

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

Presented and read a first time

SEXUALITY DISCRIMINATION BILL 1995

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SCHEDULE

AMENDMENTS OF THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION ACT 1986

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1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

Presented and read a first time

(*Senator Spindler*)

A BILL

FOR

**An Act to prohibit discrimination on the ground of
sexuality or transgender identity**

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Sexuality Discrimination Act 1995*.

Commencement

2.(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) Section 107 commences 6 months after the day on which this Act receives the Royal Assent.

Object

3. The purpose of this Act is to eliminate, as far as possible, discrimination against people on the basis of their sexuality or transgender identity.

Application of Act

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4.(1) This Act applies throughout Australia and the external territories to the extent that this Act:

(a) gives effect to:

(i) the International Covenant on Civil and Political Rights; or

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(ii) the International Covenant on Economic, Social and Cultural Rights; or

(iii) the Convention Concerning Discrimination in Respect of Employment and Occupation, 1958; or

(iv) a prescribed treaty or international agreement; or

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(b) relates to matters external to Australia; or

(c) relates to matters of international concern.

(2) This Act also has effect as stated in this section.

(3) This Act applies to things done in each Territory.

(4) This Act applies to things done by or for the Commonwealth or a public authority of the Commonwealth.

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(5) This Act applies to:

(a) Commonwealth employees in connection with their employment as Commonwealth employees; and

(b) people seeking to become Commonwealth employees.

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(6) This Act applies to things done by an authority or body in the exercise of a power under a Commonwealth law to confer, renew, extend, revoke or withdraw an authorisation or qualification.

(7) This Act applies to things done by or for:

(a) the Commonwealth or the Administration of a Territory; or

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(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) This Act applies to things done by a person in connection with exercising a power conferred by a law of the Commonwealth or a law of a Territory.

(9) This Act applies to things done by:

- (a) a person who is a Commonwealth employee in connection with the person's duties as a Commonwealth employee; or 5
- (b) 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 the institution. 10

(10) This Act applies to:

- (a) things done by a foreign corporation; or
- (b) things done by a trading or financial corporation formed within the limits of the Commonwealth for the purpose of its trading or financial activities. 15

(11) Without limiting paragraph (10)(b), this Act applies to things done by a corporation referred to in that paragraph in the course of its trading activities or its financial activities, as the case may be.

(12) This Act applies to things done in the course of the carrying on of the business of: 20

- (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.

(13) This Act applies to things done in the course of trade or commerce: 25

- (a) between Australia and a place outside Australia; or
- (b) among the States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories. 30

(14) This Act applies to things done within Australia involving people or things, or matters arising, outside Australia.

Definitions

5. In this Act:

accommodation includes residential and business accommodation. 35

administrative office means:

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

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but does not include:

- (e) 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*; or
- (f) 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*; or
- (g) an office of member of the Legislative Assembly within the meaning of the *Norfolk Island Act 1979*; or
- (h) an office or appointment in the Australian Public Service.

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associate of a person means:

- (a) another person with whom the person associates, whether socially, in business or otherwise; or
- (b) another person who is wholly or mainly dependent on, or on a member of the household of, the person.

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class member, in relation to a representative complaint, means any of the people on whose behalf the complaint was lodged, but does not include a person who has withdrawn under section 66.

club means an association (whether incorporated or unincorporated) of at least 30 people associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that:

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- (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*.

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commission agent means a person who does work for another person as the agent of the other person and who is remunerated, wholly or partly, by commission.

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Commissioner means the Sexuality Discrimination Commissioner appointed under section 99.

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

Commonwealth employee means a person who:

- (a) holds an office or appointment in the Australian Public Service or is employed in a temporary capacity in a Department; or
- (b) holds an administrative office; or 5
- (c) is employed by a public authority of the Commonwealth; or
- (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*; or
- (e) is employed under the *Australian Security Intelligence Organization Act 1979*, the *Commonwealth Electoral Act 1918*, the *Supply and Development Act 1939* or the *Naval Defence Act 1910*; or 10
- (f) is a member of the Defence Force. 15

Commonwealth law means:

- (a) an Act, or an instrument made under an Act; or
- (b) an Act or Ordinance of a Territory, or an instrument made under an Act or Ordinance of a Territory; or
- (c) an order or award made under a law referred to in paragraph (a) or (b). 20

Commonwealth program means a program conducted by or for the Commonwealth government.

contract worker means a person who does work for another person under a contract between them.

de facto spouse of a person means another person who is not married to the person but lives with the person on a *bona fide* domestic basis. 25

Department has the same meaning as in the *Public Service Act 1922*.

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. 30

employment includes:

- (a) part-time and temporary employment; and
- (b) work under a contract for services; and
- (c) work as a Commonwealth employee; and 35
- (d) work as an employee of a State or an instrumentality of a State.

employment agency means a person who or body that, whether for payment or not, assists people to find employment or other work or assists employers to find employees or workers, and includes the Commonwealth Employment Service. 40

near relative of 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 person or of a person referred to in paragraph (a).

President means the President of the Commission.

principal means:

- (a) for a commission agent—a person for whom the commission agent works as a commission agent; and 5
(b) for a contract worker—a person for whom the contract worker does work under a contract between them.

principal executive, in relation to a Commonwealth agency, has the same meaning as in Part V of the *Privacy Act 1988*. 10

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 that employs staff on its own behalf; or 15
(b) an unincorporated authority or body established, whether before or after the commencement of this Act, for a public purpose by or under a law of the Commonwealth or a law of a Territory, being an authority or body that employs staff on its own behalf; or 20
(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.

reassignment procedure means:

- (a) a medical or surgical procedure, or a combination of medical and surgical procedures, to alter the genitals and other sexual characteristics of a person who was identified by birth certificate as male or female in a way that the person will be identified as a person of the opposite sex; or 25
(b) in relation to a person under 18, such a procedure or combination of procedures to correct or eliminate ambiguities in the person's sexual characteristics. 30

registered organisation means an organisation within the meaning of the *Industrial Relations Act 1988*.

relative of a person means another person to whom the person is related by blood, marriage, affinity or adoption. 35

representative complaint means a complaint where the people on whose behalf the complaint was made include people other than the complainant, but does not include a complaint that the Commission has decided should no longer be continued as a representative complaint. 40

services includes:

- (a) services relating to banking, insurance and the provision of grants, loans, credit or finance; and
(b) services relating to entertainment, recreation or refreshment; and 45
(c) services relating to transport or travel; and

- (d) services of the kind provided by the members of a profession or trade; and
- (e) services of the kind provided by a government, a government authority or a local government body.

sexuality means heterosexuality, homosexuality and bisexuality that presently exists, existed in the past or may exist in the future. 5

State, except in subsections 4(12) and (13), 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: 10

- (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 another person. 15

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. 20

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

trade union means:

- (a) an organisation of employees that is a registered organisation; or 25
- (b) a trade union within the meaning of a State Act or a law of a Territory; or
- (c) another similar body.

transgender means a person of one sex who:

- (a) assumes any of the characteristics of the other sex, whether by medical intervention (including a reassignment procedure) or otherwise; or 30
- (b) identifies himself or herself as a member of the other sex; or
- (c) lives or seeks to live as a member of the other sex; or
- (d) attempts to be, or identifies himself or herself as, a transsexual. 35

What is discrimination on the ground of sexuality or transgender identity

6.(1) A person (the **discriminator**) discriminates against another person (the **aggrieved person**) on the ground of sexuality if, because of the actual or perceived sexuality of the aggrieved person or of a relative or associate of the aggrieved person, the discriminator treats the aggrieved person less favourably than, in the same circumstances or in circumstances that are not materially different, the discriminator treats or 40

would treat a person of a different sexuality or who had a relative or associate of a different sexuality.

(2) A person (the *discriminator*) also discriminates against another person (the *aggrieved person*) on the ground of sexuality if the discriminator requires the aggrieved person to comply with a requirement or condition: 5

- (a) with which a substantial proportion of people of the same sexuality as the aggrieved person cannot comply; and
- (b) that is not reasonable in the circumstances.

(3) A person (the *discriminator*) discriminates against another person (the *aggrieved person*) on the ground of transgender identity if, because the aggrieved person or a relative or associate of the aggrieved person is a transgender or is thought to be a transgender, the discriminator treats the aggrieved person less favourably than, in the same circumstances or in circumstances that are not materially different, the discriminator treats or would treat a person who is not a transgender or who had a relative or associate who is not a transgender. 10 15

(4) The treatment referred to in subsection (1) or (3) includes treatment because of:

- (a) a characteristic that appertains generally to people of the relevant sexuality or who are transgender; or 20
- (b) a characteristic that is generally imputed to people of the relevant sexuality or who are transgender.

Operation of State and Territory laws

7.(1) In this section: 25

law of a State or Territory means a law of a State or Territory that deals with discrimination on the ground of sexuality or transgender identity.

