



# **Sex Discrimination Act 1984**

## **Act No. 4 of 1984 as amended**

This compilation was prepared on 8 July 2005  
taking into account amendments up to Act No. 86 of 2005

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# **An Act relating to discrimination on the ground of sex, marital status, pregnancy, potential pregnancy or family responsibilities or involving sexual harassment**

Recognising the need to prohibit, so far as is possible, discrimination against people on the ground of sex, marital status, pregnancy or potential pregnancy in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs:

Affirming that every individual is equal before and under the law, and has the right to the equal protection and equal benefit of the law, without discrimination on the ground of sex, marital status, pregnancy or potential pregnancy:

## **Part I—Preliminary**

### **1 Short title** *[see Note 1]*

This Act may be cited as the *Sex Discrimination Act 1984*.

### **2 Commencement** *[see Note 1]*

This Act shall come into operation on a day to be fixed by Proclamation.

### **3 Objects**

The objects of this Act are:

- (a) to give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women; and
- (b) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status, pregnancy or potential pregnancy in the areas of work, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs; and

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- (ba) to eliminate, so far as possible, discrimination involving dismissal of employees on the ground of family responsibilities; and
- (c) to eliminate, so far as is possible, discrimination involving sexual harassment in the workplace, in educational institutions and in other areas of public activity; and
- (d) to promote recognition and acceptance within the community of the principle of the equality of men and women.

#### 4 Interpretation

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

**accommodation** includes residential and business accommodation.

**administrative office** means:

- (a) an office established by, or an appointment made under, a law of the Commonwealth;
- (b) an office established by, or an appointment made under, a law of a Territory;
- (c) an appointment made by the Governor-General or a Minister otherwise than under a law of the Commonwealth or of a Territory (including the Australian Capital Territory and the Northern Territory); and
- (d) an appointment as a director of an incorporated company that is a public authority of the Commonwealth;

but does not include:

- (ea) an office of member of the Assembly, member of the Executive, or Minister within the meaning of the *Australian Capital Territory (Self-Government) Act 1988*;
- (e) an office of member of the Legislative Assembly, member of the Council or Minister of the Territory, within the meaning of the *Northern Territory (Self-Government) Act 1978*;
- (f) an office of member of the Legislative Assembly within the meaning of the *Norfolk Island Act 1979*; or
- (g) an office or appointment in the Australian Public Service.

**club** means an association (whether incorporated or unincorporated) of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that:

- (a) provides and maintains its facilities, in whole or in part, from the funds of the association; and
- (b) sells or supplies liquor for consumption on its premises.

**Commission** means the Human Rights and Equal Opportunity Commission established by the *Human Rights and Equal Opportunity Commission Act 1986*.

**commission agent** means a person who does work for another person as the agent of that other person and who is remunerated, whether in whole or in part, by commission.

**Commissioner** means the Sex Discrimination Commissioner appointed under section 96.

**committee of management**, in relation to a club or a registered organization, means the group or body of persons (however described) that manages the affairs of that club or organization, as the case may be.

**Commonwealth agency** means an agency within the meaning of the *Privacy Act 1988*.

**Commonwealth employee** means a person who:

- (a) is appointed or engaged under the *Public Service Act 1999*;
- (b) holds an administrative office;
- (c) is employed by a public authority of the Commonwealth;
- (d) holds an office or appointment in the Commonwealth Teaching Service or is employed as a temporary employee under the *Commonwealth Teaching Service Act 1972*;
- (e) is employed under the *Australian Security Intelligence Organisation Act 1979*, the *Commonwealth Electoral Act 1918* or the *Naval Defence Act 1910*; or
- (f) is a member of the Defence Force.

**Commonwealth law** means:

- (a) an Act, or a regulation, rule, by-law or determination made under or pursuant to an Act;
- (b) an Ordinance of a Territory, or a regulation, rule, by-law or determination made under or pursuant to an Ordinance of a Territory; or

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(c) an order or award made under or pursuant to a law referred to in paragraph (a) or (b).

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

**contract worker** means a person who does work for another person pursuant to a contract between the employer of the first-mentioned person and that other person.

**Convention** means the Convention on the Elimination of All Forms of Discrimination Against Women, a copy of the English text of which is set out in the Schedule.

**de facto spouse**, in relation to a person, means a person of the opposite sex to the first-mentioned person who lives with the first-mentioned person as the husband or wife of that person on a *bona fide* domestic basis although not legally married to that person.

**Department** means an Agency within the meaning of the *Public Service Act 1999*.

**document** includes any book, register or other record of information, however compiled, recorded or stored.

**educational authority** means a body or person administering an educational institution.

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

**employment** includes:

- (a) part-time and temporary employment;
- (b) work under a contract for services; and
- (c) work as a Commonwealth employee.

**employment agency** means any person who or body that, whether for payment or not, assists persons to find employment or other work or assists employers to find employees or workers, and includes the Commonwealth Employment Service.

**enactment** has the same meaning as in the *Human Rights and Equal Opportunity Commission Act 1986*.

***family responsibilities*** has the meaning given by section 4A.

***function*** includes duty.

***institution of tertiary education*** means a university, college of advanced education, technical and further education institution or other institution at which tertiary education or training is provided.

***instrumentality of a State*** means a body or authority established for a public purpose by a law of a State and includes a technical and further education institution conducted by or on behalf of the government of a State, but does not include any other institution of tertiary education.

***man*** means a member of the male sex irrespective of age.

***marital status*** means the status or condition of being:

- (a) single;
- (b) married;
- (c) married but living separately and apart from one's spouse;
- (d) divorced;
- (e) widowed; or
- (f) the de facto spouse of another person.

***near relative***, in relation to a person, means:

- (a) a parent, child, grandparent, grandchild, brother or sister of the person; or
- (b) the spouse or de facto spouse of the first-mentioned person or of a person referred to in paragraph (a).

***potential pregnancy*** has a meaning affected by section 4B.

***President*** means President of the Commission.

***principal*** means:

- (a) in relation to a commission agent—a person for whom the commission agent does work as a commission agent; and
- (b) in relation to a contract worker—a person for whom the contract worker does work pursuant to a contract between the employer of the contract worker and the person.

***principal executive***, in relation to a Commonwealth agency, has the same meaning as in Part V of the *Privacy Act 1988*.

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**proposed enactment** has the same meaning as in the *Human Rights and Equal Opportunity Commission Act 1986*.

**public authority of the Commonwealth** means:

- (a) a body incorporated, whether before or after the commencement of this Act, for a public purpose by a law of the Commonwealth or a law of a Territory, being a body corporate employing staff on its own behalf;
- (b) an authority or body, not being a body corporate, established, whether before or after the commencement of this Act, for a public purpose by, or in accordance with the provisions of, a law of the Commonwealth or a law of a Territory, being an authority or body employing staff on its own behalf; or
- (c) an incorporated company over which the Commonwealth, or a body or authority referred to in paragraph (a) or (b), is in a position to exercise control.

**registered organization** means an organisation within the meaning of Schedule 1B to the *Workplace Relations Act 1996*.

**services** includes:

- (a) services relating to banking, insurance 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 of the kind provided by the members of any profession or trade; and
- (e) services of the kind provided by a government, a government authority or a local government body.

**State**, except in subsections 9(15), (16), (17) and (18), includes the Australian Capital Territory and the Northern Territory.

**superannuation benefit**, in relation to a member of a superannuation fund, means a benefit that is payable, under the terms and conditions relating to the fund:

- (a) in the event of the member's death—to the estate of the deceased or to someone other than the deceased; or
- (b) in the event of the member's physical or mental incapacity—to the member or to someone other than the member.

**superannuation fund** means a superannuation or provident fund or scheme.

**superannuation fund conditions**, in relation to a superannuation fund, means the terms and conditions that relate to membership of, or benefits payable from, the superannuation fund.

**technical and further education institution** has the same meaning as that expression has in the *Employment, Education and Training Act 1988*.

**Territory**, except in subsections 9(17) and (18), does not include the Australian Capital Territory and the Northern Territory.

**voluntary body** means an association or other body (whether incorporated or unincorporated) the activities of which are not engaged in for the purpose of making a profit, but does not include:

- (a) a club;
- (b) a registered organization;
- (c) a body established by a law of the Commonwealth, of a State or of a Territory; or
- (d) an association that provides grants, loans, credit or finance to its members.

**woman** means a member of the female sex irrespective of age.

- (2) For the purposes of this Act, refusing or failing to do an act shall be deemed to be the doing of an act and a reference to an act includes a reference to a refusal or failure to do an act.

#### **4A Meaning of *family responsibilities***

- (1) In this Act, **family responsibilities**, in relation to an employee, means responsibilities of the employee to care for or support:
  - (a) a dependent child of the employee; or
  - (b) any other immediate family member who is in need of care and support.

- (2) In this section:

**child** includes an adopted child, a step-child or an ex-nuptial child.

**dependent child** means a child who is wholly or substantially dependent on the employee.

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*immediate family member* includes:

- (a) a spouse of the employee; and
- (b) an adult child, parent, grandparent, grandchild or sibling of the employee or of a spouse of the employee.

*spouse* includes a former spouse, a de facto spouse and a former de facto spouse.

**4B Meaning of *potential pregnancy***

A reference in this Act to potential pregnancy of a woman includes a reference to:

- (a) the fact that the woman is or may be capable of bearing children; or
- (b) the fact that the woman has expressed a desire to become pregnant; or
- (c) the fact that the woman is likely, or is perceived as being likely, to become pregnant.

**5 Sex discrimination**

- (1) For the purposes of this Act, a person (in this subsection referred to as the *discriminator*) discriminates against another person (in this subsection referred to as the *aggrieved person*) on the ground of the sex of the aggrieved person if, by reason of:
  - (a) the sex of the aggrieved person;
  - (b) a characteristic that appertains generally to persons of the sex of the aggrieved person; or
  - (c) a characteristic that is generally imputed to persons of the sex of the aggrieved person;

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of the opposite sex.

- (1A) To avoid doubt, breastfeeding (including the act of expressing milk) is a characteristic that appertains generally to women.
- (2) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the sex of the aggrieved person if the discriminator imposes, or proposes to impose, a condition, requirement or

practice that has, or is likely to have, the effect of disadvantaging persons of the same sex as the aggrieved person.

- (3) This section has effect subject to sections 7B and 7D.

## **6 Discrimination on the ground of marital status**

- (1) For the purposes of this Act, a person (in this subsection referred to as the *discriminator*) discriminates against another person (in this subsection referred to as the *aggrieved person*) on the ground of the marital status of the aggrieved person if, by reason of:

- (a) the marital status of the aggrieved person; or
- (b) a characteristic that appertains generally to persons of the marital status of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the marital status of the aggrieved person;

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of a different marital status.

- (2) For the purposes of this Act, a person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of the marital status of the aggrieved person if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons of the same marital status as the aggrieved person.

- (3) This section has effect subject to sections 7B and 7D.

## **7 Discrimination on the ground of pregnancy or potential pregnancy**

- (1) For the purposes of this Act, a person (the *discriminator*) discriminates against a woman (the *aggrieved woman*) on the ground of the aggrieved woman's pregnancy or potential pregnancy if, because of:

- (a) the aggrieved woman's pregnancy or potential pregnancy; or
- (b) a characteristic that appertains generally to women who are pregnant or potentially pregnant; or
- (c) a characteristic that is generally imputed to women who are pregnant or potentially pregnant;

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the discriminator treats the aggrieved woman less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat someone who is not pregnant or potentially pregnant.

- (2) For the purposes of this Act, a person (the *discriminator*) discriminates against a woman (the *aggrieved woman*) on the ground of the aggrieved woman's pregnancy or potential pregnancy if the discriminator imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging women who are also pregnant or potentially pregnant.
- (3) This section has effect subject to sections 7B and 7D.

