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NAA: A1559, 1984/4

Series number: A1559

Control symbol: 1984/4

Barcode: 9764901

Number of pages: 62

Sex Discrimination Act 1984 - (An Act relating to discrimination on the ground of sex, marital status or pregnancy or involving sexual harassment)



Sex Discrimination Act 1984

No. 4 of 1984



Sex Discrimination Act 1984

No. 4 of 1984

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CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION
AGAINST WOMEN



Sex Discrimination Act 1984

No. 4 of 1984

An Act relating to discrimination on the ground of sex, marital status or pregnancy or involving sexual harassment

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

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

Commencement

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

Objects

- 10 3. The objects of this Act are—
- (a) to give effect to certain provisions of the Convention on the Elimination of All Forms of Discrimination Against Women;
 - (b) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy in the areas of work,

accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs;

- (c) to eliminate, so far as is possible, discrimination involving sexual harassment in the workplace and in educational institutions; and 5
- (d) to promote recognition and acceptance within the community of the principle of the equality of men and women.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

“accommodation” includes residential and business accommodation; 10

“administrative office” means—

- (a) an office established by, or an appointment made under, a law of the Commonwealth;
- (b) an office established by, or an appointment made under, a law of a Territory; 15
- (c) an appointment made by the Governor-General or a Minister otherwise than under a law of the Commonwealth or of a Territory (including the Northern Territory); and
- (d) an appointment as a director of an incorporated company that is a public authority of the Commonwealth, 20

but does not include—

- (e) an office of member of the Legislative Assembly, member of the Council or Minister of the Territory, within the meaning of the *Northern Territory (Self-Government) Act 1978*;
- (f) an office of member of the Legislative Assembly within the meaning of the *Norfolk Island Act 1979*; or 25
- (g) an office or appointment in the Australian Public Service;

“Chairman” means Chairman of the Commission;

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

- (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 Commission established by the *Human Rights Commission Act 1981*; 35

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

“Commissioner” means the Sex Discrimination Commissioner appointed under section 96; 40

“committee of management”, in relation to a club or a registered organization, means the group or body of persons (however described)

that manages the affairs of that club or organization, as the case may be;

“Commonwealth 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;
- (b) holds an administrative office;
- (c) is employed by a public authority of the Commonwealth;
- (d) holds an office or appointment in the Commonwealth Teaching Service or is employed as a temporary employee under the *Commonwealth Teaching Service Act 1972*;
- (e) is employed under the *Australian Security Intelligence Organization Act 1979*, the *Supply and Development Act 1939* or the *Naval Defence Act 1910*; or
- (f) is a member of the Defence Force;

“Commonwealth law” means—

- (a) an Act, or a regulation, rule, by-law or determination made under or pursuant to an Act;
- (b) an Ordinance of a Territory, or a regulation, rule, by-law or determination made under or pursuant to an Ordinance of a Territory; or
- (c) an order or award made under or pursuant to a law referred to in paragraph (a) or (b);

“Commonwealth program” means a program conducted by or on behalf of the Commonwealth government;

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

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

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

“Department” has the same meaning as that expression has in the *Public Service Act 1922*;

“document” includes any book, register or other record of information, however compiled, recorded or stored;

“educational authority” means a body or person administering an educational institution;

“educational institution” means a school, college, university or other institution at which education or training is provided;

“employment” includes—

- (a) part-time and temporary employment;

