Subdivision B—Commission functions and powers that are to be performed by certain Commission members

152 Commission functions and powers that are to be performed or exercised by President

(1) The functions and powers conferred on the Commission by Chapter 4 (complaints) are to be performed or exercised, on behalf of the Commission, by the President.

   Note: The President may delegate these functions: see section 184.
Section 153

(2) Without limiting subsection (1), provisions of this Act, as applying in relation to functions or powers to which subsection (1) applies, have effect as if references to the Commission were references to the President, acting on behalf of the Commission.

153 Commission functions and powers that are to be performed or exercised by Aboriginal and Torres Strait Islander Social Justice Commissioner

(1) The functions and powers conferred on the Commission by the following provisions are to be performed or exercised, on behalf of the Commission, by the Aboriginal and Torres Strait Islander Social Justice Commissioner:

(a) section 147 of this Act (reports relating to enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders);

(b) section 209 of the Native Title Act 1993.

Note: The Aboriginal and Torres Strait Islander Social Justice Commissioner may delegate these functions: see section 185.

(2) Without limiting subsection (1), provisions of this Act and the Native Title Act 1993, as applying in relation to functions or powers to which subsection (1) applies, have effect as if references to the Commission were references to the Aboriginal and Torres Strait Islander Social Justice Commissioner, acting on behalf of the Commission.

154 Commission functions and powers that are to be performed or exercised by National Children’s Commissioner

(1) The functions and powers conferred on the Commission by section 148 of this Act (reports relating to enjoyment and exercise of human rights by children in Australia) are to be performed or exercised, on behalf of the Commission, by the National Children’s Commissioner.

Note: The National Children’s Commissioner may delegate these functions: see section 186.

(2) Without limiting subsection (1), provisions of this Act, as applying in relation to functions or powers to which subsection (1) applies,
have effect as if references to the Commission were references to
the National Children’s Commissioner, acting on behalf of the
Commission.
Chapter 6  Australian Human Rights Commission
Part 6-1  Establishment, functions, powers and liabilities of the Commission
Division 4  Powers

Section 155

**Division 4—Powers**

**155 The Commission’s powers**

1. The Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

2. The Commission’s powers include, but are not limited to, the power to enter into contracts.

3. Any contract entered into by the Commission is to be entered into on behalf of the Commonwealth.

4. Any real or personal property held by the Commission is held for and on behalf of the Commonwealth.

5. Any money received by the Commission is received for and on behalf of the Commonwealth.

6. The Commission cannot hold real or personal property or money on trust.

   Note: The Commonwealth may hold real or personal property or money on trust.

7. To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).
Division 5—Liabilities

156 Commission’s liabilities are Commonwealth liabilities

(1) Any financial liabilities of the Commission are taken to be liabilities of the Commonwealth.

(2) A financial liability is a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

157 Commission has privileges and immunities of the Crown

The Commission has the privileges and immunities of the Crown.
Part 6-2—Constitution and membership

Division 1—Guide to this Part

158 Guide to this Part

This Part deals with the constitution and membership of the Commission.

Division 2 deals with the constitution of the Commission.

Division 3 deals with the membership of the Commission.

Division 4 deals with the terms and conditions on which Commission members hold office.
Division 2—Constitution

159 Constitution of the Commission

The Commission:

(a) is a body corporate with perpetual succession; and
(b) must have a seal; and
(c) may acquire, hold and dispose of real and personal property;
and
(d) may sue and be sued in its corporate name.
Division 3—Commission members

160 Membership of the Commission

The Commission consists of the following members:

(a) the President;
(b) the Aboriginal and Torres Strait Islander Social Justice Commissioner;
(c) the Age Discrimination Commissioner;
(d) the Disability Discrimination Commissioner;
(e) the National Children’s Commissioner;
(f) the Race Discrimination Commissioner;
(g) the Sex Discrimination Commissioner.