(2) 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. 30

(3) If:

- (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 other action under that law about an act or omission; 35 and
- (c) the person would, apart from this subsection, be entitled to make a complaint under this Act about the act or omission;

the person is not entitled to make a complaint or institute a proceeding under this Act about that act or omission.

(4) If:

(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 or under this Act, but this subsection does not render a person liable to be punished more than once for the same act or omission.

Act does not prevent action to stop unlawful behaviour

8. This Act does not prevent a person from taking action to stop another person from engaging in unlawful behaviour.

Extent to which Act binds the Crown

9.(1) This Act binds the Crown in right of the Commonwealth, of each State and of Norfolk Island.

(2) This Act does not render the Crown in right of the Commonwealth, of a State or of Norfolk Island liable to be prosecuted for an offence.

PART 2—PROHIBITION OF DISCRIMINATION***Division 1—Discrimination in work*****Discrimination in employment or in superannuation**

10.(1) It is unlawful for an employer to discriminate against a person on the ground of sexuality or transgender identity: 5

- (a) in the arrangements made for the purpose of deciding who should be offered employment; or
- (b) in deciding 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 sexuality or transgender identity: 10

- (a) in the terms or conditions of employment that the employer affords the employee; or
- (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; or 15
- (c) by dismissing the employee; or
- (d) by subjecting the employee to any other detriment.

(3) Paragraph (1)(a) or (b) does not make it unlawful for a person to discriminate against another person on the ground of sexuality or transgender identity in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides. 20

(4) Paragraph (1)(a) or (b) does not make it unlawful for a person to discriminate against another person on the ground of sexuality or transgender identity 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 person is acting in good faith and the act is necessary in order to avoid injury to the religious susceptibilities of adherents of that religion or creed. 25 30

(5) If a person exercises a discretion about the payment of a superannuation benefit to or for a member of a superannuation fund, it is unlawful for the person to discriminate, in exercising of the discretion, against the member or another person on the ground, in either case, of sexuality or transgender identity. 35

(6) In this section:
employee includes a person working as a volunteer.

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

Discrimination against commission agents

11.(1) It is unlawful for a principal to discriminate against a person on the ground of sexuality or transgender identity: 5

- (a) in the arrangements the principal makes for the purpose of deciding who should be engaged as a commission agent; or
- (b) in deciding 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. 10

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of sexuality or transgender identity:

- (a) in the terms or conditions that the principal affords the commission agent as a commission agent; or
- (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; or 15
- (c) by terminating the engagement; or
- (d) by subjecting the commission agent to any other detriment. 20

Discrimination against contract workers

12.(1) It is unlawful for a principal to discriminate against a contract worker on the ground of sexuality or transgender identity:

- (a) in the terms or conditions on which the principal allows the worker to work; or 25
- (b) by not allowing the worker to work or continue to work; or
- (c) by denying the worker access, or limiting the worker's access, to a benefit associated with the work to which the contract relates; or
- (d) by subjecting the contract worker to any other detriment. 30

(2) Paragraph (1)(b) does not make it unlawful for a person to discriminate against another person on the ground of sexuality or transgender identity in connection with a position as a contract worker for an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed if the person is acting in good faith and the act is necessary in order to avoid injury to the religious susceptibilities of adherents of that religion or creed. 35

Partnerships

13.(1) It is unlawful for a person who is proposing to form a partnership to discriminate against another person on the ground of sexuality or transgender identity:

- (a) in deciding who should be invited to become a partner in the partnership; or 5
- (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 to discriminate against a person on the ground of sexuality or transgender identity: 10

- (a) in deciding 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. 15

(3) It is unlawful for any one or more of the partners in a partnership to discriminate against a partner in the partnership on the ground of sexuality or transgender identity:

- (a) by denying the partner access, or limiting the partner's access, to a benefit arising from being a partner in the partnership; or 20
- (b) by expelling the partner from the partnership; or
- (c) by subjecting the partner to any other detriment.

Qualifying bodies

14. It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation 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 sexuality or transgender identity: 25

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification; or 30
- (b) in the terms or conditions on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by revoking or withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held. 35

Registered organisations under the Industrial Relations Act

15.(1) It is unlawful for a registered organisation, the committee of management of a registered organisation or a member of the committee of management of a registered organisation to discriminate against a person, on the ground of sexuality or transgender identity: 5

- (a) by refusing or failing to accept the person's application for membership; or
- (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.

(2) It is unlawful for a registered organisation, the committee of management of a registered organisation or a member of the committee of management of a registered organisation to discriminate against a person who is a member of the registered organisation, on the ground of sexuality or transgender identity: 10

- (a) by denying the member access, or limiting the member's access, to a benefit provided by the organisation; or 15
- (b) by depriving the member of membership or varying the terms of membership; or
- (c) by subjecting the member to any other detriment.

Employment agencies 20

16. It is unlawful for an employment agency to discriminate against a person on the ground of sexuality or transgender identity:

- (a) by refusing to provide the person with any of its services; or
- (b) in the terms or conditions on which it offers to provide the person with any of its services; or 25
- (c) in the manner in which it provides the person with any of its services.

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

17.(1) It is unlawful for an educational authority to discriminate against a person on the ground of sexuality or transgender identity: 30

- (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. 35

(2) It is unlawful for an educational authority to discriminate against a student on the ground of sexuality or transgender identity:

- (a) by denying the student access, or limiting the student's access, to a benefit provided by the educational authority; or
- (b) by expelling the student; or
- (c) by subjecting the student to any other detriment.

Goods, services and facilities

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18.(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 sexuality or transgender identity:

- (a) by refusing to provide the other person with the goods or services or to make the facilities available; or
- (b) in the terms or conditions on which the person provides the goods or services or makes the facilities available; or
- (c) in the manner in which the person provides the goods or services or makes the facilities available.

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Accommodation

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19.(1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of sexuality or transgender identity:

- (a) by refusing the other person's application for accommodation; or
- (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 giving the other person a lower order of precedence in a list of applicants for the accommodation.

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(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of sexuality or transgender identity:

- (a) by denying the other person access, or limiting the other person's access, to a benefit associated with accommodation occupied by the other person; or
- (b) by evicting the other person from accommodation occupied by the other person; or
- (c) by subjecting the other person to any other detriment about accommodation occupied by the other person.

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(3) This section does not apply to providing accommodation in premises if:

- (a) 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

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- (b) the accommodation provided in the premises is for not more than 3 people other than a person referred to in paragraph (a) or near relatives of such a person.

Land

20.(1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of sexuality or transgender identity: 5

- (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. 10

(2) This section does not apply to a disposal of an estate or interest in land by will or by way of gift.

Clubs and incorporated associations

21.(1) It is unlawful for a club or incorporated association, the committee of management of a club or a member of the committee of management of a club or incorporated association to discriminate against a person who is not a member of the club or association on the ground of sexuality or transgender identity: 15

- (a) by refusing or failing to accept the person's application for membership; or 20
- (b) in the terms or conditions on which the club or association is prepared to admit the person to membership.

(2) It is unlawful for a club or incorporated association, the committee of management of a club or a member of the committee of management of a club or incorporated association to discriminate against a person who is a member of the club or association on the ground of sexuality or transgender identity: 25

- (a) in the terms or conditions of membership that are afforded to the member; or 30
- (b) by refusing or failing to accept the member's application for a particular class or type of membership; or
- (c) by denying the member access, or limiting the member's access, to any benefit provided by the club; or
- (d) by depriving the member of membership or varying the terms of membership; or 35
- (e) by subjecting the member to any other detriment.

Sport

22. It is unlawful for a person to discriminate against another person on the ground of sexuality or transgender identity in relation to a sporting activity or an administrative or coaching position in relation to a sporting activity.

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Administration of Commonwealth laws and programs

23. It is unlawful for a person who performs a function or exercises a 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 sexuality or transgender identity in the performance of that function, the exercise of that power or the fulfilment of that responsibility.

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Application forms etc.

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24. If it would be unlawful under this Part for a person to discriminate against another person on the ground of sexuality or transgender identity in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with the doing of the act, information (whether by way of completing a form or otherwise) that:

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- (a) a person of a different sexuality or who had a relative or associate of a different sexuality; or
- (b) a person who is not a transgender or who had a relative or associate who is not a transgender;

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would not, in circumstances that are the same or not materially different, be requested or required to provide.

Official documents etc.

25.(1) This section applies to a person who has been issued with a certificate under a law of a State that specifies that the person is of the sex stated in the certificate.

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(2) It is unlawful for a person who is responsible for issuing an official document, such as a passport or a driver's licence, to refuse to recognise in the document the sex of a person to whom this section applies as specified in the certificate.