- (b) work under a contract for services; and
 - (c) work as a Commonwealth employee;
- “employment agency” means any person who or body that, whether for payment or not, assists persons to find employment or other work or assists employers to find employees or workers, and includes the Commonwealth Employment Service; 5
- “enactment” has the same meaning as in the *Human Rights Commission Act 1981*;
- “Federal Court” means the Federal Court of Australia;
- “function” includes duty; 10
- “institution of tertiary education” means a university, college of advanced education, technical and further education institution or other institution at which tertiary education or training is provided;
- “instrumentality of a State” means a body or authority established for a public purpose by a law of a State and includes a technical and further education institution conducted by or on behalf of the government of a State, but does not include any other institution of tertiary education; 15
- “man” means a member of the male sex irrespective of age;
- “marital status” means the status or condition of being—
- (a) single; 20
 - (b) married;
 - (c) married but living separately and apart from one’s spouse;
 - (d) divorced;
 - (e) widowed; or
 - (f) the de facto spouse of another person; 25
- “near relative”, in relation to a person, means—
- (a) a parent, child, grandparent, grandchild, brother or sister of the person; or
 - (b) the spouse or de facto spouse of the first-mentioned person or of a person referred to in paragraph (a); 30
- “principal” means—
- (a) in relation to a commission agent—a person for whom the commission agent does work as a commission agent; and
 - (b) in relation to a contract worker—a person for whom the contract worker does work pursuant to a contract between the employer of the contract worker and the person; 35
- “proposed enactment” has the same meaning as in the *Human Rights Commission Act 1981*;
- “public authority of the Commonwealth” means—
- (a) a body incorporated, whether before or after the commencement of this Act, for a public purpose by a law of the Commonwealth or a law of a Territory, being a body corporate employing staff on its own behalf; 40

(b) an authority or body, not being a body corporate, established, whether before or after the commencement of this Act, for a public purpose by, or in accordance with the provisions of, a law of the Commonwealth or a law of a Territory, being an authority or body employing staff on its own behalf; or

(c) an incorporated company over which the Commonwealth, or a body or authority referred to in paragraph (a) or (b), is in a position to exercise control;

“registered organization” means an organization registered pursuant to the *Conciliation and Arbitration Act 1904*;

“respondent”, in relation to a complaint, means the person who is, or each of the persons who are, alleged to have done the act to which the complaint relates;

“services” includes—

(a) services relating to banking, insurance and the provision of grants, loans, credit or finance;

(b) services relating to entertainment, recreation or refreshment;

(c) services relating to transport or travel;

(d) services of the kind provided by the members of any profession or trade; and

(e) services of the kind provided by a government, a government authority or a local government body;

“State”, except in sub-sections 9 (15), (16), (17) and (18), includes the Northern Territory;

“technical and further education institution” has the same meaning as that expression has in the *Commonwealth Tertiary Education Commission Act 1977*;

“Territory”, except in sub-sections 9 (17) and (18), does not include the Northern Territory;

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

(a) a club;

(b) a registered organization;

(c) a body established by a law of the Commonwealth, of a State or of a Territory; or

(d) an association that provides grants, loans, credit or finance to its members;

“woman” means a member of the female sex irrespective of age.

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

Sex discrimination

5. (1) For the purposes of this Act, a person (in this sub-section referred to as the "discriminator") discriminates against another person (in this sub-section referred to as the "aggrieved person") on the ground of the sex of the aggrieved person if, by reason of—

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

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

(2) For the purposes of this Act, a person (in this sub-section referred to as the "discriminator") discriminates against another person (in this sub-section referred to as the "aggrieved person") on the ground of the sex of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition—

- (a) with which a substantially higher proportion of persons of the opposite sex to the aggrieved person comply or are able to comply;
- (b) which is not reasonable having regard to the circumstances of the case; and
- (c) with which the aggrieved person does not or is not able to comply.

Discrimination on the ground of marital status

6. (1) For the purposes of this Act, a person (in this sub-section referred to as the "discriminator") discriminates against another person (in this sub-section referred to as the "aggrieved person") on the ground of the marital status of the aggrieved person if, by reason of—

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

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

(2) For the purposes of this Act, a person (in this sub-section referred to as the "discriminator") discriminates against another person (in this sub-section referred to as the "aggrieved person") on the ground of the marital status of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition—

- (a) with which a substantially higher proportion of persons not of the same marital status as the aggrieved person comply or are able to comply;

- (b) which is not reasonable having regard to the circumstances of the case; and
- (c) with which the aggrieved person does not or is not able to comply.