161 Arrangements for appointment of State judges etc. as Commission members

(1) For the purposes of appointing a judge, magistrate or justice of a court of a State (other than the Australian Capital Territory or the Northern Territory) as a Commission member, the Governor-General may enter into any necessary arrangement with the Governor of the State.

(2) For the purposes of appointing a judge, magistrate or justice of a court of the Australian Capital Territory or of the Northern Territory as a Commission member, the Governor-General may enter into any necessary arrangement with the Chief Minister of that Territory.

(3) An arrangement under subsection (1) or (2) may provide, amongst other things, for the Commonwealth to reimburse the State or Territory with respect to the services of the person to be appointed.

162 Appointment and service not to affect a tenure or rights of judicial office holders

(1) If a person who holds a judicial office is appointed as a Commission member, the appointment does not affect, and is taken never to have affected:
Section 163

(a) the person’s tenure of that office; or
(b) the person’s rights or privileges as the holder of that office.

(2) If a person who holds a judicial office serves as a Commission member, that service does not affect, and is taken never to have affected:
(a) the person’s tenure of that office; or
(b) the person’s rights or privileges as the holder of that office.

(3) Any service as a Commission member by the holder of a judicial office is taken for all purposes to be, or to have been, service as the holder of that office.

(4) For the purposes of this section, a person’s rights and privileges as the holder of a judicial office are taken to include his or her rank, title, status, precedence, salary and allowances, as the holder of that office.

163 Appointment of Commission members

(1) The Commission members are to be appointed by the Governor-General by written instrument.

(2) An instrument of appointment of a person as a Commission member must state the Commission office to which the person is appointed. The **Commission offices** are the offices listed in paragraphs 160(a) to (g).

(3) The President must be appointed on a full-time basis. The other Commission members may be appointed on a full-time or a part-time basis.

(4) A person must not be appointed as a Commission member unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

(5) A person must not be appointed as the Aboriginal and Torres Strait Islander Social Justice Commissioner unless the Minister is satisfied that the person has significant experience in community life of Aboriginal persons or Torres Strait Islanders. This subsection applies in addition to subsection (4).
Section 164

164 Period of appointment

A Commission member holds office for the period specified in the instrument of appointment. The period must not exceed 7 years.

Note: For reappointment, see section 33AA of the Acts Interpretation Act 1901.

165 Acting members

The Minister may, by written instrument, appoint a person to act as a Commission member:

(a) during a vacancy in the office of the member (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the member:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: See also sections 20, 33AB and 33A of the Acts Interpretation Act 1901.
Division 4—Terms and conditions for Commission members

166 Remuneration and allowances

(1) A Commission member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.

(2) A Commission member is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

(4) This section does not apply to a Commission member who holds a judicial office.

167 Leave of absence

(1) A full-time Commission member has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time Commission member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) The Minister may grant leave of absence to a part-time Commission member on the terms and conditions that the Minister determines.

168 Outside employment

(1) A full-time Commission member must not engage in paid employment outside the duties of his or her office without the approval of the Minister.

(2) A part-time Commission member must not engage in any paid employment that, in the Minister’s opinion, conflicts or may conflict with the proper performance of the member’s duties.
Chapter 6  Australian Human Rights Commission
Part 6-2  Constitution and membership
Division 4  Terms and conditions for Commission members

Section 169

169  Disclosure of interests to Minister

A Commission member must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member’s duties.

170  Disclosure of interests to Commission

(1) A Commission member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Commission must disclose the nature of the interest to a meeting of the Commission.

(2) The disclosure must be made as soon as possible after the relevant facts have come to the member’s knowledge.

(3) The disclosure must be recorded in the minutes of the meeting of the Commission.

(4) Unless the Commission otherwise determines, the Commission member:
   (a) must not be present during any deliberation by the Commission on the matter; and
   (b) must not take part in any decision of the Commission with respect to the matter.

(5) For the purposes of making a determination under subsection (4), the Commission member:
   (a) must not be present during any deliberation of the Commission for the purpose of making the determination; and
   (b) must not take part in making the determination.

(6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Commission.