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**Division 3—Inciting hatred etc. on ground of sexuality
or transgender identity**

Inciting hatred etc. on ground of sexuality or transgender identity

26.(1) In this section:

public act includes:

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing tapes or other recorded material; and 5
- (b) other conduct observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia. 10

(2) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of people on the ground of the sexuality or transgender identity of the person or members of the group. 15

(3) This section does not make unlawful:

- (a) a fair report of a public act referred to in subsection (2); or
- (b) a public act, done reasonably and in good faith, for academic, artistic, religious instruction, scientific or research purposes or for other purposes in the public interest, including discussion or debate about, and expositions of, an act or matter. 20

Division 4—Special measures

Special measures

27. This Part does not make it unlawful to do an act that is reasonably intended to: 25

- (a) ensure that persons of a particular sexuality or transgender identity have equal opportunities with other persons in circumstances in relation to which a provision is made by this Act; or
- (b) afford persons of a particular sexuality or transgender identity, goods or access to facilities, services or opportunities in relation to: 30
 - (i) employment, education, accommodation, clubs or sport; and
 - (ii) the provision of goods, services, facilities or land; or 35
 - (iii) the making available of facilities; or
 - (iv) the administration of Commonwealth laws and programs; or

- (c) afford persons of a particular sexuality or transgender identity, grants, benefits, or programs, whether direct or indirect, to meet their special needs in relation to:
- (i) employment, education, accommodation, clubs or sport; or 5
 - (ii) the provision of goods, services, facilities or land; or
 - (iii) the making available of facilities; or
 - (iv) the administration of Commonwealth laws and programs.

Division 5—Exemptions 10

Religious bodies

28. Divisions 1 and 2 do not affect an act or practice of a body established for religious purposes 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, including: 15

- (a) the ordination, appointment or employment of priests, ministers of religion or members of a religious order; or
- (b) the training or education of people seeking ordination, appointment or employment as priests, ministers of religion or members of a religious order; or 20
- (c) the selection, appointment or employment of people to perform duties or functions for the purpose of or in connection with, or otherwise to participate in, a religious observance or practice.

Acts done under statutory authority 25

29.(1) Divisions 1 and 2 do not affect anything done by a person in direct compliance with:

- (a) a determination or decision of the Commission; or
- (b) an order of a court.

(2) Divisions 1 and 2 do not affect anything done by a person in direct compliance with a law of the Commonwealth. 30

(3) Subsection (2) ceases to have effect at the end of 6 months after the commencement of this Act.

Superannuation and insurance

30.(1) This Part does not make it unlawful for a person to discriminate against another person on the ground of sexuality or transgender identity by refusing to offer the other person: 35

- (a) an annuity; or

- (b) a life insurance policy; or
- (c) a policy of insurance against accident or any other policy of insurance; or
- (d) membership of a superannuation or provident fund; or
- (e) membership of a superannuation or provident scheme;

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if the discrimination:

- (f) is based on actuarial or statistical data on which it is reasonable for the person to rely; and
- (g) is reasonable having regard to the matter of the data and other relevant factors.

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(2) This Part does not make it unlawful for a person to discriminate against another person, on the ground of sexuality or transgender identity, in respect of the terms or conditions on which:

- (a) an annuity; or
- (b) a life insurance policy; or
- (c) a policy of insurance against accident or any other policy of insurance; or
- (d) membership of a superannuation or provident fund; or
- (e) membership of a superannuation or provident scheme;

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is offered to, or may be obtained by, the other person if the discrimination:

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- (f) is based on actuarial or statistical data on which it is reasonable for the person to rely; and
- (g) is reasonable having regard to the matter of the data and other relevant factors.

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Commission may grant exemptions

31.(1) The Commissioner may, on application by:

- (a) a person, on that person's own behalf or on behalf of that person and another person or other people; or
- (b) 2 or more people, on their own behalf or on behalf of themselves and another person or other people; or
- (c) a person or people included in a class of people on behalf of the people included in that class of people;

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by instrument in writing, grant to the person, people or class of people an exemption from the operation of a provision of Division 1 or 2, as specified in the instrument.

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(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 has been granted under subsection (1), being an application made before the end of the period for which that exemption was granted, grant a further exemption from the operation of that provision.

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(3) An exemption, or further exemption:

- (a) may be granted subject to terms and conditions specified in the instrument; and
- (b) may be expressed to apply only in circumstances, or in relation to activities, specified in the instrument; and
- (c) must be granted for a specified period that does not exceed 5 years; and
- (d) must not be granted until the Commission has advertised the fact that it proposes to grant the exemption or further exemption and has given interested people a reasonable opportunity to make written submissions opposing the grant.

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Review by Administrative Appeals Tribunal

32.(1) Applications may be made to the Administrative Appeals Tribunal for review of decisions made by the Commission under section 31.

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Notice of decisions to be published

33.(1) The Commission must, not later than one month after it makes a decision under section 31, 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; and
- (b) referring to the evidence on which the findings were based; and
- (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 for any person or people whose interests are affected by the decision.

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(2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

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Effect of exemptions

34. Divisions 1 and 2 do not make it unlawful for a person who has been granted an exemption from a provision of Division 1 or 2, 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 exemption.

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PART 3—INQUIRIES AND CIVIL PROCEEDINGS***Division 1—Preliminary*****Part applies to victimisation offences**

35. In this Part, a reference to an act that is unlawful under a provision of Part 2 includes a reference to an act that is an offence under section 96.

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Functions of Human Rights and Equal Opportunity Commission

36.(1) The following functions are conferred on the Commission:

- (a) to inquire into alleged infringements of Part 2, and endeavour by conciliation to effect a settlement of the matters to which the alleged infringements relate; 10
- (b) to inquire into, and make determinations on, matters referred to it by the Minister or the Commissioner;
- (c) to exercise the powers conferred on it by section 31;
- (d) to deal with complaints lodged under section 39; 15
- (e) to promote an understanding and acceptance of, and compliance with, this Act;
- (f) to undertake research and educational programs, and other programs, for the Commonwealth for the purpose of promoting the object of this Act; 20
- (g) to examine enactments, and (when requested to do so by the Minister or a House of the Parliament) proposed enactments, for the purpose of establishing whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to the object of this Act, and to report to the Minister or that House the results of any such examination; 25
- (h) on its own initiative or when requested by the Minister or a House of the Parliament, to report to the Minister or that House 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 sexuality or transgender identity; 30
- (i) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of discrimination on the ground of sexuality or transgender identity; 35
- (j) if 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 sexuality or transgender identity; 40
- (k) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commissioner must not participate in an inquiry held by the Commission under Division 3 or attend a meeting of the Commission, be present during any deliberation of the Commission, or take part in a decision of the Commission, in connection with such an inquiry.

(3) In this section:

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

Functions of Commissioner

37. The functions of the Commission under paragraphs 36(1)(a) and (d), and the function of the Commission under paragraph 36(1)(k), to the extent that it relates to the performance of the first-mentioned functions, must be performed by the Commissioner for the Commission.

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Complaints

38.(1) A complaint in writing alleging that a person has done an act that is unlawful because of a provision of Part 2 may be lodged with the Commission by:

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- (a) a person aggrieved by the act, on that person's own behalf or on behalf of that person and another person or other people aggrieved by the act; or
- (b) 2 or more people aggrieved by the act, on their own behalf or on behalf of themselves and another person or other people aggrieved by the act; or
- (c) a person or people included in a class of people aggrieved by the act, on behalf of the people included in that class of people; or
- (d) a trade union of which a person or people, or people included in a class of people, aggrieved by the act is a member or are members, on behalf of that person, those people or people included in that class of people.

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(2) In the case of a representative complaint, this section has effect subject to section 64.

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Referral of discriminatory awards to the Australian Industrial Relations Commission

39.(1) A complaint in writing alleging that a person has done a discriminatory act under an award may be lodged with the Commission by:

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- (a) a person aggrieved by the act, on that person's own behalf or on behalf of that person and one or more other people aggrieved by the act; or

-
- (b) 2 or more people aggrieved by the act, on their own behalf or on behalf of themselves and one or more other people aggrieved by the act; or
- (c) a person or people who are in a class of people aggrieved by the act, on behalf of all the people in the class; or 5
- (d) a trade union, on behalf of one or more of its members aggrieved by the act or on behalf of a class of its members aggrieved by the act.
- (2) If the Commission receives a complaint under this section, the Commission must notify the Commissioner accordingly. 10
- (3) If it appears to the Commissioner that the act is a discriminatory act, the Commissioner must refer the award to the Australian Industrial Relations Commission. However, the Commissioner need not refer the award if the Commissioner is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance. 15
- (4) If the Commissioner decides not to refer the award, the Commissioner must give notice in writing of that decision to the complainant or each of the complainants, together with notice of the reasons for the decision and of the rights conferred by subsection (5).
- (5) A complainant who receives a notice under subsection (4) may, within 21 days after receipt, give a notice in writing to the Commissioner requiring the Commissioner to refer the decision to the President. 20
- (6) If the Commissioner receives a notice under subsection (5), the Commissioner must refer the decision to the President together with a report about the decision. 25
- (7) If the Commissioner refers the award to the Australian Industrial Relations Commission, the Commissioner must give notice in writing of the outcome of the referral to the complainant or each of the complainants.
- (8) The Commissioner may obtain documents or information under section 48 for the purposes of this section. 30
- (9) In this section:
award has the same meaning as in the *Industrial Relations Act 1988*.

discriminatory act under an award means an act that would be unlawful under Part 2 except for the fact that the act was done in direct compliance with an award made under the *Industrial Relations Act 1988*. For the purposes of this definition, the fact that an act is done in direct compliance with the award does not of itself mean that the act is reasonable. 5

President may review a decision of the Commissioner not to refer an award

40.(1) This section applies if the Commissioner refers to the President under subsection 39(6) a decision of the Commissioner not to refer an award to the Australian Industrial Relations Commission. 10

(2) The President must review the Commissioner's decision and must decide either:

- (a) to confirm the Commissioner's decision; or
- (b) to set aside the Commissioner's decision and to direct the Commissioner to refer the award in accordance with section 39. 15

(3) In spite of subsection (2), the President may refuse to review the Commissioner's decision unless the complainant gives the President such relevant information as the President requires. 20

(4) The President must give written notice of a decision of the President under subsection (2) to the complainant and to the Commissioner. The notice must set out the reasons for the decision.