Discrimination on the ground of pregnancy

5 7. (1) For the purposes of this Act, a person (in this sub-section referred to as the “discriminator”) discriminates against another person (in this sub-section referred to as the “aggrieved person”) on the ground of the pregnancy of the aggrieved person if—

(a) by reason of—

- 10 (i) the pregnancy of the aggrieved person;
- (ii) a characteristic that appertains generally to persons who are pregnant; or
- (iii) a characteristic that is generally imputed to persons who are pregnant,

15 the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who is not pregnant; and

(b) the less favourable treatment is not reasonable in the circumstances.

20 (2) For the purposes of this Act, a person (in this sub-section referred to as the “discriminator”) discriminates against another person (in this sub-section referred to as the “aggrieved person”) on the ground of the pregnancy of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition—

- 25 (a) with which a substantially higher proportion of persons who are not pregnant comply or are able to comply;
- (b) which is not reasonable having regard to the circumstances of the case; and
- (c) with which the aggrieved person does not or is not able to comply.

Act done for 2 or more reasons

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

35 **Application of Act**

9. (1) In this section—

“Australia” includes the external Territories;

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

40 (2) Subject to this section, this Act applies throughout Australia.

(3) This Act has effect in relation to acts done within a Territory.

(4) The prescribed provisions of Part II, and the provisions of Division 3 of Part II, have effect as provided by sub-section (3) of this section and the following provisions of this section and not otherwise.

(5) Sections 14, 15, 16 and 28 have effect in relation to discrimination against, and sexual harassment of— 5

- (a) Commonwealth employees in connection with their employment as Commonwealth employees; and
- (b) persons seeking to become Commonwealth employees.

(6) Section 18 has effect in relation to discrimination by an authority or body in the exercise of a power under a Commonwealth law to confer, renew, extend, revoke or withdraw an authorization or qualification. 10

(7) The prescribed provisions of Part II have effect in relation to acts done, by or on behalf of—

- (a) the Commonwealth or the Administration of a Territory; or
- (b) a body or authority established for a public purpose by a law of the Commonwealth or a law of a Territory, 15

in the exercise of a power conferred by a law of the Commonwealth or a law of a Territory.

(8) The provisions of Division 3 of Part II have effect in relation to acts done by a person exercising, by or on behalf of— 20

- (a) the Commonwealth or the Administration of a Territory; or
- (b) a body or authority established for a public purpose by a law of the Commonwealth or a law of a Territory,

a power conferred by a law of the Commonwealth or a law of a Territory, being acts done by the person in connection with the exercise of that power. 25

(9) The provisions of Division 3 of Part II have effect in relation to acts done by a person who is a Commonwealth employee in connection with the person's duties as a Commonwealth employee or done by a person who is a member of the staff of an educational institution established by a law of the Commonwealth or a law of a Territory in connection with the person's duties as a member of the staff of such an educational institution. 30

(10) If the Convention is in force in relation to Australia, the prescribed provisions of Part II, and the provisions of Division 3 of Part II, have effect in relation to discrimination against women, to the extent that the provisions give effect to the Convention. 35

(11) The prescribed provisions of Part II have effect in relation to discrimination by a foreign corporation, or a trading or financial corporation formed within the limits of the Commonwealth, or by a person in the course of the person's duties or purported duties as an officer or employee of such a corporation. 40

(12) The provisions of Division 3 of Part II have effect in relation to acts done, by a person who is an officer or employee of a foreign corporation, or of a

trading or financial corporation formed within the limits of the Commonwealth, in connection with the person's duties as such an officer or employee.

5 (13) Without prejudice to the effect of sub-section (11), the prescribed provisions of Part II have effect in relation to discrimination by a trading or financial corporation formed within the limits of the Commonwealth, or by a person in the course of the person's duties or purported duties as an officer or employee of such a corporation, to the extent that the discrimination takes place in the course of the trading activities of the trading corporation or the
10 financial activities of the financial corporation, as the case may be.