**7A Discrimination on the ground of family responsibilities**

For the purposes of this Act, an employer discriminates against an employee on the ground of the employee's family responsibilities if:

- (a) the employer treats the employee less favourably than the employer treats, or would treat, a person without family responsibilities in circumstances that are the same or not materially different; and
- (b) the less favourable treatment is by reason of:
  - (i) the family responsibilities of the employee; or
  - (ii) a characteristic that appertains generally to persons with family responsibilities; or
  - (iii) a characteristic that is generally imputed to persons with family responsibilities.

**7B Indirect discrimination: reasonableness test**

- (1) A person does not discriminate against another person by imposing, or proposing to impose, a condition, requirement or practice that has, or is likely to have, the disadvantaging effect mentioned in subsection 5(2), 6(2) or 7(2) if the condition, requirement or practice is reasonable in the circumstances.
- (2) The matters to be taken into account in deciding whether a condition, requirement or practice is reasonable in the circumstances include:

- (a) the nature and extent of the disadvantage resulting from the imposition, or proposed imposition, of the condition, requirement or practice; and
- (b) the feasibility of overcoming or mitigating the disadvantage; and
- (c) whether the disadvantage is proportionate to the result sought by the person who imposes, or proposes to impose, the condition, requirement or practice.

### **7C Burden of proof**

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

### **7D Special measures intended to achieve equality**

- (1) A person may take special measures for the purpose of achieving substantive equality between:
  - (a) men and women; or
  - (b) people of different marital status; or
  - (c) women who are pregnant and people who are not pregnant; or
  - (d) women who are potentially pregnant and people who are not potentially pregnant.
- (2) A person does not discriminate against another person under section 5, 6 or 7 by taking special measures authorised by subsection (1).
- (3) A measure is to be treated as being taken for a purpose referred to in subsection (1) if it is taken:
  - (a) solely for that purpose; or
  - (b) for that purpose as well as other purposes, whether or not that purpose is the dominant or substantial one.
- (4) This section does not authorise the taking, or further taking, of special measures for a purpose referred to in subsection (1) that is achieved.

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**8 Act done for 2 or more reasons**

A reference in subsection 5(1), 6(1) or 7(1) or section 7A to the doing of an act by reason of a particular matter includes a reference to the doing of such an act by reason of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for the doing of the act.

**9 Application of Act**

- (1) In this section:

*Australia* includes the external Territories.

*prescribed provisions of Division 3 of Part II* means the provisions of Division 3 of Part II other than sections 28D and 28L.

*prescribed provisions of Part II* means the provisions of Divisions 1 and 2 of Part II other than sections 19, 26 and 27.

- (2) Subject to this section, this Act applies throughout Australia.
- (3) This Act has effect in relation to acts done within a Territory.
- (4) The prescribed provisions of Part II, and the prescribed provisions of Division 3 of Part II, have effect as provided by subsection (3) of this section and the following provisions of this section and not otherwise.
- (5) Sections 14, 15, 16 and 28B have effect in relation to discrimination against, and sexual harassment of:
- (a) Commonwealth employees in connection with their employment as Commonwealth employees; and
  - (b) persons seeking to become Commonwealth employees.
- (6) Sections 18 and 28C has effect in relation to discrimination by an authority or body in the exercise of a power under a Commonwealth law to confer, renew, extend, revoke or withdraw an authorization or qualification.
- (7) The prescribed provisions of Part II have effect in relation to acts done, by or on behalf of:
- (a) the Commonwealth or the Administration of a Territory; or

- (b) a body or authority established for a public purpose by a law of the Commonwealth or a law of a Territory;  
in the exercise of a power conferred by a law of the Commonwealth or a law of a Territory.
- (8) The prescribed provisions of Division 3 of Part II have effect in relation to acts done by a person exercising, by or on behalf of:
- (a) the Commonwealth or the Administration of a Territory; or
  - (b) a body or authority established for a public purpose by a law of the Commonwealth or a law of a Territory;
- a power conferred by a law of the Commonwealth or a law of a Territory, being acts done by the person in connection with the exercise of that power.
- (9) The prescribed provisions of Division 3 of Part II have effect in relation to acts done by a person who is a Commonwealth employee in connection with the person's duties as a Commonwealth employee or done by a person who is a member of the staff of an educational institution established by a law of the Commonwealth or a law of a Territory in connection with the person's duties as a member of the staff of such an educational institution.
- (10) If the Convention is in force in relation to Australia, the prescribed provisions of Part II, and the prescribed provisions of Division 3 of Part II, have effect in relation to discrimination against women, to the extent that the provisions give effect to the Convention.
- (11) The prescribed provisions of Part II have effect in relation to discrimination by a foreign corporation, or a trading or financial corporation formed within the limits of the Commonwealth, or by a person in the course of the person's duties or purported duties as an officer or employee of such a corporation.
- (12) The prescribed provisions of Division 3 of Part II have effect in relation to acts done, by a person who is an officer or employee of a foreign corporation, or of a trading or financial corporation formed within the limits of the Commonwealth, in connection with the person's duties as such an officer or employee.
- (13) Without prejudice to the effect of subsection (11), the prescribed provisions of Part II have effect in relation to discrimination by a trading or financial corporation formed within the limits of the
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Commonwealth, or by a person in the course of the person's duties or purported duties as an officer or employee of such a corporation, to the extent that the discrimination takes place in the course of the trading activities of the trading corporation or the financial activities of the financial corporation, as the case may be.

- (14) Without prejudice to the effect of subsection (12), the prescribed provisions of Division 3 of Part II have effect in relation to acts done, by a person who is an officer or employee of a trading or financial corporation formed within the limits of the Commonwealth, in connection with any of the person's duties as such an officer or employee that relate to the trading activities of the trading corporation or the financial activities of the financial corporation, as the case may be.
- (15) The prescribed provisions of Part II have effect in relation to discrimination in the course of, or in relation to, the carrying on of the business of:
- (a) banking, other than State banking not extending beyond the limits of the State concerned; or
  - (b) insurance, other than State insurance not extending beyond the limits of the State concerned.
- (16) The prescribed provisions of Division 3 of Part II have effect in relation to acts done in the course of, or in relation to, the carrying on of the business of:
- (a) banking, other than State banking not extending beyond the limits of the State concerned; or
  - (b) insurance, other than State insurance not extending beyond the limits of the State concerned.
- (17) The prescribed provisions of Part II have effect in relation to discrimination in the course of, or in relation to, trade or commerce:
- (a) between Australia and a place outside Australia;
  - (b) among the States;
  - (c) between a State and a Territory; or
  - (d) between 2 Territories.

- (18) The prescribed provisions of Division 3 of Part II have effect in relation to acts done in the course of, or in relation to, trade or commerce:
  - (a) between Australia and a place outside Australia;
  - (b) among the States;
  - (c) between a State and a Territory; or
  - (d) between 2 Territories.
- (19) The prescribed provisions of Part II have effect in relation to discrimination within Australia involving persons or things, or matters arising, outside Australia.
- (20) The prescribed provisions of Division 3 of Part II have effect in relation to acts done within Australia involving persons or things, or matters arising, outside Australia.

## **10 Operation of State and Territory laws**

- (1) A reference in this section to this Act is a reference to this Act as it has effect by virtue of any of the provisions of section 9 other than subsection 9(10).
- (2) A reference in this section to a law of a State or Territory is a reference to a law of a State or Territory that deals with discrimination on the ground of sex, discrimination on the ground of marital status or discrimination on the ground of pregnancy or potential pregnancy.
- (3) This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.
- (4) Where:
  - (a) a law of a State or Territory deals with a matter dealt with by this Act; and
  - (b) a person has made a complaint, instituted a proceeding or taken any other action under that law in respect of an act or omission in respect of which the person would, but for this subsection, have been entitled to make a complaint under the *Human Rights and Equal Opportunity Commission Act 1986* alleging that the act or omission is unlawful under a provision of Part II of this Act;

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the person is not entitled to make a complaint or institute a proceeding under the *Human Rights and Equal Opportunity Commission Act 1986* alleging that the act or omission is unlawful under a provision of Part II of this Act.

(5) Where:

(a) a law of a State or Territory deals with a matter dealt with by this Act; and

(b) an act or omission by a person that constitutes an offence against that law also constitutes an offence against this Act;

the person may be prosecuted and convicted either under that law of the State or Territory or under this Act, but nothing in this subsection renders a person liable to be punished more than once in respect of the same act or omission.

**11 Operation of State and Territory laws that further objects of Convention**

(1) A reference in this section to this Act is a reference to this Act as it has effect by virtue of subsection 9(10).

(2) A reference in this section to a law of a State or Territory is a reference to a law of a State or Territory that deals with discrimination on the ground of sex, discrimination on the ground of marital status or discrimination on the ground of pregnancy or potential pregnancy.

(3) This Act is not intended to exclude or limit the operation of a law of a State or Territory that furthers the objects of the Convention and is capable of operating concurrently with this Act.

(4) Where:

(a) a law of a State or Territory that furthers the objects of the Convention deals with a matter dealt with by this Act; and

(b) a person has made a complaint, instituted a proceeding or taken any other action under that law in respect of an act or omission in respect of which the person would, but for this subsection, have been entitled to make a complaint under the *Human Rights and Equal Opportunity Commission Act 1986* alleging that the act or omission is unlawful under a provision of Part II of this Act;

the person is not entitled to make a complaint or institute a proceeding under the *Human Rights and Equal Opportunity Commission Act 1986* alleging that the act or omission is unlawful under a provision of Part II of this Act.

(5) Where:

- (a) a law of a State or Territory that furthers the objects of the Convention deals with a matter dealt with by this Act; and
- (b) an act or omission by a person that constitutes an offence against that law also constitutes an offence against this Act;

the person may be prosecuted and convicted either under that law of the State or Territory or under this Act, but nothing in this subsection renders a person liable to be punished more than once in respect of the same act or omission.

### **12 Extent to which Act binds the Crown**

- (1) This Act binds the Crown in right of the Commonwealth and of Norfolk Island but, except as otherwise expressly provided by this Act, does not bind the Crown in right of a State.
- (2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State or of Norfolk Island liable to be prosecuted for an offence.

### **13 Extent to which Act applies to State instrumentalities**

- (1) Section 14 does not apply in relation to employment by an instrumentality of a State.
- (2) Section 28B does not apply in relation to an act done by an employee of a State or of an instrumentality of a State.

### **13A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part II—Prohibition of discrimination**

### **Division 1—Discrimination in work**

#### **14 Discrimination in employment or in superannuation**

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy:
  - (a) in the arrangements made for the purpose of determining who should be offered employment;
  - (b) in determining who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's sex, marital status, pregnancy or potential pregnancy:
  - (a) in the terms or conditions of employment that the employer affords the employee;
  - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.
- (3) Nothing in paragraph (1)(a) or (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.
- (3A) It is unlawful for an employer to discriminate against an employee on the ground of the employee's family responsibilities by dismissing the employee.
- (4) Where a person exercises a discretion in relation to the payment of a superannuation benefit to or in respect of a member of a superannuation fund, it is unlawful for the person to discriminate, in the exercise of the discretion, against the member or another person on the ground, in either case, of the sex or marital status of the member or that other person.

(5) Subsection (4) does not apply if section 41B applies to that member in respect of that fund.

(6) In this section:

*member*, in relation to a superannuation fund, includes a person who has been a member of the fund at any time.

### **15 Discrimination against commission agents**

(1) It is unlawful for a principal to discriminate against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy:

- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms or conditions on which the person is engaged as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's sex, marital status, pregnancy or potential pregnancy:

- (a) in the terms or conditions that the principal affords the commission agent as a commission agent;
- (b) by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with the position as a commission agent;
- (c) by terminating the engagement; or
- (d) by subjecting the commission agent to any other detriment.

### **16 Discrimination against contract workers**

It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's sex, marital status, pregnancy or potential pregnancy:

- (a) in the terms or conditions on which the principal allows the contract worker to work;
- (b) by not allowing the contract worker to work or continue to work;

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- (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
- (d) by subjecting the contract worker to any other detriment.