Referral of discriminatory determinations to the Remuneration Tribunal 25

41.(1) A complaint in writing alleging that a person has done a discriminatory act under a determination may be lodged with the Commission by:

- (a) a person aggrieved by the act, on that person's own behalf or on behalf of that person and one or more other people aggrieved by the act; or 30
- (b) 2 or more people aggrieved by the act, on their own behalf or on behalf of themselves and one or more other people aggrieved by the act; or
- (c) a person or people who are in a class of people aggrieved by the act, on behalf of all the people in the class. 35

(2) If the Commission receives a complaint under this section, the Commission must notify the Commissioner accordingly.

(3) If it appears to the Commissioner that the act is a discriminatory act, the Commissioner must refer the determination to the Remuneration Tribunal. However, the Commissioner need not refer the determination if the Commissioner is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.

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(4) If the Commissioner decides not to refer the determination, the Commissioner must give notice in writing of that decision to the complainant or each of the complainants, together with notice of the reasons for the decision and of the rights conferred by subsection (5).

(5) A complainant who receives a notice under subsection (4) may, within 21 days after receipt, give a notice in writing to the Commissioner requiring the Commissioner to refer the decision to the President.

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(6) If the Commissioner receives a notice under subsection (5), the Commissioner must refer the decision to the President together with a report about the decision.

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(7) If the Commissioner refers the determination to the Remuneration Tribunal, the Commissioner must give notice in writing of the outcome of the referral to the complainant or each of the complainants.

(8) The Commissioner may obtain documents or information under section 54 for the purposes of this section.

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(9) In this section:

determination means:

(a) a determination made after the commencement of this section by the Remuneration Tribunal under the *Remuneration Tribunal Act 1973*; or

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(b) a variation made after that commencement by that Tribunal to a determination made by it under that Act before that commencement.

discriminatory act under a determination means an act that would be unlawful under Part 2 except for the fact that the act was done in direct compliance with a determination. For the purposes of this definition, the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable.

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President may review a decision of the Commissioner not to refer a determination to the Remuneration Tribunal

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42.(1) This section applies if the Commissioner refers to the President under subsection 41(6) a decision of the Commissioner not to refer a determination to the Remuneration Tribunal.

(2) The President must review the Commissioner's decision and must decide either:

- (a) to confirm the Commissioner's decision; or
- (b) to set aside the Commissioner's decision and to direct the Commissioner to refer the determination in accordance with section 41.

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(3) In spite of subsection (2), the President may refuse to review the Commissioner's decision unless the complainant gives the President such relevant information as the President requires.

(4) The President must give written notice of a decision of the President under subsection (2) to the complainant and to the Commissioner. The notice must set out the reasons for the decision.

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Commissioner deemed to be a complainant

43.(1) If:

- (a) the Commissioner has referred to the Commission a matter that came before the Commissioner otherwise than as the result of the making of a complaint to the Commission; or
- (b) the Minister has referred a matter to the Commission under section 51;

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then, for the purposes of any inquiry into the matter by the Commission, this Act has effect as if:

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- (c) the matter had been the subject of a complaint; and
- (d) the reference to the complainant in section 59 were a reference to the Commissioner; and
- (e) a reference to the respondent were a reference to the person who is, or each of the people who are, alleged to have done the act to which the matter relates.

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(2) In this section:

respondent, in relation to a complaint, means the person who is, or each of the people who are, alleged to have done the act to which the complaint relates.

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Division 2—Inquiries by Commissioner

Inquiries by Commissioner

44.(1) If:

- (a) a complaint relating to an alleged unlawful act is made to the Commission under section 38; or
- (b) it appears to the Commission that a person has done an act that is unlawful under a provision of Part 2;

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the Commission must notify the Commissioner accordingly and the Commissioner must, subject to subsection (2), inquire into the act and endeavour, by conciliation, to effect a settlement of the matter to which the act relates.

(2) The Commissioner may decide not to inquire into an act or to continue to inquire into the act, if: 5

- (a) the Commissioner is satisfied that the act is not unlawful under a provision of Part 2; or
- (b) the Commissioner thinks that the person aggrieved by the act does not desire that the inquiry be made or continued; or 10
- (c) in a case where a complaint has been made to the Commission in relation to the act—a period of more than 12 months has elapsed since the act was done and the complaint was made to the Commission; or
- (d) in a case where a complaint has been made to the Commission in relation to the act—the Commissioner thinks that the complaint was frivolous, vexatious, misconceived or lacking in substance; or 15
- (e) in a case where some other remedy has been sought in relation to the subject matter of the complaint—the Commissioner thinks that the subject matter of the complaint has been adequately dealt with; or 20
- (f) the Commissioner thinks that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the person aggrieved by the act. 25

(3) If the Commissioner decides not to inquire into or to continue to inquire into an act in respect of which a complaint was made to the Commission, the Commissioner must give notice in writing to the complainant of that decision, of the reasons for that decision and of the rights of the complainant under subsection (5). 30

(4) Subsection (3) does not apply to a decision of the Commissioner that is made at the request of the complainant.

(5) If the Commissioner has given a complainant a notice under subsection (3), the complainant may, within 21 days after receipt of the notice, by notice in writing served on the Commissioner: 35

- (a) if paragraph (2) (a) applies—require the Commissioner to refer the complaint to the Commission; or
- (b) in any other case—require the Commissioner to refer the decision to the President.

(6) If the Commissioner receives a notice under paragraph (5)(a), the Commissioner must refer the complaint to the Commission together with a report relating to any inquiries made by the Commissioner into the complaint.

(7) If the Commissioner receives a notice under paragraph (5)(b), the Commissioner must refer the decision to the President together with a report about the decision.

(8) A report for the purposes of subsection (7) must not set out or describe anything said or done in the course of conciliation proceedings under this Division (including anything said or done at a conference held under this Division).

(9) The Commissioner may, for the purposes of this Act, obtain information from such people, and make such inquiries, as the Commissioner thinks fit.

President may review a decision of the Commissioner not to hold an inquiry or to discontinue an inquiry

45.(1) This section applies if a decision of the Commissioner not to inquire into an act, or not to continue to inquire into an act, is referred to the President under subsection 44(7).

(2) The President:

(a) must review the Commissioner's decision; and

(b) must decide either:

(i) to confirm the Commissioner's decision; or

(ii) to set aside the Commissioner's decision and to direct the Commissioner to inquire into the act, or to continue to inquire into the act, in accordance with section 44.

(3) In spite of subsection (2), the President may refuse to review the Commissioner's decision unless the complainant gives the President such relevant information as the President requires.

(4) The President must give written notice of a decision of the President under paragraph (2)(b) to the complainant and to the Commissioner.

(5) The notice must set out the reasons for the decision.

(6) In spite of subsection 44(2), the Commissioner must comply with a direction of the President under subparagraph (2)(b)(ii) of this section unless the complainant notifies the Commissioner that the complainant does not wish the inquiry to be held or continued.

Review by President—interim determination

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46.(1) This section applies if a decision of the Commissioner not to inquire into an act, or not to continue to inquire into an act, is referred to the President under subsection 44(7).

(2) If the President has not completed a review of the Commissioner's decision, the Commission or the President may make an interim determination of such a nature as would, if it were binding and conclusive upon the parties, preserve:

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- (a) the status quo between the parties to the complaint; or
- (b) the rights of the parties to the complaint;

pending completion of the matter the subject of the complaint.

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(3) The Commission or the President may vary or revoke an interim determination made under this section.

(4) The functions conferred on the Commission by subsection (2) or (3) may only be performed on an application made by the President.

(5) The functions conferred on the President by subsection (2) or (3) may only be performed:

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- (a) on the President's own initiative; and
- (b) if the President thinks that it is expedient that the President should perform those functions.

(6) An interim determination under this section is not binding or conclusive between any of the parties to the determination.

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Application for interim determination

47.(1) The Commissioner may, at any time after a complaint is lodged and before the Commissioner declines to entertain the complaint, resolves the complaint by conciliation or refers the matter to which the complaint relates to the Commission under subsection 51(1), apply to the Commission for the making of an interim determination under section 77 or for the variation or revocation of such a determination.