171  Resignation

(1) A Commission member may resign his or her appointment by giving the Governor-General a written resignation.
(2) The resignation takes effect on the day it is received by the
Governor-General or, if a later day is specified in the resignation,
on that later day.

172 Termination of appointment

(1) The Governor-General may terminate the appointment of a
Commission member:
   (a) for misbehaviour; or
   (b) if the member is unable to perform the duties of his or her
       office because of physical or mental incapacity; or
   (c) if the member:
       (i) becomes bankrupt; or
       (ii) applies to take the benefit of any law for the relief of
            bankrupt or insolvent debtors; or
       (iii) compounds with his or her creditors; or
       (iv) makes an assignment of remuneration for the benefit of
            his or her creditors; or
   (d) if the member is absent, except on leave of absence, for 14
       consecutive days or for 28 days in any 12 months; or
   (e) if the member engages in paid employment contrary to
       section 168; or
   (f) if the member fails, without reasonable excuse, to comply
       with section 169 or 170 (which deal with disclosure of
       interests).

(2) Subsection (1) does not apply to a Commission member who holds
a judicial office.

(3) If a Commission member who holds a judicial office stops holding
that office, the Governor-General may terminate the member’s
appointment.

173 Other terms and conditions

(1) A Commission member holds office on the terms and conditions (if
any) in relation to matters not covered by this Act that are
determined by the Governor-General.
(2) This section does not apply to a Commission member who holds a judicial office.
Part 6-3—How the Commission operates

Division 1—Guide to this Part

174 Guide to this Part

This Part deals with how the Commission operates. Other significant provisions about how the Commission operates are contained in Subdivision B of Division 3 of Part 6-1 (Commission functions and powers that are to be performed by certain Commission members).

Division 2 deals with the role of the President.

Division 3 deals with meetings of the Commission.

Division 4 deals with delegation.
Section 175

Division 2—Role of President

175 Role of the President

The President is the senior member of the Commission and is responsible for managing the administrative affairs of the Commission.
Divison 3—Meetings of the Commission

176 Convening meetings

(1) The President may, at any time, convene a meeting of the Commission.

(2) The President must convene such meetings of the Commission as, in the President’s opinion, are necessary for the efficient performance of its functions.

(3) The President must convene a meeting of the Commission if requested to do so by the Minister.

(4) The President must convene a meeting of the Commission if requested to do so by a majority of the current Commission members.

(5) Each Commission member is entitled to receive reasonable notice of the Commission’s meetings.

177 Presiding at meetings

(1) The President is to preside at all meetings of the Commission at which he or she is present.

(2) If the President is not present at a meeting of the Commission, the Commission members present are to appoint one of themselves to preside.

178 Quorum

At a meeting of the Commission, a quorum is constituted by a majority of the current Commission members.

179 Voting at meetings

(1) At a meeting of the Commission, a question is decided by a majority of the votes of the Commission members present and voting.
Section 180

(2) The person presiding at a meeting has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

180 Conduct of meetings

The Commission may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the Acts Interpretation Act 1901 provides for participation in meetings by telephone etc.

181 Minutes

The Commission must keep minutes of its meetings.

182 Decisions without meetings

(1) The Commission is taken to have made a decision at a meeting if:
   (a) without meeting, a majority of the Commission members entitled to vote on the proposed decision indicate agreement with the decision; and
   (b) that agreement is indicated in accordance with the method determined by the Commission under subsection (2); and
   (c) all the Commission members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.

(2) Subsection (1) applies only if the Commission:
   (a) has determined that it may make decisions of that kind without meeting; and
   (b) has determined the method by which Commission members are to indicate agreement with proposed decisions.

(3) For the purposes of paragraph (1)(a), a Commission member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Commission.

(4) The Commission must keep a record of decisions made in accordance with this section.
Division 4—Delegation

183 Delegation of Commission’s functions and powers: general

(1) This section applies to all of the Commission’s functions and powers, other than the functions and powers to which sections 152, 153 and 154 apply.