**17 Partnerships**

- (1) It is unlawful for 6 or more persons, being persons who are proposing to form themselves into a partnership, to discriminate against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy:
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy:
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's sex, marital status, pregnancy or potential pregnancy:
  - (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
  - (b) by expelling the partner from the partnership; or
  - (c) by subjecting the partner to any other detriment.

**18 Qualifying bodies**

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorization or qualification that is needed for or facilitates the practice of a profession, the

carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy:

- (a) by refusing or failing to confer, renew or extend the authorization or qualification;
- (b) in the terms or conditions on which it is prepared to confer the authorization or qualification or to renew or extend the authorization or qualification; or
- (c) by revoking or withdrawing the authorization or qualification or varying the terms or conditions upon which it is held.

### **19 Registered organisations under Schedule 1B to the *Workplace Relations Act 1996***

- (1) It is unlawful for a registered organization, the committee of management of a registered organization or a member of the committee of management of a registered organization to discriminate against a person, on the ground of the person's sex, marital status, pregnancy or potential pregnancy:
  - (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the organization is prepared to admit the person to membership.
- (2) It is unlawful for a registered organization, the committee of management of a registered organization or a member of the committee of management of a registered organization to discriminate against a person who is a member of the registered organization, on the ground of the member's sex, marital status, pregnancy or potential pregnancy:
  - (a) by denying the member access, or limiting the member's access, to any benefit provided by the organization;
  - (b) by depriving the member of membership or varying the terms of membership; or
  - (c) by subjecting the member to any other detriment.

### **20 Employment agencies**

It is unlawful for an employment agency to discriminate against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy:

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- (a) by refusing to provide the person with any of its services;
- (b) in the terms or conditions on which it offers to provide the person with any of its services; or
- (c) in the manner in which it provides the person with any of its services.

## **Division 2—Discrimination in other areas**

### **21 Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's sex, marital status, pregnancy or potential pregnancy:
  - (a) by refusing or failing to accept the person's application for admission as a student; or
  - (b) in the terms or conditions on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's sex, marital status, pregnancy or potential pregnancy:
  - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority;
  - (b) by expelling the student; or
  - (c) by subjecting the student to any other detriment.
- (3) Nothing in this section applies to or in respect of a refusal or failure to accept a person's application for admission as a student at an educational institution where:
  - (a) the educational institution is conducted solely for students of the opposite sex to the sex of the applicant; or
  - (b) except in the case of an institution of tertiary education—education or training at the level at which the applicant is seeking education or training is provided by the educational institution only or mainly for students of the opposite sex to the sex of the applicant.
- (4) This section binds the Crown in right of a State.

### **22 Goods, services and facilities**

- (1) It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's sex, marital status, pregnancy or potential pregnancy:

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- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
  - (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
  - (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.
- (2) This section binds the Crown in right of a State.

**23 Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sex, marital status, pregnancy or potential pregnancy:
- (a) by refusing the other person's application for accommodation;
  - (b) in the terms or conditions on which accommodation is offered to the other person; or
  - (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sex, marital status, pregnancy or potential pregnancy:
- (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person;
  - (b) by evicting the other person from accommodation occupied by the other person; or
  - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.

- (3) Nothing in this section applies to or in respect of:
- (a) the provision of accommodation in premises if:
    - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
    - (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (i) or near relatives of such a person;
  - (b) accommodation provided by a religious body; or
  - (c) accommodation provided by a charitable or other non-profit-making body solely for persons of one sex or solely for persons of a particular marital status or particular marital statuses.
- (4) This section binds the Crown in right of a State.

## **24 Land**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sex, marital status, pregnancy or potential pregnancy:
- (a) by refusing or failing to dispose of an estate or interest in land to the other person; or
  - (b) in the terms or conditions on which an estate or interest in land is offered to the other person.
- (2) This section does not apply in relation to a disposal of an estate or interest in land by will or by way of gift.
- (3) This section binds the Crown in right of a State.

## **25 Clubs**

- (1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club on the ground of the person's sex, marital status, pregnancy or potential pregnancy:
- (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the club is prepared to admit the person to membership.

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- (2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is a member of the club on the ground of the member's sex, marital status, pregnancy or potential pregnancy:
- (a) in the terms or conditions of membership that are afforded to the member;
  - (b) by refusing or failing to accept the member's application for a particular class or type of membership;
  - (c) by denying the member access, or limiting the member's access, to any benefit provided by the club;
  - (d) by depriving the member of membership or varying the terms of membership; or
  - (e) by subjecting the member to any other detriment.
- (3) Nothing in subsection (1) or (2) renders it unlawful to discriminate against a person on the ground of the person's sex if membership of the club is available to persons of the opposite sex only.
- (4) Nothing in subsection (1), other than paragraph (1)(a), or subsection (2) renders it unlawful to discriminate against a person on the ground of the person's sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the club where:
- (a) it is not practicable for the benefit to be used or enjoyed:
    - (i) simultaneously; or
    - (ii) to the same extent;by both men and women; and
  - (b) either:
    - (i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other; or
    - (ii) men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.
- (5) In determining any matter relating to the application of subsection (4), regard shall be had to:
- (a) the purposes for which the club is established;
  - (b) the membership of the club, including any class or type of membership;

- (c) the nature of the benefits provided by the club;
- (d) the opportunities for the use and enjoyment of those benefits by men and women; and
- (e) any other relevant circumstances.

## **26 Administration of Commonwealth laws and programs**

- (1) It is unlawful for a person who performs any function or exercises any power under a Commonwealth law or for the purposes of a Commonwealth program, or has any other responsibility for the administration of a Commonwealth law or the conduct of a Commonwealth program, to discriminate against another person, on the ground of the other person's sex, marital status, pregnancy or potential pregnancy, in the performance of that function, the exercise of that power or the fulfilment of that responsibility.
- (2) This section binds the Crown in right of a State.

## **27 Requests for information**

- (1) It is unlawful for a person (the *first person*) to request or require another person (the *other person*) to provide information (whether by way of completing a form or otherwise) if:
  - (a) the information is requested or required in connection with, or for the purposes of, the first person doing a particular act; and
  - (b) under Division 1 or this Division, it would be unlawful in particular circumstances for the first person, in doing that act, to discriminate against the other person on the ground of the other person's sex, marital status, pregnancy or potential pregnancy; and
  - (c) persons:
    - (i) of the opposite sex; or
    - (ii) of a different marital status; or
    - (iii) who are not pregnant or potentially pregnant;as the case requires, would not be requested or required to provide the information in circumstances that are the same or not materially different.

Example: Under section 14 of Division 1, it is unlawful to determine not to offer employment to a woman because she is pregnant or might become pregnant. Under this section, it is therefore also unlawful to ask a

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woman during a job interview whether she is pregnant or intends to become pregnant if that information is requested in connection with determining whether to offer her employment.

- (2) Nothing in subsection (1) renders it unlawful for a person to request or require:
- (a) a person of a particular sex to provide information concerning such part of the last-mentioned person's medical history as relates to medical conditions that affect persons of that sex only; or
  - (b) a person who is pregnant to provide medical information concerning the pregnancy.

Note: Information obtained under this subsection may be used provided the use is not for the purpose of a discriminatory act that is unlawful under any other section of this Act. For example, an employer may use such information for a purpose connected with occupational health and safety, but only if doing so does not amount to unlawful discrimination.

- (3) This section binds the Crown in right of a State.

## **Division 3—Sexual harassment**

### **28A Meaning of *sexual harassment***

- (1) For the purposes of this Division, a person sexually harasses another person (the *person harassed*) if:
  - (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
  - (b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated.
- (2) In this section:

*conduct of a sexual nature* includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

### **28B Employment, partnerships etc.**

- (1) It is unlawful for a person to sexually harass:
  - (a) an employee of the person; or
  - (b) a person who is seeking to become an employee of the person.
- (2) It is unlawful for an employee to sexually harass a fellow employee or a person who is seeking employment with the same employer.
- (3) It is unlawful for a person to sexually harass:
  - (a) a commission agent or contract worker of the person; or
  - (b) a person who is seeking to become a commission agent or contract worker of the person.
- (4) It is unlawful for a commission agent or contract worker to sexually harass a fellow commission agent or fellow contract worker.

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- (5) It is unlawful for a partner in a partnership to sexually harass another partner, or a person who is seeking to become a partner, in the same partnership.
- (6) It is unlawful for a workplace participant to sexually harass another workplace participant at a place that is a workplace of both of those persons.

- (7) In this section:

*place* includes a ship, aircraft or vehicle.

*workplace* means a place at which a workplace participant works or otherwise carries out functions in connection with being a workplace participant.

*workplace participant* means any of the following:

- (a) an employer or employee;
- (b) a commission agent or contract worker;
- (c) a partner in a partnership.

**28C Members of bodies with power to grant etc. occupational qualifications etc.**

- (1) It is unlawful for a member of an authority or body that has power to take action in connection with an occupational qualification to sexually harass a person seeking action in connection with an occupational qualification.
- (2) In this section:

*action in connection with an occupational qualification* means conferring, renewing, extending, revoking or withdrawing 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.

**28D Registered organisations**

It is unlawful for:

- (a) a member of a registered organisation; or
  - (b) a member of the staff of a registered organisation;
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to sexually harass a member of the organisation, or a person who is seeking to become a member of the organisation.

### **28E Employment agencies**

It is unlawful for:

- (a) a person who operates an employment agency; or
- (b) a member of the staff of an employment agency;

to sexually harass another person in the course of providing, or offering to provide, any of the agency's services to that other person.

### **28F Educational institutions**

- (1) It is unlawful for a member of the staff of an educational institution to sexually harass:

- (a) a person who is a student at the institution; or
- (b) a person who is seeking to become a student at the institution.

- (2) It is unlawful for a person who is an adult student at an educational institution to sexually harass:

- (a) a person who is an adult student at the institution; or
- (b) a member of the staff of the institution.

- (3) In this section:

*adult student* means a student who has attained the age of 16 years.

### **28G Provision of goods, services and facilities**

It is unlawful for a person to sexually harass another person in the course of providing, or offering to provide, goods, services or facilities to that other person.

### **28H Provision of accommodation**

- (1) It is unlawful for a person to sexually harass another person in the course of providing, or offering to provide, (whether as principal or agent) accommodation to that other person.

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- (2) This section does not apply to anything done by a person in the course of providing, or offering to provide, accommodation to a near relative.

**28J Land**

It is unlawful for a person to sexually harass another person in the course of dealing (whether as principal or agent) with that other person in connection with:

- (a) disposing of, or offering to dispose of, an estate or interest in land to the other person; or
- (b) acquiring, or offering to acquire, an estate or interest in land from the other person.

**28K Clubs**

It is unlawful for a member of the committee of management of a club to sexually harass a member of the club or a person seeking to become a member of the club.

**28L Commonwealth laws and programs**

It is unlawful for a person:

- (a) in the course of performing any function, or exercising any power, under a Commonwealth law or for the purposes of a Commonwealth program; or
  - (b) in the course of carrying out any other responsibility for the administration of a Commonwealth law or the conduct of a Commonwealth program;
- to sexually harass another person.

## **Division 4—Exemptions**

### **30 Certain discrimination on ground of sex not unlawful**

- (1) Nothing in paragraph 14(1)(a) or (b), 15(1)(a) or (b) or 16(b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with a position as an employee, commission agent or contract worker, being a position in relation to which it is a genuine occupational qualification to be a person of the opposite sex to the sex of the other person.
- (2) Without limiting the generality of subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular sex (in this subsection referred to as the *relevant sex*) if:
  - (a) the duties of the position can be performed only by a person having particular physical attributes (other than attributes of strength or stamina) that are not possessed by persons of the opposite sex to the relevant sex;
  - (b) the duties of the position involve performing in a dramatic performance or other entertainment in a role that, for reasons of authenticity, aesthetics or tradition, is required to be performed by a person of the relevant sex;
  - (c) the duties of the position need to be performed by a person of the relevant sex to preserve decency or privacy because they involve the fitting of clothing for persons of that sex;
  - (d) the duties of the position include the conduct of searches of the clothing or bodies of persons of the relevant sex;
  - (e) the occupant of the position is required to enter a lavatory ordinarily used by persons of the relevant sex while the lavatory is in use by persons of that sex;
  - (f) the occupant of the position is required to live on premises provided by the employer or principal of the occupant of the position and:
    - (i) the premises are not equipped with separate sleeping accommodation and sanitary facilities for persons of each sex;

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- (ii) the premises are already occupied by a person or persons of the relevant sex and are not occupied by any person of the opposite sex to the relevant sex; and
- (iii) it is not reasonable to expect the employer or principal to provide separate sleeping accommodation and sanitary facilities for persons of each sex;
- (g) the occupant of the position is required to enter areas ordinarily used only by persons of the relevant sex while those persons are in a state of undress; or
- (h) the position is declared, by regulations made for the purposes of this paragraph, to be a position in relation to which it is a genuine occupational qualification to be a person of a particular sex.