(14) Without prejudice to the effect of sub-section (12), the provisions of Division 3 of Part II have effect in relation to acts done, by a person who is an officer or employee of a trading or financial corporation formed within the limits of the Commonwealth, in connection with any of the person's duties as
15 such an officer or employee that relate to the trading activities of the trading corporation or the financial activities of the financial corporation, as the case may be.

(15) The prescribed provisions of Part II have effect in relation to discrimination in the course of, or in relation to, the carrying on of the business
20 of—

- (a) banking, other than State banking not extending beyond the limits of the State concerned; or
- (b) insurance, other than State insurance not extending beyond the limits of the State concerned.

25 (16) The provisions of Division 3 of Part II have effect in relation to acts done in the course of, or in relation to, the carrying on of the business of—

- (a) banking, other than State banking not extending beyond the limits of the State concerned; or
- (b) insurance, other than State insurance not extending beyond the limits
30 of the State concerned.

(17) The prescribed provisions of Part II have effect in relation to discrimination in the course of, or in relation to, trade or commerce—

- (a) between Australia and a place outside Australia;
- (b) among the States;
- (c) between a State and a Territory; or
35
- (d) between 2 Territories.

(18) The provisions of Division 3 of Part II have effect in relation to acts done in the course of, or in relation to, trade or commerce—

- (a) between Australia and a place outside Australia;
- (b) among the States;
- (c) between a State and a Territory; or
40
- (d) between 2 Territories.

(19) The prescribed provisions of Part II have effect in relation to discrimination within Australia involving persons or things, or matters arising, outside Australia.

(20) The provisions of Division 3 of Part II have effect in relation to acts done within Australia involving persons or things, or matters arising, outside Australia.

Operation of State and Territory laws

10. (1) A reference in this section to this Act is a reference to this Act as it has effect by virtue of any of the provisions of section 9 other than sub-section 9 (10).

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

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

(4) Where—

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

(b) a person has made a complaint, instituted a proceeding or taken any other action under that law in respect of an act or omission in respect of which the person would, but for this sub-section, have been entitled to make a complaint under this Act,

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

(5) Where—

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

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

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

Operation of State and Territory laws that further objects of Convention

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

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

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

(4) Where—

- 5 (a) a law of a State or Territory that furthers the objects of the Convention deals with a matter dealt with by this Act; and
- (b) a person has made a complaint, instituted a proceeding or taken any other action under that law in respect of an act or omission in respect of which the person would, but for this sub-section, have been entitled to make a complaint under this Act,

10 the person is not entitled to make a complaint or institute a proceeding under this Act in respect of that act or omission.

(5) Where—

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

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

Extent to which Act binds the Crown

25 **12. (1)** This Act binds the Crown in right of the Commonwealth and of Norfolk Island but, except as otherwise expressly provided by this Act, does not bind the Crown in right of a State.

(2) Nothing in this Act renders the Crown in right of the Commonwealth, of a State or of Norfolk Island liable to be prosecuted for an offence.

Extent to which Act applies to instrumentalities of States

13. (1) Section 14 does not apply in relation to employment by an instrumentality of a State.

30 (2) Section 28 does not apply in relation to an act done by an employee of a State or of an instrumentality of a State.

PART II — PROHIBITION OF DISCRIMINATION

Division 1—Discrimination in Work

Discrimination against applicants and employees

35 **14. (1)** It is unlawful for an employer to discriminate against a person on the ground of the person's sex, marital status or pregnancy—

- (a) in the arrangements made for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment; or

(c) in the terms or conditions on which employment is offered.

(2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's sex, marital status or pregnancy—

(a) in the terms or conditions of employment that the employer affords the employee; 5

(b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;

(c) by dismissing the employee; or

(d) by subjecting the employee to any other detriment. 10

(3) Nothing in paragraph (1) (a) or (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

Discrimination against commission agents

 15

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

(a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent;

(b) in determining who should be engaged as a commission agent; or 20

(c) in the terms or conditions on which the person is engaged as a commission agent.