(2) The Commission may, in writing, delegate any of the functions and powers to which this section applies to any of the following:
   (a) a Commission member;
   (b) a member of the Commission staff;
   (c) any other person who the Commission is satisfied is suitably qualified.

(3) In exercising any powers or performing any functions under a delegation under this section, the delegate must comply with any directions of the Commission.

184 Delegation of Commission’s functions and powers: functions and powers that are to be performed by the President

(1) This section applies to the functions and powers of the Commission to which section 152 applies.

(2) Subject to subsection (3), the President may, in writing, delegate any of the functions and powers to which this section applies to any of the following persons:
   (a) a member of the Commission staff;
   (b) any other person who the President is satisfied is suitably qualified.

(3) Functions or powers that relate to a complaint made against the Commission, the President, or another Commission member, can only be delegated to a person referred to in paragraph (2)(b).

(4) In exercising any powers or performing any functions under a delegation under this section, the delegate must comply with any directions of the President.
Section 185

185 Delegation of Commission’s functions and powers: functions and powers that are to be performed by the Aboriginal and Torres Strait Islander Social Justice Commissioner

(1) This section applies to the functions and powers of the Commission to which section 153 applies.

(2) The Aboriginal and Torres Strait Islander Social Justice Commissioner may, in writing, delegate any of the functions and powers to which this section applies to any of the following persons:

(a) another Commission member;
(b) a member of the Commission staff;
(c) any other person who:
   (i) the Aboriginal and Torres Strait Islander Social Justice Commissioner is satisfied is suitably qualified; and
   (ii) is approved by the Commission.

(3) In exercising any powers or performing any functions under a delegation under this section, the delegate must comply with any directions of the Aboriginal and Torres Strait Islander Social Justice Commissioner.

186 Delegation of Commission’s functions and powers: functions and powers that are to be performed by the National Children’s Commissioner

(1) This section applies to the functions and powers of the Commission to which section 154 applies.

(2) The National Children’s Commissioner may, in writing, delegate any of the functions and powers to which this section applies to any of the following persons:

(a) another Commission member;
(b) a member of the Commission staff;
(c) any other person who:
   (i) the National Children’s Commissioner is satisfied is suitably qualified; and
   (ii) is approved by the Commission.
(3) In exercising any powers or performing any functions under a
delegation under this section, the delegate must comply with any
directions of the National Children’s Commissioner.

187 Delegation of President’s functions and powers

(1) This section applies to the functions and powers of the President
(but not including functions and powers to which section 184
applies).

(2) The President may, in writing, delegate any of the functions and
powers to which this section applies to any of the following
persons:
   (a) another Commission member;
   (b) a member of the Commission staff;
   (c) any other person who the President is satisfied is suitably
      qualified.

(3) In exercising any powers or performing any functions under a
delegation under this section, the delegate must comply with any
directions of the President.
Chapter 6  Australian Human Rights Commission
Part 6-4  Other matters
Division 1  Guide to this Part

Section 188

Part 6-4—Other matters
Division 1—Guide to this Part

188  Guide to this Part

This Part deals with other matters relating to the Commission.
Division 2 deals with the Commission’s staff.
Division 3 deals with the Commission’s planning and reporting obligations.
Division 4 deals with confidentiality.
Division 2—Staff

189 Staff

(1) The staff of the Commission are to be persons engaged under the
Public Service Act 1999.

(2) For the purposes of the Public Service Act 1999:
   (a) the President and the Commission staff together constitute a
       Statutory Agency; and
   (b) the President is the Head of that Statutory Agency.
Section 190

Division 3—Planning and reporting obligations

190 Corporate plan

(1) The Commission must prepare a corporate plan at least once each 3 year period and give it to the Minister.

(2) Each corporate plan must cover a 3 year period.

(3) Each corporate plan must include details of:

(a) the objectives of the Commission; and

(b) the strategies and policies that are to be followed by the Commission in order to achieve those objectives.

(4) The Commission must keep the Minister informed about:

(a) changes to a corporate plan; and

(b) matters that might significantly affect the achievement of the objectives set out in a corporate plan.