**31 Pregnancy or childbirth**

Nothing in Division 1 or 2 renders it unlawful for a person to discriminate against a man on the ground of his sex by reason only of the fact that the first-mentioned person grants to a woman rights or privileges in connection with pregnancy or childbirth.

**32 Services for members of one sex**

Nothing in Division 1 or 2 applies to or in relation to the provision of services the nature of which is such that they can only be provided to members of one sex.

**34 Accommodation provided for employees or students**

- (1) Nothing in Division 1 or 2 renders it unlawful for an employer who provides accommodation to employees of the employer to provide accommodation of different standards to different employees where:
  - (a) the standard of the accommodation provided to each employee is determined having regard to the number of persons in the household of the employee; and
  - (b) it is not reasonable to expect the employer to provide accommodation of the same standard for all employees.
- (2) Nothing in Division 1 or 2 applies to or in relation to the provision of accommodation, where the accommodation is provided solely

for persons of one sex who are students at an educational institution.

### **35 Residential care of children**

- (1) Nothing in paragraph 14(1)(a) or (b) or 16(b) renders it unlawful for a person to discriminate against another person on the ground of the other person's sex in connection with a position as an employee or contract worker, where the duties of the position involve the care of a child or children in the place where the child or children resides or reside.
- (2) Nothing in paragraph 14(1)(a) or (b), 14(2)(c) or 16(b) renders it unlawful for a person to discriminate against another person on the ground of the other person's marital status in connection with a position as an employee or contract worker of a particular employer or principal, where:
  - (a) the duties of the position involve the care of a child or children in the place where the child or children resides or reside; and
  - (b) it is intended that the spouse of the occupant of the position would also occupy a position as an employee or contract worker of that employer or principal.

### **36 Charities**

- (1) Nothing in Division 1 or 2 affects:
  - (a) a provision of a deed, will or other document, whether made before or after the commencement of this Act, that confers charitable benefits or enables charitable benefits to be conferred on persons of a class identified by reference to any one or more of the grounds of discrimination referred to in this Act; or
  - (b) an act that is done in order to give effect to such a provision.

- (2) In this section:

*Australia* includes the external Territories.

*charitable benefits* means benefits for purposes that are exclusively charitable according to the law in force in any part of Australia.

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**37 Religious bodies**

Nothing in Division 1 or 2 affects:

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- (c) the selection or appointment of persons to perform duties or functions for the purposes of or in connection with, or otherwise to participate in, any religious observance or practice; or
- (d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

**38 Educational institutions established for religious purposes**

- (1) Nothing in paragraph 14(1)(a) or (b) or 14(2)(c) renders it unlawful for a person to discriminate against another person on the ground of the other person's sex, marital status or pregnancy in connection with employment as a member of the staff of an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.
- (2) Nothing in paragraph 16(b) renders it unlawful for a person to discriminate against another person on the ground of the other person's sex, marital status or pregnancy in connection with a position as a contract worker that involves the doing of work in an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.
- (3) Nothing in section 21 renders it unlawful for a person to discriminate against another person on the ground of the other

person's marital status or pregnancy in connection with the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

### **39 Voluntary bodies**

Nothing in Division 1 or 2 renders it unlawful for a voluntary body to discriminate against a person, on the ground of the person's sex, marital status or pregnancy, in connection with:

- (a) the admission of persons as members of the body; or
- (b) the provision of benefits, facilities or services to members of the body.

### **40 Acts done under statutory authority**

- (1) Nothing in Division 1 or 2 affects anything done by a person in direct compliance with:
  - (c) a determination or decision of the Commission;
  - (d) an order of a court; or
  - (e) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment; or
  - (f) a certified agreement (within the meaning of the *Workplace Relations Act 1996*).
- (2) Nothing in Division 1 or 2 affects anything done by a person in direct compliance with any of the following as in force on 1 August 1984:
  - (a) the *Gift Duty Assessment Act 1941*;
  - (b) the operation of:
    - (i) the definition of *pensioner* in subsection 4(1); or
    - (ii) the definition of *concessional beneficiary* in subsection 84(1);of the *National Health Act 1953*;
  - (c) the *Income Tax Assessment Act 1936*;
  - (d) the *International Tax Agreements Act 1953*;

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- (e) the *Papua New Guinea (Members of the Forces Benefits) Act 1957*;
  - (f) the *Sales Tax (Exemptions and Classifications) Act 1935*;
  - (h) the *Social Security Act 1947*;
  - (i) the *Taxation (Unpaid Company Tax) Assessment Act 1982*;
  - (j) the *Social Services Act 1980* of Norfolk Island.
- (3) Nothing in Division 1 or 2, as applying by reference to section 6, affects anything done by a person in direct compliance with any regulations, rules, by-laws, determinations or directions made under the *Gift Duty Assessment Act 1941*, the *Income Tax Assessment Act 1936* or the *Sales Tax (Exemptions and Classifications) Act 1935*.
- (4) Nothing in Division 1 or 2, as applying by reference to section 6, affects anything done by a person for the purposes of the administration of the AUSTUDY scheme or the ABSTUDY scheme.
- (6) Nothing in Division 1 or 2 affects anything done by a person in compliance with a provision of a law of the Commonwealth, of a State or of a Territory, being a provision that is included for the purpose referred to in subsection 7D(1).

Note: See also subsection 98(6A) of the *Civil Aviation Act 1988*, which allows regulations made under that Act to contain provisions relating to medical standards that are inconsistent with this Act if the inconsistency is necessary for the safety of air navigation.

**40A Review of operation of subsections 40(2) and (3)**

- (1) The Minister must review the operation of subsections 40(2) and (3) before 1 June 1996.
- (2) The review must include, but need not be limited to, a recommendation as to whether subsections 40(2) and (3) should be repealed.
- (3) The Minister must cause copies of the review to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the review.

## 41 Insurance

- (1) Nothing in Division 1 or 2 makes discrimination by one person (in this subsection called the *insurer*) against another person (in this subsection called the *client*) unlawful if:
- (a) the discrimination is on the ground of the client's sex; and
  - (b) the discrimination is in the terms on which an insurance policy is offered to, or may be obtained by, the client; and
  - (c) the discrimination is based on actuarial or statistical data from a source on which it is reasonable for the insurer to rely; and
  - (d) the discrimination is reasonable having regard to the data; and
  - (e) if the client gives the insurer a written request for access to the data—either:
    - (i) the insurer gives the client a document containing the data; or
    - (ii) the insurer:
      - (A) makes a document containing the data available for inspection by the client at such time or times, and at such place or places, as are reasonable; and
      - (B) if the client inspects the document—allows the client to make a copy of, or take extracts from, the document.
- (1A) Paragraph (1)(e) does not apply if the Commission has, under section 44, granted an exemption from the operation of that paragraph.

- (2) In this section:

*insurance policy* includes an annuity, a life assurance policy, an accident insurance policy and an illness insurance policy.

### 41A New superannuation fund conditions

- (1) Nothing in Division 1 or 2 makes discrimination in relation to a superannuation fund by one person (in this subsection called the *discriminator*) against another person (in this subsection called the *aggrieved person*) unlawful if:

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- (a) the discrimination is on the ground of the aggrieved person's sex or marital status; and
  - (b) the discrimination arises only because of one or more of the following:
    - (i) the superannuation fund conditions include a provision that:
      - (A) is based on actuarial or statistical data from a source on which it is reasonable for the discriminator to rely; and
      - (B) is reasonable having regard to those data and any other relevant factors;
    - (ii) in the case of a member who has no spouse (whether legal or de facto) or has no child—the superannuation fund conditions:
      - (A) do not provide for superannuation benefits in the event of the member's death; or
      - (B) provide for less generous superannuation benefits in the event of the member's death; or
      - (C) do not provide for superannuation benefits to someone other than the member in the event of the member's physical or mental incapacity; or
      - (D) provide for less generous superannuation benefits to someone other than the member in the event of the member's physical or mental incapacity;
    - (iii) the superannuation fund conditions include a provision that relates to:
      - (A) the vesting in members or other persons of benefits arising directly or indirectly from amounts contributed to the fund; or
      - (B) the preservation of benefits arising directly or indirectly from amounts contributed to the fund; or
      - (C) the portability of benefits arising directly or indirectly from amounts contributed to another superannuation fund;
- if the inclusion of that provision results in only indirect discrimination against the aggrieved person on the ground of that person's sex or marital status;

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- (iv) the superannuation fund conditions include a provision that confers particular benefits, or more generous benefits, only on a person to whom subsection 41B(3) or (4) applies.
- (2) For the purposes of this section, discrimination against a person on the ground of the person's sex or marital status is taken to be indirect if paragraph 5(1)(b) or (c), subsection 5(2), paragraph 6(1)(b) or (c) or subsection 6(2) applies to the discrimination.
- (3) This section does not apply to a person in respect of a superannuation fund if subsection 41B(3) or (4) applies to that person.
- (4) In this section:  
*member*, in relation to a superannuation fund, includes a person who has been a member of the fund at any time.

**41B Existing superannuation fund conditions**

- (1) This section applies to a person (in this section called the *member*) if:
    - (a) the person was a member of a superannuation fund immediately before the commencement of this section; and
    - (b) unless the Commission has, under section 44, granted an exemption from the operation of this paragraph—before the commencement of this section, the person:
      - (i) had been given an option to obtain non-discriminatory benefits; and
      - (ii) had not exercised the option in accordance with subsection (5).
  - (2) This section applies to a person (in this section also called the *member*) if:
    - (a) at any time before the commencement of this section, the person became a member of a superannuation fund; and
    - (b) at a later time before that commencement, the person ceased to be a member of the fund.
  - (3) Nothing in Division 1 or 2 makes discrimination against the member unlawful if the discrimination:
    - (a) is on the ground of the member's sex or marital status; and
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- (b) is in the superannuation fund conditions.
- (4) Nothing in Division 1 or 2 makes discrimination against a person unlawful if:
  - (a) the person derives, or would, apart from the discrimination, derive, benefits because the member is or was a member of the superannuation fund; and
  - (b) the discrimination:
    - (i) is on the ground of the sex or marital status of the member or the person; and
    - (ii) is in the superannuation fund conditions.
- (5) If the administrators of the fund required the member to exercise the option referred to in subsection (1) before the end of a particular period, subsection (1) does not apply unless that period was at least 2 months long and ended before the commencement of this section.
- (6) For the purposes of this section, the member is taken to obtain non-discriminatory benefits where, if section 41A applied to the member in respect of the fund, the superannuation fund conditions that relate to the benefits would not give rise to discrimination that is unlawful under Division 1 or 2.

**42 Sport**

- (1) Nothing in Division 1 or 2 renders it unlawful to exclude persons of one sex from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.
- (2) Subsection (1) does not apply in relation to the exclusion of persons from participation in:
  - (a) the coaching of persons engaged in any sporting activity;
  - (b) the umpiring or refereeing of any sporting activity;
  - (c) the administration of any sporting activity;
  - (d) any prescribed sporting activity; or
  - (e) sporting activities by children who have not yet attained the age of 12 years.