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(2) In relation to a matter arising under paragraph 44(1)(b), the Commissioner may apply to the Commission for the making of such an interim determination, or for the variation or revocation of such an interim determination, at any time.

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Power to obtain information and documents

48.(1) The powers of the Commissioner under this section apply if the Commissioner has reason to believe that a person is capable of giving information (*relevant information*) or producing documents (*relevant documents*) relevant to an inquiry under this Division. 5

(2) The Commissioner may, by written notice given to the person, require the person, at a reasonable place, and within a reasonable period or on a reasonable date and time, specified in the notice:

- (a) to give to the Commissioner, by writing signed by the person or, in the case of a body corporate, by an officer of the body corporate, the relevant information specified in the notice; or 10
- (b) to give to the Commissioner the relevant documents specified in the notice.

(3) If documents are produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner: 15

- (a) may take possession of, and may make copies of, or take extracts from, the documents; and
- (b) may retain possession of the documents for the period that is necessary for the purposes of the inquiry to which the documents relate; and 20
- (c) during that period must permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Commissioner to inspect at all reasonable times the documents that person would be so entitled to inspect. 25

Directions to people to attend compulsory conference

49.(1) For the purpose of inquiring into an act, and endeavouring to settle the matter to which the act relates, in accordance with section 44, the Commissioner may, by written notice, direct the people referred to in subsection (2) of this section to attend, at a reasonable time and place specified in the notice, a conference presided over by the Commissioner or a person appointed by the Commissioner. 30

(2) Directions under subsection (1) to attend a conference in relation to an act must be given to:

- (a) if a complaint was made to the Commission in relation to that act—the complainant, or all the complainants, as the case requires; and 35
- (b) the person who is alleged to have done the act; and

- (c) any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the inquiry or whose presence at the conference is, in the opinion of the Commissioner, likely to be conducive to the settlement of the matter to which the act relates. 5

(3) A person who has been given a direction under subsection (1) to attend a conference is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at the conference.

(4) The Commissioner may, in a notice given to a person under subsection (1), require the person to produce documents specified in the notice at the conference. 10

Compulsory conference

50.(1) The person presiding at a conference held under this Division may require a person attending the conference to produce a document. 15

(2) A conference under this Division is to be held in private and, subject to this Act, must be conducted in the manner decided by the person presiding at the conference.

(3) Subject to subsection (4), a body of people, whether incorporated or not, that is directed under section 49 to attend a conference is taken to attend if an officer or employee of the body attends on behalf of the body. 20

(4) Unless the person presiding at a conference under this Division consents:

- (a) a natural person is not entitled to be represented at the conference by another person; and 25
- (b) a body of people, whether incorporated or not, is not entitled to be represented at the conference by a person other than an officer or employee of the body.

Reference of matters to the Commission

51.(1) If the Commissioner: 30

- (a) thinks that a matter cannot be settled by conciliation; or
- (b) has endeavoured to settle a matter by conciliation but has not been successful; or
- (c) thinks that the nature of a matter is such that it should be referred to the Commission; 35

the Commissioner must refer the matter to the Commission together with a report relating to any inquiries made by the Commissioner into the matter.

(2) A report for the purposes of subsection (1) must not set out or describe anything said or done in the course of conciliation proceedings under this Division (including anything said or done at a conference held under this Division). 5

(3) Evidence of anything said or done in the course of conciliation proceedings under this Division (including anything said or done at a conference held under this Division) is not admissible in subsequent proceedings under this Part relating to the matter. 10

***Division 3—Inquiries by Human Rights and
Equal Opportunity Commission***

Minister may appoint people to participate in inquiries

52.(1) The Minister may appoint a person or people to participate, in accordance with this section, in the performance of the functions of the Commission. 15

(2) A person who holds an appointment under subsection (1) may, at the request of the President, participate in the holding of an inquiry under this Division as if the person were a member of the Commission and, for the purposes of the application of this Act in relation to the inquiry, the person is taken to be a member of the Commission. 20

(3) A person appointed under subsection (1):
(a) holds the appointment for such period, not exceeding 5 years, as is specified in the instrument of the person's appointment, but is eligible for re-appointment; and 25
(b) may resign the appointment by written notice given to the Minister.

(4) The Minister may:
(a) determine the terms and conditions of appointment, including remuneration, of a person appointed under subsection (1); and 30
(b) at any time terminate such an appointment.

(5) The Minister may, for the purpose of appointing under subsection (1) a person who is the holder of a judicial office of a State, enter into such arrangement with the appropriate Minister of the State as is necessary to secure that person's services. 35

(6) An arrangement under subsection (5) may provide for the Commonwealth to reimburse a State with respect to the services of the person to whom the arrangement relates.

(7) The appointment under subsection (1) of the holder of a judicial office, or service by the holder of a judicial office under such an appointment, does not affect the person's tenure of that judicial office or the person's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and the person's service under such an appointment is taken to be service as the holder of that judicial office.

(8) In this section, *judicial office* means:

- (a) an office of Judge of a court created by the Parliament; or
- (b) an office the holder of which has, because of holding that office, the same status as a Judge of a court created by the Parliament.

Reference of matter to the Commission by the Minister

53. The Minister may refer any matter to the Commission for inquiry as a complaint under this Part.

Inquiries into complaints

54.(1) Subject to subsections (2) and (3), the Commission must hold an inquiry into each complaint or matter referred to it under subsection 44(6) or 51(1) or section 53.

(2) The Commission must not hold, or must discontinue, an inquiry into a complaint or matter referred to it under subsection 44(6) or 51(1) if the complainant notifies the Commission that the complainant does not wish the inquiry to be held or to continue.

(3) The Commission must not hold, or must discontinue, an inquiry into a complaint or matter referred to it under section 53 if the Minister notifies the Commission that the Minister does not wish the inquiry to be held or to continue.

Exercise of inquiry powers by Commission

55.(1) Subject to subsection 36(2), the powers of the Commission to hold inquiries under this Act may, if the President so directs, be exercised by a single member of the Commission who is a legally qualified person, or by 2 or more members of the Commission at least one of whom is a legally qualified person.

(2) If the power of the Commission to hold an inquiry is being exercised by 2 or more members of the Commission:

- (a) if only one of those members is a legally qualified person—that member must preside; or
- (b) if 2 or more of those members are legally qualified people:
 - (i) if one of those people is the President—the President must preside; or
 - (ii) in any other case—those members must elect one of those people to preside.

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(3) In this section:

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legally qualified person means a person who:

- (a) is or has been a Judge of a court created by the Parliament or of a court of a State or a person who has the same designation and status as a Judge of a court created by the Parliament; or
- (b) is enrolled as a barrister or solicitor, as a barrister and solicitor, or as a legal practitioner, of the High Court, of another federal court or of the Supreme Court of a State or Territory.

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Single inquiry in relation to several complaints

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56. If the Commission is of the opinion that 2 or more complaints arise out of the same or substantially the same circumstances or subject-matter, it may hold a single inquiry into those complaints.

Joinder of parties by the Commission

57. If, before or during the holding of an inquiry, the Commission is of the opinion that a person ought to be joined as a party to the inquiry, it may, by notice in writing given to the person, join the person as a party to the inquiry.

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Notice of inquiry and rights of parties at inquiry

58.(1) The Commission:

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- (a) must give a party to an inquiry, other than a person to whom the Commission grants leave to appear as a party to the inquiry, such notice in such manner as the Commission determines of the time and place at which it intends to hold the inquiry; and
- (b) must give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Commission.

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(2) If a party to an inquiry to whom notice has been given under paragraph (1) (a) fails to attend at the time and place specified for the inquiry, the Commission may hold the inquiry in the absence of that party.

Parties to an inquiry

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59. The parties to an inquiry must be the complainant, the respondent, any person joined by the Commission as a party to the inquiry and any person to whom the Commission grants leave to appear as a party to the inquiry.

Right of appearance and to representation

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60.(1) A party to an inquiry:

(a) must appear personally or, if the party is a body of people, whether incorporated or not, by an officer, employee or agent of the body; and

(b) may:

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(i) if the Commission has made arrangements under subsection 63(1) for counsel to appear at the inquiry to assist the Commission; or

(ii) in any other case—with the leave of the Commission; be represented by a solicitor or counsel or an agent.

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(2) A person, other than a solicitor or counsel, is not entitled to demand or receive any fee or reward for representing a party to an inquiry.

Inquiries may be held in private

61.(1) Subject to subsection (2), an inquiry must be held in public.

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(2) The Commission may, on its own initiative or on the application of a party to the inquiry, if it is satisfied that it is appropriate to do so, direct that an inquiry, or a part of an inquiry, be held in private.

Commission may prohibit publication of evidence etc.

62.(1) The Commission may direct that:

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(a) any evidence given before it;

(b) the contents of any document produced to the Commission; or

(c) any information that might enable a person who has appeared before the Commission to be identified;

must not be published, or must not be published except in such manner, and to such people, as the Commission specifies.