(5) The Commission must ensure that each corporate plan is published in such manner as the Commission considers appropriate.

191 Annual report

The Commission must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on its operations during that year.

192 Reports given to Minister are to be tabled in Parliament

(1) The Minister must cause a copy of each report given to the Minister by the Commission under this Act to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

(2) Subsection (1) does not apply to a report given to the Minister under subsection 116(2) or 142(4).
Division 4—Confidentiality

193 Prohibition of unauthorised disclosure etc. of protected information and documents

Offence

(1) A person commits an offence if:

   (a) the person is, or was at any time, a Commission official; and
   (b) the person:
      (i) makes a record of information, or all or part of a document; or
      (ii) directly or indirectly discloses information, or all or part of a document, to another person (other than the person to whom the information or document relates); and
   (c) the information is protected information, or the document is a protected document; and
   (d) the making of the record, or the disclosure, is not authorised by section 194.

Penalty: Imprisonment for 2 years.

Protected information

(2) Information is protected information if the information:

   (a) is obtained by a Commission official in the course of performing duties or functions, or exercising powers, as a Commission official; and
   (b) relates to the affairs of a person.

Protected document

(3) A document is a protected document if the document:

   (a) is obtained or produced by a Commission official in the course of performing duties or functions, or exercising powers, as a Commission official; and
   (b) relates to the affairs of a person.
Chapter 6  Australian Human Rights Commission
Part 6-4  Other matters
Division 4  Confidentiality

Section 194

194 Authorised records and disclosures

A person may make a record of protected information or of all or part of a protected document, or disclose protected information or all or part of a protected document, if:

(a) the record or disclosure:

   (i) is necessary to comply with, or in accordance with, another provision of this Act or another Commonwealth law; or

   (ii) is made in the course of performing a function, or exercising a power, as a Commission official; or

   (iii) is made for the purposes of enabling another person to perform functions, or exercise powers, as a Commission official; or

(b) the disclosure is of information that relates to the affairs of a person, and is made with the consent of the person.

195 Disclosure to courts or tribunals

Except when it is necessary to do so for the purposes of giving effect to this Act, a person who is, or was at any time, a Commission official must not be required to disclose protected information to a court or tribunal, or to produce all or part of a protected document to a court or tribunal.

196 Commission may give directions to preserve anonymity

Directions to preserve anonymity of certain persons

(1) The Commission may give a direction to a person prohibiting or restricting the disclosure of information that might enable another person (the second person) to be identified if:

   (a) this subsection applies to the second person (see subsection (2)); and

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(b) the Commission considers that the preservation of the anonymity of the second person is necessary to protect the security of employment, the privacy, or any human right, of the second person.

(2) Subsection (1) applies to the second person if:

(a) the second person, an associate of the second person or a person acting on behalf of the second person has made a complaint; or

(b) the second person, an associate of the second person or a person acting on behalf of the second person:
   (i) has provided, or proposes to provide, information or evidence (whether by answering questions or otherwise); or
   (ii) has produced or proposes to produce a document; or
   (iii) has made or proposes to make a submission; to the Commission or a Commission official.

Offence of contravention of direction

(3) A person commits an offence of strict liability if:

(a) the Commission gives a direction to the person under subsection (1); and

(b) the person refuses or fails to comply with the direction.

Penalty: 10 penalty units.

Note: For strict liability, see section 6.1 of the Criminal Code.

Directions are not legislative instruments

(4) If a direction under subsection (1) is given in writing, the direction is not a legislative instrument.

197 Commission may give directions to restrict publication

Directions to restrict publication

(1) The Commission may give a direction to a person that any of the following (or content of any of the following):
Section 197

(a) information or evidence provided (whether by answering questions or otherwise) to the Commission or a Commission official;
(b) a document produced to the Commission or a Commission official;
(c) a submission made to the Commission or a Commission official;

must not be published, or must not be published except in such manner, and to such persons, as the Commission specifies in the direction.