### **43 Combat duties etc.**

- (1) Nothing in Division 1 or 2 renders it unlawful for a person to discriminate against a woman on the ground of her sex in connection with employment, engagement or appointment in the Defence Force:
  - (a) in a position involving the performance of combat duties; or
  - (b) in prescribed circumstances in relation to combat duties.

- (2) In this section:

*combat duties* means such duties as are declared by the regulations to be combat duties for the purposes of this section.

### **44 Commission may grant exemptions**

- (1) The Commission may, on application by:
  - (a) a person, on that person's own behalf or on behalf of that person and another person or other persons;
  - (b) 2 or more persons, on their own behalf or on behalf of themselves and another person or other persons; or
  - (c) a person or persons included in a class of persons on behalf of the persons included in that class of persons;by instrument in writing, grant to the person, persons or class of persons, as the case may be, an exemption from the operation of a provision of Division 1 or 2, or paragraph 41(1)(e), or paragraph 41B(1)(b), as specified in the instrument.
- (2) The Commission may, on application by a person to, or in respect of, whom an exemption from a provision of Division 1 or 2, or paragraph 41(1)(e), has been granted under subsection (1), being an application made before the expiration of the period for which that exemption was granted, grant a further exemption from the operation of that provision.
- (3) An exemption, or further exemption, from the operation of a provision of Division 1 or 2, or paragraph 41(1)(e) or paragraph 41B(1)(b):
  - (a) may be granted subject to such terms and conditions as are specified in the instrument;

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- (b) may be expressed to apply only in such circumstances, or in relation to such activities, as are specified in the instrument; and
- (c) shall be granted for a specified period not exceeding 5 years.

**45 Review by Administrative Appeals Tribunal**

Applications may be made to the Administrative Appeals Tribunal for review of decisions made by the Commission under section 44.

**46 Notice of decisions to be published**

- (1) The Commission shall, not later than one month after it makes a decision under section 44, cause to be published in the *Gazette* a notice of the making of the decision:
  - (a) setting out its findings on material questions of fact;
  - (b) referring to the evidence on which those findings were based;
  - (c) giving the reasons for the making of the decision; and
  - (d) containing a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates by or on behalf of any person or persons whose interests are affected by the decision.
- (2) Any failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

**47 Effect of exemptions**

Nothing in Division 1 or 2 renders it unlawful for a person who has been granted an exemption from a provision of that Division, or a person in the employment or under the direction or control of a person who has been granted such an exemption, to do an act in accordance with the provisions of the instrument by which the exemption was granted.

## **Part III—Functions of Human Rights and Equal Opportunity Commission**

### **Division 1—Preliminary**

#### **48 Functions of Human Rights and Equal Opportunity Commission**

- (1) The following functions are hereby conferred on the Commission:
- (c) to exercise the powers conferred on it by section 44;
  - (d) to promote an understanding and acceptance of, and compliance with, this Act;
  - (e) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting the objects of this Act;
  - (f) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to the objects of this Act, and to report to the Minister the results of any such examination;
  - (g) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to discrimination on the ground of sex, marital status, pregnancy or potential pregnancy or to discrimination involving sexual harassment;
  - (ga) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of discrimination on the ground of sex, marital status, pregnancy or potential pregnancy and discrimination involving sexual harassment;
  - (gb) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve issues of discrimination on the ground of sex, marital status, pregnancy or potential pregnancy or discrimination involving sexual harassment;

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(h) to do anything incidental or conducive to the performance of any of the preceding functions.

Note: For the provisions about inquiries into complaints of discrimination and conciliation of those complaints: see Part IIB of the *Human Rights and Equal Opportunity Commission Act 1986*.

(2) The Commission shall not regard an enactment or proposed enactment as being inconsistent with or contrary to the objects of this Act for the purposes of paragraph (1)(f) by reason of a provision of the enactment or proposed enactment that is included for the purpose referred to in subsection 7D(1).

## **Part IV—Offences**

### **85 Unlawful act not offence unless expressly so provided**

Except as expressly provided by this Part, nothing in this Act makes it an offence to do an act that is unlawful by reason of a provision of Part II.

### **86 Advertisements**

- (1) A person shall not publish or display an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of a provision of Part II.

Penalty:

- (a) in the case of a natural person—\$1,000; or  
(b) in the case of a body corporate—\$5,000.
- (2) For the purposes of subsection (1), *advertisement* includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and the reference in that subsection to publish or display, in relation to an advertisement, shall be construed accordingly.

### **87 Failure to provide actuarial or statistical data**

- (1) Where a person has engaged in an act of discrimination that would, apart from subsection 41(1), be unlawful, the President or the Commission may, by notice in writing served on the person as prescribed, require the person, within 28 days after service of the notice on the person, to disclose to the President or to the Commission, as the case may be, the source of the actuarial or statistical data on which the act of discrimination was based and, where the President or the Commission, as the case may be, makes such a requirement of a person, the person shall not fail to comply with the requirement.

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Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

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) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**92 Particulars of complaints not to be communicated**

- (1) Subject to subsection (2), where a complaint alleging that a person has done an act that is unlawful under Division 3 of Part II is lodged with the Commission under section 46P of the *Human Rights and Equal Opportunity Commission Act 1986*, a person shall not make a record of, or divulge or communicate to any other person, any particulars of that complaint until:

- (a) the President has commenced to inquire into the act;
- (ab) the complaint is withdrawn under section 46PG of the *Human Rights and Equal Opportunity Commission Act 1986*; or
- (b) the President terminates the complaint under section 46PE or 46PH of the *Human Rights and Equal Opportunity Commission Act 1986*.

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

- (1A) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) Nothing in subsection (1) prohibits:

- (a) the President, a member of the Commission, a member of the staff assisting the Commission or a person acting under the direction or authority of the Commission or of the President or pursuant to a delegation under section 104 from making a record of, or divulging or communicating, any particulars of a complaint in the performance of a duty under or in

- connection with this Act or in the performance or exercise of a function or power under this Act;
- (b) a person from divulging or communicating any particulars of a complaint to any person in accordance with an arrangement in force under section 16 of the *Human Rights and Equal Opportunity Commission Act 1986*;
  - (c) a person from divulging or communicating any particulars of a complaint to:
    - (i) the complainant or a person on whose behalf the complaint was made;
    - (ii) the person alleged to have done the act to which the complaint relates;
    - (iii) the legal representative of a person referred to in subparagraph (i) or (ii); or
    - (iv) the employer or principal of the person referred to in subparagraph (i) or (ii);
  - (d) a person who has made a complaint in respect of a particular matter from divulging or communicating any particulars of the complaint to:
    - (i) a person to whom, or an officer of a body to which, the complainant is making a complaint or application in respect of the same matter;
    - (ii) an officer of a tribunal in which the complainant is instituting proceedings, or to which the complainant is making an application, in respect of the same matter;
    - (iii) a near relative of the complainant; or
    - (iv) a person from whom the complainant is seeking or receiving professional treatment, counselling or advice;
  - (e) a person (in this paragraph referred to as the ***relevant person***) on whose behalf a complaint has been made in respect of a particular matter from divulging or communicating any particulars of the complaint to:
    - (i) a person to whom, or an officer of a body to which, the relevant person is making a complaint or application in respect of the same matter;
    - (ii) an officer of a tribunal in which the relevant person is instituting proceedings, or to which the relevant person is making an application, in respect of the same matter;
    - (iii) a near relative of the relevant person; or

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- (iv) a person from whom the relevant person is seeking or receiving professional treatment, counselling or advice; or
- (f) a person to whom particulars of a complaint may be divulged or communicated under paragraph (b), (c), (d) or (e) from making a record of those particulars.

**94 Victimisation**

- (1) A person shall not commit an act of victimization against another person.

Penalty:

- (a) in the case of a natural person—\$2,500 or imprisonment for 3 months, or both; or
  - (b) in the case of a body corporate—\$10,000.
- (2) For the purposes of subsection (1), a person shall be taken to commit an act of victimization against another person if the first-mentioned person subjects, or threatens to subject, the other person to any detriment on the ground that the other person:
- (a) has made, or proposes to make, a complaint under this Act or the *Human Rights and Equal Opportunity Commission Act 1986*;
  - (b) has brought, or proposes to bring, proceedings under this Act or the *Human Rights and Equal Opportunity Commission Act 1986* against any person;
  - (c) has furnished, or proposes to furnish, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act or the *Human Rights and Equal Opportunity Commission Act 1986*;
  - (d) has attended, or proposes to attend, a conference held under this Act or the *Human Rights and Equal Opportunity Commission Act 1986*;
  - (e) has appeared, or proposes to appear, as a witness in a proceeding under this Act or the *Human Rights and Equal Opportunity Commission Act 1986*;
  - (f) has reasonably asserted, or proposes to assert, any rights of the person or the rights of any other person under this Act or the *Human Rights and Equal Opportunity Commission Act 1986*; or
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- (g) has made an allegation that a person has done an act that is unlawful by reason of a provision of Part II;  
or on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in any of paragraphs (a) to (g), inclusive.
- (3) It is a defence to a prosecution for an offence under subsection (1) constituted by subjecting, or threatening to subject, a person to a detriment on the ground that the person has made an allegation that another person had done an act that was unlawful by reason of a provision of Part II if it is proved that the allegation was false and was not made in good faith.

### **95 Obstruction etc.**

- (1) A person shall not insult, hinder, obstruct, molest or interfere with a person exercising a power or performing a function under this Act.

Penalty:

- (a) in the case of a natural person—\$1,000; or  
(b) in the case of a body corporate—\$5,000.
- (2) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance, that a person is exercising a power or performing a function under this Act.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Part V—Sex Discrimination Commissioner**

### **96 Sex Discrimination Commissioner**

- (1) There shall be a Sex Discrimination Commissioner, who shall be appointed by the Governor-General.
- (2) A person is not qualified to be appointed as the Sex Discrimination Commissioner unless the Governor-General is satisfied that the person has appropriate qualifications, knowledge or experience.

### **97 Terms and conditions of appointment**

- (1) Subject to this section, the Commissioner holds office for such period, not exceeding 7 years, as is specified in the instrument of the person's appointment, but is eligible for re-appointment.
- (3) The Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

### **98 Remuneration of Commissioner**

- (1) The Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Remuneration Tribunal is in operation, the Commissioner shall be paid such remuneration as is prescribed.
- (2) The Commissioner shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **99 Leave of absence**

- (1) The Commissioner has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Commissioner leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

**100 Outside employment**

The Commissioner shall not, except with the approval of the Minister, engage in paid employment outside the duties of the office of Commissioner.

**101 Resignation**

The Commissioner may resign from the office of Commissioner by writing delivered to the Governor-General.

**102 Termination of appointment**

- (1) The Governor-General may terminate the appointment of the Commissioner by reason of misbehaviour or of physical or mental incapacity.
- (2) The Governor-General shall terminate the appointment of the Commissioner if the Commissioner:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
  - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
  - (c) engages in paid employment outside the duties of the office of Commissioner otherwise than with the consent of the Minister.

**103 Acting Commissioner**

- (1) The Minister may appoint a person to act as Commissioner:
  - (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office of Commissioner.

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- (7) The validity of anything done by a person purporting to act pursuant to an appointment made under subsection (1) shall not be called in question on the ground that the occasion for the person's appointment had not arisen, that there is a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.

**Part VI—Miscellaneous****104 Delegation**

- (1) The Commission may by writing under its seal, delegate to a member of the Commission, the Commissioner, a member of the staff of the Commission or another person or body of persons all or any of the powers conferred on the Commission under this Act.
- (2) The Commissioner may, by writing signed by the Commissioner, delegate to:
  - (a) a member of the staff of the Commission; or
  - (b) any other person or body of persons;approved by the Commission, all or any of the powers exercisable by the Commissioner under this Act.

**105 Liability of persons involved in unlawful acts**

A person who causes, instructs, induces, aids or permits another person to do an act that is unlawful under Division 1 or 2 of Part II shall, for the purposes of this Act, be taken also to have done the act.