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(2) This section is not to be taken to derogate from the Commission's powers under section 61.

Counsel assisting the Commission

63.(1) The Commission may make arrangements for counsel to appear at an inquiry to assist the Commission. 5

(2) Counsel assisting the Commission at an inquiry pursuant to arrangements made under subsection (1) must, in relation to that inquiry, be subject to the control and direction of the Commission.

Conditions for making a representative complaint

64.(1) A representative complaint may be lodged under section 38 only if: 10

- (a) the class members have complaints against the same person; and
- (b) all the complaints are in respect of, or arise out of, the same, similar or related circumstances; and 15
- (c) all the complaints give rise to a substantial common issue of law or fact.

(2) A representative complaint under section 38 must:

- (a) describe or otherwise identify the class members; and
- (b) specify the nature of the complaints made on behalf of the class members; and 20
- (c) specify the nature of the relief sought; and
- (d) specify the questions of law or fact that are common to the complaints of the class members.

In describing or otherwise identifying the class members, it is not necessary to name them or specify how many there are. 25

(3) A representative complaint may be lodged without the consent of class members.

Commission may decide that a complaint is not to continue as a representative complaint 30

65.(1) The Commission may, on application by the respondent or of its own motion, decide that a complaint should no longer continue as a representative complaint.

(2) The Commission may only make such a decision if it is satisfied that it is in the interests of justice to do so for any of the following reasons: 35

- (a) the costs that would be incurred if the complaint were to continue as a representative complaint are likely to exceed the costs that would be incurred if each class member lodged a separate complaint;
 - (b) the representative complaint will not provide an efficient and effective means of dealing with the complaints of the class members; 5
 - (c) the complaint was not brought in good faith as a representative complaint;
 - (d) it is otherwise inappropriate that the complaints be pursued by means of a representative complaint. 10
- (3) If the Commission makes such a determination:
- (a) the complaint may be continued as a complaint by the complainant on his or her own behalf against the respondent, unless the complainant is a trade union; and 15
 - (b) on the application of a person who was a class member for the purposes of the former representative complaint, the Commission may join that person as a complainant to the complaint as continued under paragraph (a).

Additional rules applying to the determination of representative complaints 20

66.(1) The Commission may, on application by a class member, replace the complainant with another class member, if it appears to the Commission that the complainant is not able adequately to represent the interests of the class members. 25

(2) A class member may, by notice in writing to the Commission, withdraw from a representative complaint at any time before the Commission begins to hold an inquiry into the complaint.

(3) The Commission may at any stage direct that notice of any matter be given to a class member or class members. 30

Amendment of representative complaints

67.(1) If the Commission is satisfied that a complaint could be dealt with as a representative complaint if the class of people on whose behalf that complaint is lodged is increased, reduced or otherwise altered, the Commission may amend the complaint so that the complaint can be dealt with as a representative complaint. 35

(2) If the Commission is satisfied that a complaint has been wrongly made as a representative complaint, the Commission may amend the complaint by removing the names of the people or the description of

the class of people on whose behalf the complaint was lodged so that the complaint can be dealt with otherwise than as a representative complaint.

Class member for representative complaint not entitled to lodge individual complaint

68. A person who is a class member for a representative complaint is not entitled to lodge a complaint in respect of the same subject matter. 5

Resolution of complaint by conciliation

69. The Commission:

- (a) may endeavour, by all such means as to it seem reasonable, to resolve a complaint the subject of an inquiry by conciliation; and 10
- (b) must take all such steps as to it seem reasonable to effect an amicable settlement of a complaint the subject of an inquiry and for this purpose may adjourn an inquiry at any stage to enable the parties to negotiate with a view to settlement of the complaint by amicable arrangements. 15

Evidence and findings in other proceedings

70. In the course of an inquiry, the Commission may, in its discretion:

- (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal and draw any conclusions of fact from that transcript that it considers proper; and 20
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the inquiry; and 25
- (c) receive in evidence any report of the Commissioner if a copy of that report has been made available to every other party to the inquiry.

Powers of Commission to take evidence

71.(1) The Commission may take evidence on oath or affirmation and for that purpose a member of the Commission may administer an oath or affirmation. 30

(2) A member of the Commission may summon a person to appear before the Commission to give evidence and to produce such documents (if any) as are referred to in the summons. 35

(3) A person to whom an inquiry under this Part relates or who is a party to proceedings before the Commission may call witnesses.

(4) A person appearing as a witness before the Commission may be examined, cross-examined and re-examined.

Fees for witnesses

72.(1) A person summoned to appear before the Commission is entitled to be paid, in respect of the person's attendance, fees, and allowances for expenses, fixed by or in accordance with the regulations.

(2) Subject to subsection (3), the fees and allowances must be paid:

- (a) if the person was summoned at the request of a person other than the Commonwealth—by the person who made the request; or
- (b) in any other case—by the Commonwealth.

(3) The Commission may, in its discretion, order that the fees and allowances payable to a person summoned as mentioned in paragraph (2) (a) must be paid, in whole or in part, by the Commonwealth.

Retention and copying of documents

73. The Commission may retain for a reasonable period and may make copies of, or of part of, any documents produced to the Commission in the course of an inquiry or proceedings.

Application of rules of evidence etc.

74.(1) For the purposes of an inquiry, the Commission:

- (a) is not bound by the rules of evidence and may inform itself on any matter in the manner it thinks fit; and
- (b) must conduct the inquiry with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Commission permit; and
- (c) may give directions relating to procedure that it thinks will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties.

(2) The member presiding at an inquiry must decide any question relating to the admissibility of evidence and any other question of law or procedure.

Consideration of exceptions and exemptions

75. In deciding whether an act is unlawful under a provision of Part 2, the Commission is not required to have regard to any exception or exemption provided for in that Part unless there is evidence before the Commission that the exception or exemption is or may be applicable in relation to that act.

Commission may dismiss frivolous etc. complaints

76. The Commission may, at any stage of an inquiry, dismiss a complaint if it is satisfied that the complaint is frivolous, vexatious, misconceived, lacking in substance or relates to an act that is not unlawful because of a provision of Part 2.

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Making of interim determination

77.(1) The Commission may, on the application of the Commissioner under section 47 or on the application of a party to an inquiry at any time after the lodgement of the complaint into which that inquiry is held, make an interim determination of such a nature as would, if it were binding and conclusive upon the parties, preserve:

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- (a) the status quo between the parties to the complaint; or
- (b) the rights of the parties to the complaint;

pending completion of the matter the subject of the complaint.

(2) The President may exercise the power under subsection (1) if the President is of the opinion that it is expedient that the President alone should do so.

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(3) An interim determination under subsection (1) is not binding or conclusive between any of the parties to the determination.

Determination or other decision of the Commission

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78.(1) After holding an inquiry, the Commission may:

- (a) dismiss the complaint the subject of the inquiry; or
- (b) find the complaint substantiated and make a determination, which may include any one or more of the following:

- (i) a declaration that the respondent has engaged in conduct that is unlawful under Part 2 and should not repeat or continue the unlawful conduct;

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- (ii) a declaration that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;

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- (iii) a declaration that the respondent should employ or re-employ the complainant;

- (iv) a declaration that the respondent should pay to the complainant damages by way of compensation for any loss or damage suffered because of the conduct of the respondent;

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- (v) a declaration that the respondent should promote the complainant;

- (vi) a declaration that the termination of a contract or agreement should be varied to redress any loss or damage suffered by the complainant;

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(vii) a declaration that it would be inappropriate for any further action to be taken in the matter.

(2) A determination of the Commission under subsection (1) is not binding or conclusive between any of the parties to the determination.

(3) The Commission may, in a determination under subsection (1), state any findings of fact upon which the determination is based. 5

(4) The damage referred to in paragraph (1)(b) includes injury to the complainant's feelings or humiliation suffered by the complainant.

(5) A determination by the Commission under subparagraph (1)(b)(iv) on a representative complaint: 10

(a) may provide for payment of specified amounts or of amounts worked out in a manner specified by the Commission; and

(b) if it provides for payment in accordance with paragraph (a), must make provision for the payment of the money to the complainants concerned. 15

(6) If the Commission makes a determination under subparagraph (1)(b)(iv) on a representative complaint, the Commission may give such directions (if any) as it thinks just in relation to:

(a) the manner in which a class member is to establish his or her entitlement to the payment of an amount under the determination; and 20

(b) the manner for determining any dispute regarding the entitlement of a class member to the payment.

(7) In this section:

complainant, in relation to a representative complaint, means the class members. 25

Determination must identify the class members who are to be affected by the determination

79. A determination under section 77 or 78 on a representative complaint must describe or otherwise identify those of the class members who are to be affected by the determination. 30

Assistance in proceedings before Commission

80.(1) If:

(a) a person has made a complaint in respect of which the Commission has held an inquiry under section 54 and the Commission has found the complaint to be substantiated; or 35

- (b) a person has done or is alleged to have done an act in respect of which an inquiry has been held by the Commission under section 54 and the Commission dismisses the complaint the subject of the inquiry;

the Commission may, in its discretion, recommend to the Attorney-General that assistance be given to the person in respect of expenses incurred by the person in connection with the inquiry.