(2) A direction under subsection (1) does not prevent a person from publishing something of which the person has knowledge otherwise than because of the provision of information, the production of a document or the making of a submission as mentioned in subsection (1).

Note: In a prosecution for an offence based on subsection (5), a defendant bears an evidential burden in relation to the matter in this subsection. See subsection 13.3(3) of the Criminal Code.

(3) In deciding whether to give a direction under subsection (1), the Commission must have regard to the need to prevent such of the following as are relevant in the circumstances:

(a) prejudice to the security, defence or international relations of Australia;
(b) prejudice to relations between the Commonwealth Government and the Government of a State or between the Government of a State and the Government of another State;
(c) the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet, of the Commonwealth or of a State;
(d) the disclosure of:
  (i) deliberations or advice of the Federal Executive Council, or the Executive Council of a State; or
  (ii) deliberations or decisions of the Australian Capital Territory Executive or a committee of that Executive;
(e) prejudice to the proper administration of justice;
(f) the endangering of the life or physical safety of any person;
Section 197

(g) the disclosure of information the disclosure of which is prohibited (absolutely or subject to qualifications) by or under a law;

(h) the unreasonable disclosure of the personal affairs of any person;

(i) the unreasonable disclosure of confidential commercial information;

(j) the disclosure of material that is protected against disclosure by legal professional privilege or any other duty of confidence.

(4) In having regard to the matters mentioned in subsection (3), the Commission must try to achieve an appropriate balance between the need to have regard to those matters and the desirability of ensuring that interested persons are sufficiently informed of the outcomes of complaints made to, and inquiries conducted by, the Commission and of other activities of the Commission.

Offence of contravention of direction

(5) A person commits an offence of strict liability if:

(a) the Commission gives a direction to the person under subsection (1); and

(b) the person refuses or fails to comply with the direction.

Penalty: 10 penalty units.

Note: For strict liability, see section 6.1 of the Criminal Code.

Directions are not legislative instruments

(6) If a direction under subsection (1) is given in writing, the direction is not a legislative instrument.
198 Attorney-General’s certificates restricting requirements for information or documents

Certificates that certain information or documents should not be required to be provided or produced

(1) The Attorney-General may give the Commission a certificate certifying that the giving of information relating to a specified matter, the production of a specified document, or the answering of specified questions, would be contrary to the public interest:

(a) because it would prejudice the security, defence or international relations of Australia; or
(b) because it would prejudice relations between the Commonwealth Government and the Government of a State; or
(c) because it would involve the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet, of the Commonwealth; or
(d) because it would involve the disclosure of deliberations or advice of the Federal Executive Council; or
(e) because it would prejudice the proper administration of justice; or
(f) because it would endanger the life or physical safety of any person.

(2) If the Attorney-General gives the Commission a certificate under subsection (1):

(a) a person cannot be required under section 107 or 140 to provide information about the matter, or to produce the document or answer the questions; and
(b) any requirement purportedly made under section 107 or 140 has effect subject to paragraph (a).

Note: In a prosecution for an offence based on section 201, a defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the Criminal Code.
Certificates that existence or non-existence of certain information or documents should not be required to be provided or produced.

(3) The Attorney-General may give the Commission a certificate certifying that giving information or answering questions as to the existence or non-existence of information relating to a specified matter, or as to the existence or non-existence of a document that a person has been required to produce under section 107 or 140, would be contrary to the public interest:

(a) because it would prejudice the security, defence or international relations of Australia; or

(b) because it would prejudice the proper performance of the functions of the Australian Crime Commission.

(4) If the Attorney-General gives the Commission a certificate under subsection (3):

(a) a person cannot be required under section 107 or 140:

(i) to provide information or answer questions as to the existence or non-existence of information relating to the matter; or

(ii) to provide information or answer questions as to the existence or non-existence of the document; and

(b) any requirement purportedly made under section 107 or 140 has effect subject to paragraph (a).

Note: In a prosecution for an offence based on section 201, a defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the Criminal Code.