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

(a) in the terms or conditions that the principal affords the commission agent as a commission agent; 25

(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; 30

(c) by terminating the engagement; or

(d) by subjecting the commission agent to any other detriment.

Discrimination against contract workers

16. It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's sex, marital status or pregnancy— 35

(a) in the terms or conditions on which the principal allows the contract worker to work;

(b) by not allowing the contract worker to work or continue to work;

(c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or 40

(d) by subjecting the contract worker to any other detriment.

Partnerships

17. (1) It is unlawful for 6 or more persons, being persons who are proposing to form themselves into a partnership, to discriminate against a person on the ground of the person's sex, marital status or pregnancy—

- 5 (a) in determining who should be invited to become a partner in the partnership; or
(b) in the terms or conditions on which the person is invited to become a partner in the partnership.

10 (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's sex, marital status or pregnancy—

- 15 (a) in determining who should be invited to become a partner in the partnership; or
(b) in the terms or conditions on which the person is invited to become a partner in the partnership.

(3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's sex, marital status or pregnancy—

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

Qualifying bodies

25 18. It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorization or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of the person's sex, marital status or pregnancy—

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

Registered organizations under the Conciliation and Arbitration Act

40 19. (1) It is unlawful for a registered organization, the committee of management of a registered organization or a member of the committee of management of a registered organization to discriminate against a person, on the ground of the person's sex, marital status or pregnancy—

- (a) by refusing or failing to accept the person's application for membership; or

- (b) in the terms or conditions on which the organization is prepared to admit the person to membership.

(2) It is unlawful for a registered organization, the committee of management of a registered organization or a member of the committee of management of a registered organization to discriminate against a person who is a member of the registered organization, on the ground of the member's sex, marital status or pregnancy—

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

Employment agencies

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

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

Division 2—Discrimination in Other Areas

Education

21. (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's sex, marital status or pregnancy—

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

(2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's sex, marital status or pregnancy—

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

(3) Nothing in this section applies to or in respect of a refusal or failure to accept a person's application for admission as a student at an educational institution where—

- (a) the educational institution is conducted solely for students of the opposite sex to the sex of the applicant; or
- (b) except in the case of an institution of tertiary education—education or training at the level at which the applicant is seeking education or

training is provided by the educational institution only or mainly for students of the opposite sex to the sex of the applicant.

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

Goods, services and facilities

5 22. (1) It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's sex, marital status or pregnancy—

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

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

Accommodation

20 23. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sex, marital status or pregnancy—

- (a) by refusing the other person's application for accommodation;
- (b) in the terms or conditions on which accommodation is offered to the other person; or
- 25 (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.

30 (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sex, marital status or pregnancy—

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

(3) Nothing in this section applies to or in respect of—

(a) the provision of accommodation in premises if—

- 40 (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and

- (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in sub-paragraph (i) or near relatives of such a person;
- (b) accommodation provided by a religious body; or
- (c) accommodation provided by a charitable or other non-profit-making body solely for persons of one sex or solely for persons of a particular marital status or particular marital statuses. 5
- (4) This section binds the Crown in right of a State.

Land

24. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sex, marital status or pregnancy— 10

- (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. 15

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

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

Clubs

25. (1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club on the ground of the person's sex, marital status or pregnancy— 20

- (a) by refusing or failing to accept the person's application for membership; or 25
- (b) in the terms or conditions on which the club is prepared to admit the person to membership.

(2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is a member of the club on the ground of the member's sex, marital status or pregnancy— 30

- (a) in the terms or conditions of membership that are afforded to the member;
- (b) by refusing or failing to accept the member's application for a particular class or type of membership; 35
- (c) by denying the member access, or limiting the member's access, to any benefit provided by the club;
- (d) by depriving the member of membership or varying the terms of membership; or 40
- (e) by subjecting the member to any other detriment.