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(2) If a recommendation is made by the Commission under subsection (1) in relation to a person, the Attorney-General may authorise the provision by the Commonwealth to that person, on such conditions (if any) as the Attorney-General decides, of such financial assistance in respect of expenses incurred by the person in connection with the inquiry as the Attorney-General decides.

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Proceedings in the Federal Court to enforce a determination

81.(1) The Commission or the complainant may commence proceedings in the Federal Court for an order to enforce a determination under subsection 77(1) or 78(1), except where the respondent to the determination is a Commonwealth agency or the principal executive of a Commonwealth agency.

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(2) If the Court is satisfied that the respondent has engaged in conduct or committed an act that is unlawful under this Act, the Court may make such orders (including a declaration of right) as it thinks fit.

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(3) The Court may, if it thinks fit, grant an interim injunction pending the determination of the proceedings.

(4) The Court is not to require a person, as a condition of granting an interim injunction, to give an undertaking as to damages.

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(5) In the proceedings, the question whether the respondent has engaged in conduct or committed an act that is unlawful under this Act is to be dealt with by the Court by way of a hearing *de novo*, but the Court may receive as evidence any of the following:

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- (a) a copy of the Commission's written reasons for the determination;
- (b) a copy of any document that was before the Commission;
- (c) a copy of the record (including any tape recording) of the Commission's inquiry into the complaint.

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(6) In this section:

complainant, in relation to a representative complaint, means any of the class members.

Assistance in proceedings before the Federal Court

82.(1) A person who:

- (a) has commenced or proposes to commence proceedings in the Federal Court under section 81; or
- (b) has done or is alleged to have done an act in respect of which proceedings have been commenced in the Federal Court under that section;

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

(2) If:

- (a) an application is made by a person under subsection (1); and
- (b) the Attorney-General is satisfied that:
 - (i) it would involve hardship to that person to refuse the application; and
 - (ii) in all the circumstances, it is reasonable to grant the application;;

the Attorney-General may authorise the provision by the Commonwealth to that person, on such conditions (if any) as the Attorney-General decides, of such legal or financial assistance in respect of the proceedings as the Attorney-General decides.

Division 4—Review and enforcement of determinations involving Commonwealth agencies

Application of Division

83. This Division applies to a determination that is made under section 77 or 78 and has a Commonwealth agency, or the principal executive of a Commonwealth agency, as the respondent.

Obligations of respondent agency

84.(1) If a Commonwealth agency is the respondent to a determination to which this Division applies that is made under section 77, the agency must comply with the determination.

(2) If a Commonwealth agency is the respondent to a determination to which this Division applies that is made under section 78:

- (a) the agency must not repeat or continue conduct that is covered by a declaration included in the determination under subparagraph 78(1)(b)(i); and
- (b) the agency must perform the act or course of conduct that is covered by a declaration included in the determination under subparagraph 78(1)(b)(ii), (iii), (v) or (vi).

Obligations of principal executive of agency

85.(1) If the principal executive of a Commonwealth agency is the respondent to a determination to which this Division applies that is made under section 77, the principal executive must take all such steps as are reasonably within his or her power to ensure:

- (a) that the terms of the determination are brought to the notice of all members, officers and employees of the agency whose duties are such that they may engage in conduct of the kind to which the determination relates; and
- (b) that the determination is complied with.

(2) If the principal executive of a Commonwealth agency is the respondent to a determination to which this Division applies that is made under section 78, the principal executive must take all such steps as are reasonably within his or her power to ensure:

- (a) that the terms of the determination are brought to the notice of all members, officers and employees of the agency whose duties are such that they may engage in conduct of the kind to which the determination relates; and
- (b) that no member, officer or employee of the agency repeats or continues conduct that is covered by a declaration included in the determination under subparagraph 78(1)(b)(i); and
- (c) the performance of any act or course of conduct that is covered by a declaration included in the determination under subparagraph 78(1)(b)(ii), (iii), (v) or (vi).

Damages

86.(1) If a determination to which this Division applies that is made under section 78 includes a declaration that the respondent should pay damages to the complainant, the complainant is entitled to be paid the amount specified in the declaration.

(2) If the respondent is a Commonwealth agency that has the capacity to sue and be sued, the amount is recoverable as a debt due by the agency to the complainant. In any other case, the amount is recoverable as a debt due by the Commonwealth to the complainant.

(3) In this section:

complainant, in relation to a representative complaint, means a class member.

Review of determinations regarding damages

87.(1) Application may be made to the Administrative Appeals Tribunal for review of:

- (a) a declaration of the kind referred to in subparagraph 78(1)(b)(iv) that is included in a determination to which this Division applies; or
- (b) a decision of the Commission refusing to include such a declaration in a determination to which this Division applies. 5

(2) A Commonwealth agency, or the principal executive of a Commonwealth agency, may not apply for review without the permission of the Minister.

(3) In exercising powers in relation to an application under subsection (1), the Tribunal must be constituted by a presidential member who is a Judge and 2 other members who are not Judges. This subsection has effect subject to subsection 21(1A) of the *Administrative Appeals Tribunal Act 1975*. 10

(4) Terms used in subsection (3) that are also used in the *Administrative Appeals Tribunal Act 1975* have the same meanings as in that Act. 15

Enforcement of determination against Commonwealth agency

88.(1) If a Commonwealth agency fails to comply with section 84, an application may be made to the Federal Court for an order directing the agency to comply. 20

(2) If the principal executive of a Commonwealth agency fails to comply with section 85, an application may be made to the Federal Court for an order directing the principal executive to comply.

(3) The application may be made by the Commission or by the complainant. In the case of a representative complaint, *complainant* means a class member. 25

(4) On an application under this section, the Federal Court may make such other orders as it thinks fit with a view to securing compliance by the respondent.

(5) An application may not be made under this section in relation to a determination under section 78 until: 30

- (a) the time has expired for making an application under section 87 for review of the determination; or
- (b) if such an application is made, the decision of the Administrative Appeals Tribunal on the application has come into operation. 35

PART 4—OFFENCES**Unlawful act not offence unless expressly so provided**

89. Except as expressly provided by this Part, this Act does not make it an offence to do an act that is unlawful because of a provision of Part 2.

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Advertisements

90.(1) A person must not publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful because of a provision of Part 2.

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Maximum penalty: 10 penalty units.

(2) In 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, is to be construed accordingly.

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Failure to attend conference

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91. A person who has been given a direction under subsection 49(1) to attend a conference must not, without reasonable excuse:

- (a) fail to attend as required by the direction; or
- (b) fail to attend and report from day to day unless excused, or released from further attendance, by the person presiding at the conference.

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Maximum penalty: 10 penalty units.

Failure to provide information etc.

92. A person must not, without reasonable excuse, refuse or fail:

- (a) to provide information; or
- (b) to produce a document;

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when so required under section 48, 49 or 50.

Maximum penalty: 10 penalty units.

Offences in relation to Commission

93.(1) A person served, as prescribed, with a summons to appear before the Commission as a witness must not, without reasonable excuse:

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- (a) fail to attend as required by the summons; or

- (b) fail to appear and report from day to day unless excused, or released from further attendance, by the Commission.

(2) A person appearing before the Commission as a witness at an inquiry must not, without reasonable excuse:

- (a) refuse or fail to be sworn or make an affirmation; or 5
 (b) refuse or fail to answer a question that is required by the member presiding at the inquiry to be answered; or
 (c) refuse or fail to produce a document that was required to be produced by a summons under this Act served on that person as prescribed. 10

(3) A person must not:

- (a) interrupt an inquiry or proceedings of the Commission; or
 (b) use insulting language towards a member of the Commission when the member is exercising any powers or performing any functions as a member; or 15
 (c) make a publication in contravention of any direction given under section 62; or
 (d) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Commission is meeting or holding an inquiry; or 20
 (e) do any other act or thing that would, if the Commission were a court of record, constitute a contempt of that court.

Maximum penalty: 10 penalty units.

Self-incrimination

94. It is not a reasonable excuse for the purposes of section 92 for a person to refuse or fail to provide information or produce a document that the providing of the information or the production of the document might incriminate the person, but evidence of the provision of the information or the production of the document is not admissible in evidence against the person in any civil or criminal proceeding other than a proceeding for an offence under section 95. 25 30

False or misleading information

95. A person must not provide information or make a statement to the Commission, to the Commissioner or to any other person exercising powers or performing functions under this Act, knowing that the information or statement is false or misleading in a material particular. 35

Maximum penalty: 25 penalty units.

Victimisation

96.(1) A person must not commit an act of victimisation against another person.

Maximum penalty: 25 penalty units.