**106 Vicarious liability etc.**

- (1) Subject to subsection (2), where an employee or agent of a person does, in connection with the employment of the employee or with the duties of the agent as an agent:
  - (a) an act that would, if it were done by the person, be unlawful under Division 1 or 2 of Part II (whether or not the act done by the employee or agent is unlawful under Division 1 or 2 of Part II); or
  - (b) an act that is unlawful under Division 3 of Part II;this Act applies in relation to that person as if that person had also done the act.
- (2) Subsection (1) does not apply in relation to an act of a kind referred to in paragraph (1)(a) or (b) done by an employee or agent of a person if it is established that the person took all reasonable

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steps to prevent the employee or agent from doing acts of the kind referred to in that paragraph.

**107 Acts done on behalf of bodies**

- (1) Where, for the purposes of this Act, it is necessary to establish that a body corporate has done an act on a particular ground, it is sufficient to establish that a person who acted on behalf of the body corporate in the matter so acted on that ground.

**108 Commonwealth deemed to be employer**

For the purposes of this Act, all Commonwealth employees shall be deemed to be employed by the Commonwealth.

**109 Awards inconsistent with this Act not to be made**

This Act is a prescribed Act for the purposes of section 121 of the *Workplace Relations Act 1996*.

**110 Unlawful act not basis of civil action unless expressly so provided**

Except as expressly provided by this Act, nothing in this Act confers on a person any right of action in respect of the doing of an act that is unlawful by reason of a provision of Part II.

**111 Protection from civil actions**

- (1) The Commission, a member of the Commission, the Commissioner or a person acting under the direction or authority of the Commission or of the Commissioner or pursuant to a delegation under section 104 is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function, or in the exercise or purported exercise of any power or authority, conferred on the Commission or the Commissioner.
- (2) If a submission has been made, a document or information has been given, or evidence has been given, to the Commission or the Commissioner, a person is not liable to an action, suit or other proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that submission was

made, the document or information was furnished or the evidence was given.

### **112 Non-disclosure of private information**

- (1) A person who is, or has at any time been, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorized to perform or exercise any function or power of the Commission or the Commissioner or any function or power on behalf of the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act, shall not, either directly or indirectly:
- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized;
  - (b) make use of any such information as is mentioned in paragraph (a); or
  - (c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$5,000 or imprisonment for 1 year, or both.

- (2) A person who is, or has at any time been, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorized to perform or exercise any function or power of the Commission or the Commissioner or any function or power on behalf of the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act, shall not be required:
- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized; or
  - (b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, by reason of that

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person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized;

except where it is necessary to do so for the purposes of this Act.

(3) Nothing in this section prohibits a person from:

- (a) making a record of information that is, or is included in a class of information that is, required or permitted by an Act to be recorded, if the record is made for the purposes of or pursuant to that Act;
- (b) divulging or communicating information, or producing a document, to any person in accordance with an arrangement in force under section 16 of the *Human Rights and Equal Opportunity Commission Act 1986*; or
- (c) divulging or communicating information, or producing a document, that is, or is included in a class of information that is or class of documents that are, required or permitted by an Act to be divulged, communicated or produced, as the case may be, if the information is divulged or communicated, or the document is produced, for the purposes of or pursuant to that Act.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(3AA) Subsection (1) does not prevent a person from making a record of, divulging, communicating or making use of information, or producing a document, if the person does so:

- (a) in the performance of a duty under or in connection with this Act; or
- (b) in the performance or exercise of a function or power conferred on the Commission or on the Commissioner under this Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3AA) (see subsection 13.3(3) of the *Criminal Code*).

(3A) Nothing in subsection (2) prevents a person from being required, for the purposes of or pursuant to an Act, to divulge or communicate information, or to produce a document, that is, or is included in a class of information that is or class of documents that are, required or permitted by that Act to be divulged, communicated or produced.

(4) In this section:

*court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

*produce* includes permit access to.

### **113 Information stored otherwise than in written form**

Where information is recorded or stored by means of a mechanical, electronic or other device, any duty imposed by this Act to produce the document recording that information shall be construed as a duty to provide a document containing a clear reproduction in writing of the information.

### **114 Commissioner to furnish information**

The Commissioner shall furnish to the Commission such information relating to the operations of the Commissioner under this Act as the Commission from time to time requires.

### **116 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, 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.

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## **Schedule—Convention on the Elimination of all Forms of Discrimination Against Women**

### Section 4

*The States Parties to the present Convention,*

*Noting* that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

*Noting* that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

*Noting* that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

*Considering* the international conventions concluded under the auspices of the United Nations and the specialised agencies promoting equality of rights of men and women,

*Noting* also the resolutions, declarations and recommendations adopted by the United Nations and the specialised agencies promoting equality of rights of men and women,

*Concerned*, however, that despite these various instruments extensive discrimination against women continues to exist,

*Recalling* that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full

development of the potentialities of women in the service of their countries and of humanity,

*Concerned* that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

*Convinced* that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

*Emphasizing* that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

*Affirming* that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realisation of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

*Convinced* that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

*Bearing in mind* the great contribution of women to the welfare of the family and to the development of society, so far not fully recognised, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

*Aware* that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

*Determined* to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

*Have agreed* on the following:

PART 1

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

#### Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

#### Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

#### Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the

inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

#### Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

### PART II

#### Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organisations and associations concerned with the public and political life of the country.

#### Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organisations.

#### Article 9

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1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

### PART III

#### Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaption of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

- (f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

#### Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

#### Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

#### Article 14

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1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

#### PART IV

#### Article 15

1. States Parties shall accord to women equality with men before the law.
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2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

#### Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

## PART V

### Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilisation as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those

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nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3, and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

#### Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

- (a) Within one year after the entry into force for the State concerned; and
- (b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with Article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialised agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialised agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

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PART VI

Article 23

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

- (a) In the legislation of a State Party; or
- (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realisation of the rights recognised in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.
2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.
3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organisation of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorised, have signed the present Convention.



**Table of Acts****Notes to the *Sex Discrimination Act 1984*****Note 1**

The *Sex Discrimination Act 1984* as shown in this compilation comprises Act No. 4, 1984 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 13 October 1999 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Sex Discrimination Act 1984</i>	4, 1984	21 Mar 1984	1 Aug 1984 (see <i>Gazette</i> 1984, No. S264)	
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1984</i>	72, 1984	25 June 1984	S. 3: 1 Aug 1984 (a)	Ss. 2(24) and 5(1)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (b)	S. 16
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1986</i>	76, 1986	24 June 1986	S. 3: Royal Assent (c)	S. 9
<i>Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Act 1986</i>	126, 1986	6 Dec 1986	10 Dec 1986 (see s. 2 and <i>Gazette</i> 1986, No. S631)	Ss. 44(2), 46 and 47
<i>Statute Law (Miscellaneous Provisions) Act 1988</i>	38, 1988	3 June 1988	S. 3: Royal Assent (d)	S. 5(1)
<i>Commonwealth Employees' Rehabilitation and Compensation Act 1988</i>	75, 1988	24 June 1988	Ss. 1 and 2: Royal Assent Ss. 4(1), 68–97, 99 and 100: 1 July 1988 (see <i>Gazette</i> 1988, No. S196) Remainder: 1 Dec 1988 (see <i>Gazette</i> 1988, No. S196)	—
<i>Employment, Education and Training Act 1988</i>	80, 1988	24 June 1988	1 July 1988 (see <i>Gazette</i> 1988, No. S190)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Industrial Relations (Consequential Provisions) Act 1988</i>	87, 1988	8 Nov 1988	Ss. 1 and 2: Royal Assent Remainder: 1 Mar 1989 (see s. 2(2) and <i>Gazette</i> 1989, No. S53)	—
<i>Law and Justice Legislation Amendment Act 1990</i>	115, 1990	21 Dec 1990	Part 4 (s. 49): Royal Assent (e)	—
<i>Social Security (Rewrite) Transition Act 1991</i>	70, 1991	25 June 1991	1 July 1991 (see s. 2)	—
<i>Sex Discrimination Amendment Act 1991</i>	71, 1991	25 June 1991	Part 1 (ss. 1–3), ss. 4, 7, 8, Parts 3 and 4 (ss. 11–23): 1 Aug 1991 Ss. 5 and 6: 25 June 1993 S. 9: 1 July 1994 Remainder: Royal Assent	S. 3 S. 2(2) (am. by 13, 1994, s. 24)
<b>as amended by</b>				
<i>Law and Justice Legislation Amendment Act 1993</i>	13, 1994	18 Jan 1994	S. 24: Royal Assent (f)	—
<i>Human Rights and Equal Opportunity Legislation Amendment Act 1992</i>	132, 1992	30 Oct 1992	26 Nov 1992 (see s. 2 and <i>Gazette</i> 1992, No. S346)	—
<i>Law and Justice Legislation Amendment Act (No. 3) 1992</i>	165, 1992	11 Dec 1992	Schedule (Part 2): 8 Jan 1993 (g) Schedule (Part 3): (g)	S. 3(3) and (4)
<i>Sex Discrimination and other Legislation Amendment Act 1992</i>	179, 1992	16 Dec 1992	13 Jan 1993	Ss. 2(2) and 4
<i>Human Rights and Equal Opportunity Legislation Amendment Act (No. 2) 1992</i>	180, 1992	16 Dec 1992	13 Jan 1993	—
<i>Qantas Sale Act 1992</i>	196, 1992	21 Dec 1992	Schedule (Parts 3, 6): (h)	S. 2(6) (am. by 60, 1993, s. 4; 168, 1994, s. 3)
<b>as amended by</b>				
<i>Qantas Sale Amendment Act 1993</i>	60, 1993	3 Nov 1993	10 Mar 1993	—
<i>Qantas Sale Amendment Act 1994</i>	168, 1994	16 Dec 1994	S. 3 (item 17): Royal Assent (i)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Industrial Relations and other Legislation Amendment Act 1993</i>	109, 1993	22 Dec 1993	Ss. 1, 2 and 58: Royal Assent S. 32: 5 Jan 1994 S. 34: 6 Sept 1991 S. 47: 24 Dec 1992 Remainder: 19 Jan 1994	—
<i>Law and Justice Legislation Amendment Act 1993</i>	13, 1994	18 Jan 1994	Ss. 21, 23, 25 and 26: Royal Assent (j) S. 22: 13 Jan 1993 (j)	S. 25(2)
<i>Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994</i>	164, 1994	16 Dec 1994	Part 4 (s. 60): Royal Assent (k)	—
<i>Income Tax (International Agreements) Amendment Act 1995</i>	22, 1995	29 Mar 1995	29 Mar 1995	—
<i>Human Rights Legislation Amendment Act 1995</i>	59, 1995	28 June 1995	S. 3 (item 25): 30 Oct 1992 Remainder: Royal Assent	Ss. 4 and 5
<i>Sex Discrimination Amendment Act 1995</i>	165, 1995	16 Dec 1995	16 Dec 1995	—
<i>Industrial Relations and other Legislation Amendment Act 1995</i>	168, 1995	16 Dec 1995	Ss. 1–12, Schedules 5 and 7–10: Royal Assent S. 13: 13 Jan 1996 Remainder: 15 Jan 1996 (see <i>Gazette</i> 1996, No. S16)	—
<i>Workplace Relations and Other Legislation Amendment Act 1996</i>	60, 1996	25 Nov 1996	Schedule 9 (item 2(9)): 31 Dec 1996 (see <i>Gazette</i> 1996, No. S535) Schedule 19 (items 46, 47): Royal Assent (l) Schedule 11 (items 62–71): 31 Dec 1996 (see <i>Gazette</i> 1996, No. S535)	S. 2(2) and (6) (am. by 77, 1996, Sch. 3 [items 1, 2]) Sch. 9 (item 2(9)) (am. by 133, 1999, Sch. 1 [item 125])
<b>as amended by</b>				
<i>Workplace Relations and Other Legislation Amendment Act (No. 2) 1996</i>	77, 1996	19 Dec 1996	Schedule 3 (items 1, 2): (m)	—
<i>Human Rights Legislation Amendment Act (No. 1) 1999</i>	133, 1999	13 Oct 1999	(see 133, 1999 below)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Student and Youth Assistance (Sex Discrimination Amendment) Act 1997</i>	171, 1997	17 Nov 1997	17 Nov 1997	—
<i>Defence Legislation Amendment Act (No. 1) 1999</i>	116, 1999	22 Sept 1999	Schedule 5 (item 14): 1 Jan 2001 (n)	—
<i>Human Rights Legislation Amendment Act (No. 1) 1999</i>	133, 1999	13 Oct 1999	Ss. 1–3 and 21: Royal Assent S. 22 and Schedule 1 (items 53, 60): 10 Dec 1999 (see <i>Gazette</i> 1999, No. S598) Remainder: 13 Apr 2000	Ss. 4–22 [see Table A]
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 812–814): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (o)	—
<i>Australian Security Intelligence Organisation Legislation Amendment Act 1999</i>	161, 1999	10 Dec 1999	Schedule 3 (items 1, 57): (p)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 45: (q)	S. 4(1) and (2) [see Table A]
<i>Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002</i>	105, 2002	14 Nov 2002	Schedule 3 (item 61): 12 May 2003 (see <i>Gazette</i> 2002, No. GN49)	—
<i>Sex Discrimination Amendment (Pregnancy and Work) Act 2003</i>	103, 2003	15 Oct 2003	Schedule 1: 12 Nov 2003 Remainder: Royal Assent	—
<i>Age Discrimination (Consequential Provisions) Act 2004</i>	40, 2004	21 Apr 2004	Schedule 2 (item 28): [see (r) and Note 2]	—
<i>Civil Aviation Amendment Act 2005</i>	86, 2005	6 July 2005	6 July 2005	—