Certificates are not legislative instruments

(5) A certificate given under subsection (1) or (3) is not a legislative instrument.

199 Information or documents originating from an intelligence agency

If:

(a) a person is required under section 107 or 140 to provide information, to produce a document or to answer questions; and
Section 199

(b) either:

(i) the information or document originated with, or has been received from, an intelligence agency; or

(ii) answering the questions might reveal information about the operations of an intelligence agency, or might reveal (or reveal the contents of or other circumstances relating to) information or a document that originated with, or has been received from, an intelligence agency;

the person must immediately notify the intelligence agency of the making of the requirement.
Chapter 7—Miscellaneous

Part 7-1—Miscellaneous

Division 1—Guide to this Part

200 Guide to this Part

This Part deals with miscellaneous matters.

Division 2 deals with offences related to the administration of this Act.

Division 3 deals with other miscellaneous matters.
Division 2—Offences related to the administration of the Act

201 Failure to comply with notice requiring the provision of information etc.

(1) A person commits an offence of strict liability if:
   
   (a) the person has been given:
      
      (i) a notice under section 107 requiring the person to provide information or produce a document; or
      
      (ii) a notice under section 140 requiring the person to provide information, produce a document or attend and answer questions; and
   
   (b) the person refuses or fails comply with the requirement.

   Penalty: 10 penalty units.

   Note 1: A notice under section 107 or 140 has effect subject to any certificate given by the Attorney-General to the Commission under section 198.

   Note 2: For strict liability, see section 6.1 of the Criminal Code.

(2) Subsection (1) does not apply if providing the information, producing the document or answering the question might tend to incriminate the person or expose the person to a penalty.

   Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the Criminal Code.

(3) If a court hearing proceedings for an offence based on subsection (1) is satisfied that:
   
   (a) the Attorney-General has been asked to give the Commission a certificate under section 198, but has not yet decided whether to do so; and
   
   (b) if a certificate were given to the Commission pursuant to the request, the person could not be required to provide the information, produce the document or answer the questions;
   
   the court may stay the proceedings until the Attorney-General has decided whether to give a certificate.

   (4) Subsection (3) does not limit any other power of the court to order a stay of the proceedings.
Section 202

202 Failure to comply with notice requiring attendance at conference

A person commits an offence of strict liability if:

(a) the person has been given a notice under section 109 requiring the person to attend a conference; and

(b) the person refuses or fails comply with the requirement.

Penalty: 10 penalty units.

Note: For strict liability, see section 6.1 of the Criminal Code.
Division 3—Other miscellaneous provisions

203 Compensation for acquisition of property

(1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

204 Protection of Commission etc. from civil liability

Neither the Commission, nor a Commission official, is liable to civil proceedings for loss, damage or injury of any kind suffered by another person for or in relation to conduct engaged in in good faith in the performance or exercise (or purported performance, or exercise) of duties, functions or powers as the Commission or a Commission official.

205 Protection of persons making complaints etc. from civil liability

A person who, in good faith:

(a) makes a complaint to the Commission; or
(b) brings proceedings in a court under this Act; or
(c) produces a document, provides information, makes a submission or gives evidence to the Commission or a Commission official, or to a court in which proceedings under this Act have been brought; or
(d) attends or participates in a conference held under section 109; is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person merely because of that conduct.
Section 206

206 No right of action except as expressly provided

Except as expressly provided by this Act, this Act does not confer on a person a right of action in relation to conduct that:

(a) is unlawful conduct; or

(b) is an offence against a provision of this Act.

207 Commission may charge fees for certain matters

(1) Subject to subsections (2) and (3), if the Commission receives an application under section 64, 76, 80 or 84, the Commission may charge the person or body that made the application a fee for dealing with the application.

(2) The regulations may prescribe the rate of any fee that may be charged under subsection (1), or may provide for how such a fee is to be calculated.

Note: If there are no regulations that apply to a fee, the amount of the fee is as determined by the Commission (subject to subsection (3)).

(3) A fee must not amount to taxation.

208 Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.