(2) For the purposes of subsection (1), a person commits an act of victimisation 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
- (b) has brought, or proposes to bring, proceedings under this Act against any person; or
- (c) has provided or proposes to provide information, or has produced or proposes to produce documents, to a person exercising or performing any power or function under this Act; or
- (d) has attended, or proposes to attend, a conference held under Division 2 or 3 of Part 3; or
- (e) has appeared, or proposes to appear, as a witness before the Commission in a proceeding under this Act; or
- (f) has reasonably asserted, or proposes to assert, any rights of the person or the rights of any other person under this Act; or
- (g) has made an allegation that a person has done an act that is unlawful because of a provision of Part 2;

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 because of a provision of Part 2 if it is proved that the allegation was false and was not made in good faith.

Offence to vilify on the ground of sexuality or transgender identity

97.(1) In this section:

public act has the same meaning as in section 26.

(2) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of people on the ground of the sexuality or transgender identity of the person or members of the group by means that include:

- (a) threatening physical harm to, or to property of, the person or members of the group; or
- (b) inciting others to threaten physical harm to, or to property of, the person or members of the group.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

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Obstruction etc.

98. A person must not insult, hinder, obstruct, molest or interfere with a person exercising a power or performing a function under this Act.

Maximum penalty: 10 penalty units.

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PART 5—SEXUALITY DISCRIMINATION COMMISSIONER.**Sexuality Discrimination Commissioner**

99. There is to be a Sexuality Discrimination Commissioner, who is to be appointed by the Governor-General.

Terms and conditions of appointment

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100.(1) Subject to subsection (2), the Commissioner holds office for the period (not exceeding 7 years) specified in his or her instrument of appointment.

(2) The Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are decided by the Governor-General.

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Remuneration of Commissioner

101.(1) The Commissioner is to 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 is to be paid such remuneration as is prescribed.

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(2) The Commissioner is to be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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Leave of absence

102.(1) Subject to section 87E of the Public Service Act 1922, 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.

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Outside employment

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

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Resignation

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

Termination of appointment

105.(1) The Governor-General may terminate the appointment of the Commissioner because of:

- (a) misbehaviour; or
- (b) a disability that renders the Commissioner incapable of performing the requirements of the office. 5

(2) The Governor-General must 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; or 10
- (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 15
- (c) engages in paid employment outside the duties of the office of Commissioner otherwise than with the approval of the Minister.

Acting Commissioner

106.(1) The Minister may appoint a person to act as Commissioner: 20

- (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. 25

(2) The validity of anything done by a person purporting to act pursuant to an appointment made under subsection (1) is not to be called in question on the ground that:

- (a) the occasion for the person's appointment had not arisen; or 30
- (b) there is a defect or irregularity in or in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased. 35

PART 6—SAME SEX COUPLES

Rights etc. of same sex couples under laws of the Commonwealth

107.(1) This section applies to a law of the Commonwealth that:

- (a) confers a right or entitlement on a person, or imposes an obligation on a person; or
- (b) applies to a person in a particular way;

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because of the person living together with another person of the opposite sex on a genuine domestic basis although not married to the other person.

(2) After the commencement of this Act, the law:

- (a) confers the same right or entitlement, or imposes the same obligation, on a person who lives together with another person of the same sex on a genuine domestic basis; or
- (b) applies to such a person in the same way.

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(3) The regulations may provide that this section does not apply to a specified law of the Commonwealth.

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PART 7—MISCELLANEOUS**This Act does not make unlawful acts lawful**

108. Nothing in this Act makes it lawful to do a thing that would be unlawful apart from this Act.

Delegation

109.(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 people all or any of the powers conferred on the Commission under this Act, other than powers in connection with the performance of the functions that, under section 37, are to be performed by the Commissioner for the Commission.

(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 people;

approved by the Commission, all or any of the powers exercisable by the Commissioner under this Act.

Liability of people involved in unlawful acts

110. 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 2 is, for the purposes of this Act, taken also to have done the act.

Vicarious liability etc.

111.(1) Subject to subsection (2), if 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, an act that would, if it were done by the person, be unlawful under Division 1 or 2 of Part 2 (whether or not the act done by the employee or agent is unlawful under Division 1 or 2 of Part 2), this Act applies 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 subsection (1) done by an employee or agent of a person if it is established that the person took all reasonable steps to prevent the employee or agent from doing acts of the kind referred to in that paragraph.

Acts done for bodies corporate

112.(1) If, 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 for the body corporate in the matter so acted on that ground.

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(2) If a person attends a conference under Division 2 of Part 3, or appears before the Commission under Division 3 of that Part, for a body of people, whether incorporated or not, any conduct by that person when so attending or appearing is taken, for the purposes of this Act, to be conduct of the body.

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Commonwealth taken to be employer

113. For the purposes of this Act, all Commonwealth employees are taken to be employed by the Commonwealth.

Awards inconsistent with this Act not to be made

114. This Act is a prescribed Act for the purposes of section 121 of the *Industrial Relations Act 1988*.

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Unlawful act not basis of civil action unless expressly so provided

115. 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 because of a provision of Part 2.

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Protection from civil actions

116.(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 under a delegation under section 109 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 a function, or in the exercise or purported exercise of any power or authority, conferred on the Commission or the Commissioner.

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(2) If:

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- (a) a complaint has been made to the Commission; or
- (b) a submission has been made, a document or information has been provided, 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 the complaint or submission was made, the document or information was provided or the evidence was given.

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Non-disclosure of private information

117.(1) This section applies to a person who is, or has at any time been:

- (a) the Commissioner; or
- (b) a member of the Commission or a member of the staff assisting the Commission; or 5
- (c) authorised to perform or exercise a function or power of the Commission or the Commissioner or a function or power for the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act 10

(2) A person to whom this section applies must not, either directly or indirectly, except in the performance of a duty under or in connection with this Act or in the performance or exercise of a function or power referred to in paragraph (1)(c): 15

- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the person because of that person's office or employment under or for the purposes of this Act or because of the person being or having been so authorised; or 20
- (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 provided for the purposes of this Act. 25

Maximum penalty: 50 penalty units, or imprisonment for 1 year, or both. 25

(3) A person to whom this section applies must not be required:

- (a) to divulge or communicate to a court information relating to the affairs of another person acquired by the person because of the person's office or employment under or for the purposes of this Act or because of the person being or having been so authorised; or 30
- (b) to produce in a court a document relating to the affairs of another person of which the person has custody, or to which that person has access, because of the person's office or employment under or for the purposes of this Act or because of the person being or having been so authorised; 35

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

(4) 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 under that Act; or 40

- (b) divulging or communicating information, or producing a document, to a 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.

(5) Subsection (3) does not prevent a person from being required, for the purposes of 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.

(6) In this section:

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

produce includes permit access to.

Information stored otherwise than in written form

118. If 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 is a duty to provide a document containing a clear reproduction in writing of the information.

Commissioner to provide information

119. The Commissioner must give to the Commission such information relating to the operations of the Commissioner under this Act as the Commission from time to time requires.

Amendments of the *Human Rights and Equal Opportunity Commission Act 1986*

120. The *Human Rights and Equal Opportunity Commission Act 1986* is amended as set out in the Schedule.

Regulations

121. 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.

SCHEDULE

Section 120

AMENDMENTS OF THE HUMAN RIGHTS AND EQUAL
OPPORTUNITY COMMISSION ACT 1986**Subsection 8(1):**

Add at the end:

“and (g) the Sexuality Discrimination Commissioner.”

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Subsection 8A(3) (Item 2 of Table):

Add “and section 45 of the Sexuality DA”

Subsection 8A(3) (Item 3 of Table):

Add “and sections 46 and 77 of the Sexuality DA”

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Subsection 8A(3) (Item 6 of Table):

Add “and section 55 of the Sexuality DA”

Subsection 8A(3) (Item 7 of Table):

Add “and subsection 52(2) of the Sexuality DA”

Subsection 8A(4):Add “‘Sexuality DA’ means the *Sexuality Discrimination Act 1995*.”

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Paragraph 11(1)(a):After “the *Sex Discrimination Act 1984*” insert “or the *Sexuality Discrimination Act 1995*”.

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Subsection 11(3):After “the *Sex Discrimination Act 1984*” insert “, the *Sexuality Discrimination Act 1995*”.**Subsection 14(8):**After “the *Sex Discrimination Act 1984*” insert “, the *Sexuality Discrimination Act 1995*”.

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Subsection 16(2A):After “the *Sex Discrimination Act 1984*” insert “, the *Sexuality Discrimination Act 1995*”.

SCHEDULE—continued**Paragraph 16(2A)(b):**

After “the *Sex Discrimination Act 1984*” insert “or section 36 of the *Sexuality Discrimination Act 1995*”.

Paragraph 19(3)(b):

After “the *Sex Discrimination Act 1984*” insert “, subsection 52(1) of the *Sexuality Discrimination Act 1995*”.

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After paragraph 19(4)(b):

Insert:

“(ba) sections 46 and 77 of the *Sexuality Discrimination Act 1995*; or”.

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Subsection 19(6):

After “the *Sex Discrimination Act 1984*” insert “, the *Sexuality Discrimination Act 1995*”.