**Act Notes**

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- (a) The *Sex Discrimination Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsection 2(19) of which provides as follows:
- (19) The amendments of the *Sex Discrimination Act 1984* made by this Act shall come into operation on the commencement of that Act.
- (b) The *Sex Discrimination Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (c) The *Sex Discrimination Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (d) The *Sex Discrimination Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1988*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (e) The *Sex Discrimination Act 1984* was amended by Part 4 (section 49) only of the *Law and Justice Legislation Amendment Act 1990*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (f) The *Sex Discrimination Amendment Act 1991* was amended by section 24 only of the *Law and Justice Legislation Amendment Act 1993*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (g) The *Sex Discrimination Act 1984* was amended by the Schedule (Parts 2 and 3) only of the *Law and Justice Legislation Amendment Act (No. 3) 1992*, subsections 2(7) and (8) of which provide as follows:
- (7) Part 2 of the Schedule commences on the 28th day after the day on which this Act receives the Royal Assent.
- (8) Part 3 of the Schedule commences immediately after the commencement of section 9 of the *Sex Discrimination Amendment Act 1991*.
- Section 9 of the *Sex Discrimination Amendment Act 1991* commenced on 25 June 1993.
- (h) The *Sex Discrimination Act 1984* was amended by the Schedule (Parts 3 and 6) only of the *Qantas Sale Act 1992*, subsections 2(2), (5) and (6) of which provide as follows:
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (5) If, on the 100% sale day, Part 3 of the Schedule has not commenced, then, on the day on which Part 7 of the Schedule commences, Parts 3 and 6 of the Schedule are taken to have been repealed.
- (6) If a provision of this Act has not commenced before 31 August 1995, the provision is taken to have been repealed on that day.
- The Schedule (Parts 3 and 6) are taken to have been repealed on 31 August 1995.
- (i) The *Qantas Sale Act 1992* was amended by section 3 (item 17) only of the *Qantas Sale Amendment Act 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (j) The *Sex Discrimination Act 1984* was amended by sections 21–23, 25 and 26 only of the *Law and Justice Legislation Amendment Act 1993*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
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## Act Notes

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- (2) Section 22 is taken to have commenced on 13 January 1993.
- (k) The *Sex Discrimination Act 1984* was amended by Part 4 (section 60) only of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:
- (1) Part 1, Divisions 1 and 11 of Part 2 and Parts 3 and 4 commence on the day on which this Act receives the Royal Assent.
- (l) The *Sex Discrimination Act 1984* was amended by Schedule 11 (items 62–71) and Schedule 19 (items 46, 47) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Subject to subsection (3), the items of the Schedules, other than Schedule 5, item 1 of Schedule 9, items 2 and 3 of Schedule 12, item 90 of Schedule 16 and the items of Schedule 19, commence on a day or days to be fixed by Proclamation.
- (m) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:
- (4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.
- The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.
- (n) The *Sex Discrimination Act 1984* was amended by Schedule 5 (item 14) only of the *Defence Legislation Amendment Act (No. 1) 1999*, subsection 2(4) of which provides as follows:
- (4) Schedule 5 commences on 1 January 2001.
- (o) The *Sex Discrimination Act 1984* was amended by Schedule 1 (items 812–814) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (p) The *Sex Discrimination Act 1984* was amended by Schedule 3 (items 1 and 57) only of the *Australian Security Intelligence Organisation Legislation Amendment Act 1999*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (6), Schedule 3 commences immediately after the commencement of the other Schedules to this Act.
- The other Schedules to this Act commence on Royal Assent.
- (q) The *Sex Discrimination Act 1984* was amended by Schedule 45 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
- (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.
- (r) Subsection 2(1) (item 7) of the *Age Discrimination (Consequential Provisions) Act 2004* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Act Notes**

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
7. Schedule 2, items 23 to 28	The later of: (a) immediately after the commencement of the <i>Age Discrimination Act 2004</i> ; and (b) immediately after the commencement of Schedule 1 to the <i>Australian Human Rights Commission Legislation Act 2004</i>	[see Note 2] (paragraph (b) applies)



**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Title .....	am. No. 180, 1992; No. 165, 1995
<b>Part I</b>	
S. 3 .....	am. Nos. 179 and 180, 1992; No. 165, 1995
S. 4 .....	am. No. 72, 1984; No. 126, 1986; Nos. 80 and 87, 1988; No. 115, 1990; No. 71, 1991; Nos. 179 and 180, 1992; No. 165, 1995; No. 60, 1996; Nos. 116, 133, 146 and 161, 1999; No. 105, 2002
S. 4A .....	ad. No. 180, 1992
S. 4B .....	ad. No. 165, 1995
S. 5 .....	am. No. 165, 1995; No. 103, 2003
S. 6 .....	am. No. 165, 1995
S. 7 .....	rs. No. 165, 1995
S. 7A .....	ad. No. 180, 1992
Ss. 7B–7D .....	ad. No. 165, 1995
S. 8 .....	am. No. 180, 1992
S. 9 .....	am. No. 179, 1992; No. 165, 1995
Ss. 10, 11 .....	am. No. 165, 1995; No. 133, 1999
S. 13 .....	am. No. 13, 1994
S. 13A .....	ad. No. 24, 2001
<b>Part II</b>	
<b>Division 1</b>	
S. 14 .....	am. No. 71, 1991; No. 180, 1992; No. 13, 1994; No. 165, 1995
Ss. 15–18 .....	am. No. 165, 1995
Heading to s. 19 .....	am. No. 165, 1995; No. 60, 1996; No. 105, 2002
Ss. 19, 20 .....	am. No. 165, 1995
<b>Division 2</b>	
Ss. 21–26 .....	am. No. 165, 1995
Heading to s. 27 .....	rs. No. 103, 2003
S. 27 .....	am. No. 165, 1995; No. 103, 2003
Note to s. 27(2) .....	ad. No. 103, 2003
<b>Division 3</b>	
Div. 3 of Part II .....	rs. No. 179, 1992
Ss. 28, 29 .....	rep. No. 179, 1992
Ss. 28A–28H .....	ad. No. 179, 1992
Ss. 28J–28L .....	ad. No. 179, 1992
<b>Division 4</b>	
S. 33 .....	rep. No. 165, 1995
S. 40 .....	am. Nos. 38 and 75, 1988; Nos. 70 and 71, 1991; No. 164, 1994; Nos. 22 and 165, 1995; No. 60, 1996; No. 171, 1997

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Note to s. 40 .....	ad. No. 86, 2005
S. 40A .....	ad. No. 71, 1991
S. 41 .....	rs. No. 71, 1991 am. No. 165, 1992
Ss. 41A, 41B .....	ad. No. 71, 1991
S. 43 .....	am. No. 165, 1995
S. 44 .....	am. No. 65, 1985; No. 71, 1991; No. 165, 1992; No. 59, 1995
<b>Part III</b>	
Heading to Part III.....	rs. No. 133, 1999
<b>Division 1</b>	
S. 47A .....	ad. No. 179, 1992 rep. No. 133, 1999
S. 48 .....	am. No. 126, 1986; No. 179, 1992; No. 165, 1995; No. 133, 1999
Note to s. 48(1).....	ad. No. 133, 1999
S. 49 .....	am. No. 126, 1986; No. 179, 1992 rep. No. 133, 1999
S. 50 .....	am. No. 179, 1992 rep. No. 133, 1999
Heading to s. 50A.....	am. No. 60, 1996 rep. No. 133, 1999
S. 50A.....	ad. No. 179, 1992 am. No. 60, 1996 rep. No. 133, 1999
Heading to s. 50B.....	am. No. 60, 1996 rep. No. 133, 1999
S. 50B.....	ad. No. 179, 1992 am. No. 60, 1996 rep. No. 133, 1999
Ss. 50C, 50D .....	ad. No. 109, 1993 rep. No. 133, 1999
Ss. 50E, 50F .....	ad. No. 168, 1995 rep. No. 133, 1999
S. 51.....	rep. No. 133, 1999
Div. 2 of Part III.....	rep. No. 133, 1999
S. 52 .....	am. No. 38, 1988; No. 165, 1992 rep. No. 133, 1999
Ss. 52A, 52B .....	ad. No. 165, 1992 rep. No. 133, 1999
Ss. 53–57 .....	rep. No. 133, 1999
Heading to Div. 3 of Part III .....	rs. No. 126, 1986 rep. No. 133, 1999
Div. 3 of Part III.....	rep. No. 133, 1999
S. 57A .....	ad. No. 126, 1986 rep. No. 133, 1999
Ss. 58, 59.....	rep. No. 133, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 60 .....	am. No. 126, 1986 rep. No. 133, 1999
Ss. 61–68 .....	rep. No. 133, 1999
Ss. 69, 70 .....	rs. No. 179, 1992 rep. No. 133, 1999
S. 70A .....	ad. No. 179, 1992 rep. No. 133, 1999
S. 71 .....	am. No. 179, 1992 rep. No. 133, 1999
S. 72 .....	rs. No. 179, 1992 rep. No. 133, 1999
Ss. 73–75 .....	rep. No. 133, 1999
S. 75A .....	ad. No. 76, 1986 rep. No. 133, 1999
S. 76 .....	rep. No. 133, 1999
S. 77 .....	am. No. 179, 1992 rep. No. 133, 1999
Ss. 78, 79 .....	rep. No. 133, 1999
S. 80 .....	am. No. 126, 1986; No. 179, 1992 rep. No. 133, 1999
S. 81 .....	am. No. 38, 1988; No. 179, 1992 rep. No. 133, 1999
S. 82 .....	am. No. 165, 1992 rs. No. 179, 1992 rep. No. 133, 1999
S. 82A .....	ad. No. 179, 1992 rep. No. 59, 1995
S. 82B .....	ad. No. 179, 1992 am. No. 13, 1994 rep. No. 59, 1995
S. 82C .....	ad. No. 179, 1992 rep. No. 59, 1995
S. 83 .....	rep. No. 133, 1999
S. 84 .....	am. No. 179, 1992; No. 13, 1994 rep. No. 59, 1995
Div. 3A of Part III .....	ad. No. 59, 1995 rep. No. 133, 1999
Ss. 83A–83F .....	ad. No. 59, 1995 rep. No. 133, 1999
S. 84 .....	ad. No. 59, 1995 rep. No. 133, 1999
Div. 4 of Part III .....	ad. No. 179, 1992 rep. No. 133, 1999
Ss. 84A–84F .....	ad. No. 179, 1992 rep. No. 133, 1999
<b>Part IV</b>	
S. 86 .....	am. No. 24, 2001

**Table of Amendments**

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 87 .....	am. No. 165, 1992; No. 133, 1999; No. 24, 2001
Ss. 88–91 .....	rep. No. 133, 1999
S. 92 .....	am. No. 72, 1984; No. 126, 1986; No. 38, 1988; No. 165, 1992; No. 133, 1999; No. 24, 2001
S. 93 .....	am. No. 133, 1999 rep. No. 137, 2000
S. 94 .....	am. No. 133, 1999
S. 95 .....	am. No. 24, 2001
<b>Part V</b>	
S. 96 .....	am. No. 59, 1995
S. 97 .....	am. No. 126, 1986; No. 133, 1999
S. 98 .....	am. No. 59, 1995
S. 99 .....	rs. No. 132, 1992 am. No. 146, 1999
Ss. 102, 103 .....	am. No. 132, 1992
<b>Part VI</b>	
S. 104 .....	am. No. 132, 1992; No. 133, 1999
S. 107 .....	am. No. 133, 1999
S. 109 .....	am. No. 87, 1988; No. 60, 1996
S. 111 .....	am. No. 133, 1999
S. 112 .....	am. No. 126, 1986; No. 24, 2001
Note to s. 112(3) .....	ad. No. 24, 2001
S. 115 .....	rep. No. 133, 1999

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**Note 2**

**Note 2**

*Age Discrimination (Consequential Provisions) Act 2004* (No. 40, 2004)

The following amendment commences immediately after the commencement of Schedule 1 to the *Australian Human Rights Commission Legislation Act 2004* (still a Bill):

**Schedule 2**

**28 Paragraph 48(3)(c)**

Repeal the paragraph, substitute:

- (c) whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of any of the following Acts:
  - (i) this Act;
  - (ii) the *Age Discrimination Act 2004*;
  - (iii) the *Australian Human Rights Commission Act 1986*;
  - (iv) the *Disability Discrimination Act 1992*;
  - (v) the *Racial Discrimination Act 1975*;

As at 8 July 2005 the amendment is not incorporated in this compilation.

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**Table A**

**Table A**

**Application, saving or transitional provisions**

*Human Rights Legislation Amendment Act (No. 1) 1999* (No. 133, 1999)

**Division 1—Interpretation**

**4 Interpretation**

In this Part:

***appropriate Commissioner*** means:

- (a) in relation to a complaint lodged under the old DDA—the Disability Discrimination Commissioner; and
- (b) in relation to a complaint lodged under the old RDA—the Race Discrimination Commissioner; and
- (c) in relation to a complaint lodged under the old SDA—the Sex Discrimination Commissioner.

***Court*** means the Federal Court of Australia.

***holding of an inquiry*** means a holding of an inquiry referred to in a notice given under:

- (a) section 83 of the old DDA; or
- (b) section 25E of the old RDA; or
- (c) section 63 of the old SDA.

***new HREOCA*** means the *Human Rights and Equal Opportunity Commission Act 1986* as amended by Schedule 1 to this Act.

***old DDA*** means the *Disability Discrimination Act 1992* before being amended by Schedule 1 to this Act.

***old RDA*** means the *Racial Discrimination Act 1975* before being amended by Schedule 1 to this Act.

***old SDA*** means the *Sex Discrimination Act 1984* before being amended by Schedule 1 to this Act.

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**Table A**

*purported complaint* means a document purporting to be a complaint.

*starting day* means the day on which this Part commences.

**Division 2—Treatment of complaints lodged before starting day**

**Subdivision A—Treatment of complaint depends on the stage it has reached**

**5 Purported complaint lodged but no decision as to whether it is a complaint**

- (1) A purported complaint is treated in the way set out in subsection (2) if, before the starting day:
  - (a) it was lodged with the Commission; and
  - (b) the Commission had not decided whether it was a complaint within the meaning of the old DDA, old RDA or old SDA.
- (2) On the starting day:
  - (a) the purported complaint is taken to have been lodged under section 46P of the new HREOCA; and
  - (b) the Commission must then decide whether it is a complaint within the meaning of the new HREOCA.

**6 Administrative appeal on Commission’s decision as to whether complaint**

- (1) A purported complaint is treated in the way set out in subsection (2) if:
  - (a) before the starting day, the Commission decided that it was, or was not, a complaint within the meaning of the old DDA, old RDA or old SDA; and
  - (b) on or after the starting day, the Court makes an order under the *Administrative Decisions (Judicial Review) Act 1977* to refer the matter to which the decision relates to the Commission for further consideration.

**Table A**

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- (2) On the day on which the order is made:
  - (a) the purported complaint is taken to have been lodged under section 46P of the new HREOCA; and
  - (b) the Commission must then decide whether it is a complaint within the meaning of the new HREOCA.

**7 Complaint lodged but Commissioner not notified of it**

- (1) A purported complaint is treated in the way set out in subsection (2) if, before the starting day:
  - (a) it was lodged with the Commission; and
  - (b) the Commission decided that it was a complaint within the meaning of the old DDA, old RDA or old SDA; and
  - (c) the Commission had not notified the appropriate Commissioner of it.
- (2) On the starting day:
  - (a) the purported complaint is taken to have been lodged under section 46P of the new HREOCA; and
  - (b) the Commission is taken to have decided that it is a complaint within the meaning of the new HREOCA.

**8 Commissioner notified of complaint but had not decided to dismiss or refer it**

- (1) A complaint is treated in the way set out in subsection (2) if, before the starting day:
  - (a) the Commission had notified the appropriate Commissioner of the complaint; and
  - (b) the appropriate Commissioner had not made a decision not to inquire, or not to continue to inquire, into the complaint; and
  - (c) the appropriate Commissioner had not referred the complaint to the Commission.
- (2) On the starting day, the complaint is taken to have been referred to the President under section 46PD of the new HREOCA.

**Table A****9 Commissioner decided to dismiss complaint**

- (1) A complaint is treated in the way set out in subsection (2) if:
- (a) before the starting day, the appropriate Commissioner decided not to inquire, or not to continue to inquire, into the complaint; and
  - (b) on the starting day, the complainant could have required the appropriate Commissioner to:
    - (i) refer the complaint to the President under section 71 of the old DDA if that section had not been repealed by this Act; or
    - (ii) refer the Commissioner's decision to the President, or refer the complaint to the Commission, under section 24 of the old RDA if that section had not been repealed by this Act; or
    - (iii) refer the Commissioner's decision to the President, or refer the complaint to the Commission, under section 52 of the old SDA if that section had not been repealed by this Act.
- (2) On the starting day, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

**10 Presidential review of Commissioner's decision to dismiss complaint**

- (1) A complaint is treated in the way set out in subsection (2) if, before the starting day:
- (a) the appropriate Commissioner decided not to inquire, or not to continue to inquire, into the complaint; and
  - (b) the complainant required the appropriate Commissioner to refer the complaint, or the Commissioner's decision, to the President; and
  - (c) the President had not made a decision under whichever of the following sections is applicable:
    - (i) section 101 of the old DDA;
    - (ii) section 24AA of the old RDA;

## **Table A**

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(iii) section 52A of the old SDA.

(2) On the starting day, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

### **11 Administrative review of President's decision**

(1) A complaint is treated in the way set out in subsection (2) if:

(a) before the starting day, the President made a decision in relation to the complaint under:

- (i) section 101 of the old DDA; or
- (ii) section 24AA of the old RDA; or
- (iii) section 52A of the old SDA; and

(b) on or after the starting day, the Court makes an order under the *Administrative Decisions (Judicial Review) Act 1977* to refer the matter to which the decision relates to the Commission for further consideration.

(2) On the day the order is made, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

### **12 Complaint referred to Commission but inquiry not started**

(1) A complaint is treated in the way set out in subsection (2) if, before the starting day:

(a) the appropriate Commissioner referred the complaint to the Commission; and

(b) a holding of an inquiry into the complaint had not started under the old DDA, old RDA or old SDA; and

(c) the complaint had not been withdrawn under whichever of the following sections is applicable:

- (i) section 79 of the old DDA;
- (ii) section 25A of the old RDA;
- (iii) section 59 of the old SDA.

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**Table A**

- (2) On the starting day, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

**13 Inquiry started**

- (1) A complaint is treated in the way set out in subsection (2) if, before the starting day:
- (a) a holding of an inquiry into the complaint had started under the old DDA, old RDA or old SDA; and
  - (b) the complaint had not been withdrawn under whichever of the following sections is applicable:
    - (i) section 79 of the old DDA;
    - (ii) section 25A of the old RDA;
    - (iii) section 59 of the old SDA.
- (2) The amendments made by Schedule 1 to this Act do not apply in relation to the complaint.

**Subdivision B—Other rules about complaints lodged before starting day**

**14 Notice of termination**

- (1) If the President is taken to have terminated a complaint under section 9, 10, 11 or 12, then the President must notify the complainants in writing of the termination and the reasons for the termination.
- (2) Subsection (1) does not apply if all the complainants requested the appropriate Commissioner not to inquire into the complaint.
- (3) The President must give a person a copy of the notice that was given to the complainants under subsection (1) if:
- (a) the person was a person on whose behalf the complaint was lodged; and
  - (b) the person requested the President for a copy of the notice.

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**Table A**

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- (4) The President is not required to notify any person under section 46PH of the new HREOCA.

**15 Work done by Commissioner is taken to have been done by President**

Any thing done, or information obtained, by the appropriate Commissioner in relation to a complaint that is referred to the President under section 8 is taken to have been done or obtained by the President.

**16 Special rules apply to proceedings to enforce a determination**

Sections 46PQ, 46PR and 46PT of the new HREOCA apply for the purposes of proceedings in the Court:

- (a) for an order to enforce a determination in relation to a complaint; or
  - (b) for an order directing a Commonwealth agency (or the principal executive of a Commonwealth agency) to comply;
- if the proceedings started on or after the starting day under:
- (c) section 105A or 106F of the old DDA; or
  - (d) section 25ZC or 25ZI of the old RDA; or
  - (e) section 83A or 84F of the old SDA.

**Division 3—Other transitional and application provisions**

**17 Protection from civil actions**

The amendments made by items 30, 31, 83, 84, 119 and 120 of Schedule 1 do not apply to a complaint lodged before the starting day under the old DDA, old RDA or old SDA.

**18 Referrals under the old SDA**

The amendments made by items 1, 2, 85, 86, 97, 100, 122, 123, 124 and 125 of Schedule 1 do not apply to a complaint lodged before the starting day under section 50A, 50C or 50E of the old SDA.

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**Table A**

**19 Inquiries started by Human Rights Commissioner**

The amendment made by item 52 of Schedule 1 does not apply in relation to an inquiry that the Human Rights Commissioner started before the starting day.

**20 When a person cannot lodge a complaint under the new HREOCA**

A person cannot lodge a complaint under section 46P of the new HREOCA if:

- (a) the person is a class member for a representative complaint in respect of the same subject matter; and
- (b) a holding of an inquiry into the representative complaint had started under the old DDA, old RDA or old SDA.

**21 Regulations**

- (1) 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.
- (2) In particular, regulations may be made in relation to matters of a transitional or saving nature arising out of the enactment of this Act.

**22 Transitional—powers of a Secretary**

A thing done by the Commission before the commencement of this section in exercising powers referred to in subsection 43(2) of the *Human Rights and Equal Opportunity Commission Act 1986* has effect, for the purpose of the exercise by the President after the commencement of this section of powers referred to in that subsection, as if the thing had been done by the President.

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**Table A**

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*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (No. 137, 2000)

**Schedule 2**

**418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
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**Table A**

*Law and Justice Legislation Amendment (Application of Criminal Code) Act  
2001 (No. 24, 2001)*

**4 Application of amendments**

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.