(3) Nothing in sub-section (1) or (2) renders it unlawful to discriminate against a person on the ground of the person's sex if membership of the club is available to persons of the opposite sex only.

5 (4) Nothing in sub-section (1), other than paragraph (1) (a), or sub-section (2) renders it unlawful to discriminate against a person on the ground of the person's sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the club where—

(a) it is not practicable for the benefit to be used or enjoyed—

10 (i) simultaneously; or

(ii) to the same extent,

by both men and women; and

(b) either—

(i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other; or

15 (ii) men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.

(5) In determining any matter relating to the application of sub-section (4), regard shall be had to—

20 (a) the purposes for which the club is established;

(b) the membership of the club, including any class or type of membership;

(c) the nature of the benefits provided by the club;

(d) the opportunities for the use and enjoyment of those benefits by men and women; and

25 (e) any other relevant circumstances.

Administration of Commonwealth laws and programs

30 26. (1) It is unlawful for a person who performs any function or exercises any power under a Commonwealth law or for the purposes of a Commonwealth program, or has any other responsibility for the administration of a Commonwealth law or the conduct of a Commonwealth program, to discriminate against another person, on the ground of the other person's sex, marital status or pregnancy, in the performance of that function, the exercise of that power or the fulfilment of that responsibility.

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

Application forms, &c.

35 27. (1) Where, by virtue of a provision of Division 1 or this Division, it would be unlawful, in particular circumstances, for a person to discriminate against another person, on the ground of the other person's sex, marital status or pregnancy, 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 or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons of the opposite sex or of a

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different marital status, or persons who are not pregnant, as the case requires, would not, in circumstances that are the same or not materially different, be requested or required to provide.

(2) Nothing in sub-section (1) renders it unlawful for a person to request or require— 5

- (a) a person of a particular sex to provide information concerning such part of the last-mentioned person's medical history as relates to medical conditions that affect persons of that sex only; or
- (b) a person who is pregnant to provide medical information concerning the pregnancy. 10

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

Division 3—Discrimination Involving Sexual Harassment

Sexual harassment in employment

28. (1) It is unlawful for a person to harass sexually—

- (a) an employee of that person; 15
- (b) an employee of a person by whom the first-mentioned person is employed; or
- (c) a person who is seeking employment by the first-mentioned person or by an employer of the first-mentioned person.

(2) It is unlawful for a person to harass sexually— 20

- (a) a commission agent or contract worker of that person;
- (b) a commission agent or contract worker of a person of whom the first-mentioned person is a commission agent or contract worker; or
- (c) a person who is seeking to become a commission agent or contract worker of the first-mentioned person or of a person of whom the first-mentioned person is a commission agent or contract worker. 25

(3) A person shall, for the purposes of this section, be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and— 30

- (a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's employment or work or possible employment or possible work; or 35
- (b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's employment or work or possible employment or possible work. 40

(4) A reference in sub-section (3) to conduct of a sexual nature in relation to a person includes a reference to the making, to, or in the presence of, a

person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

Sexual harassment in education

5 29. (1) It is unlawful for a person who is a member of the staff of an educational institution to harass sexually a person who is a student at that educational institution or is seeking admission to that educational institution as a student.

10 (2) A person shall, for the purposes of this section, be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and—

15 (a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's studies or the other person's application for admission to an educational institution as a student; or

20 (b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's studies or the other person's application for admission to an educational institution as a student.

25 (3) A reference in sub-section (2) to conduct of a sexual nature in relation to a person includes a reference to the making, to, or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

Division 4—Exemptions

Certain discrimination on ground of sex not unlawful

30 30. (1) Nothing in paragraph 14 (1) (a) or (b), 15 (1) (a) or (b) or 16 (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with a position as an employee, commission agent or contract worker, being a position in relation to which it is a genuine occupational qualification to be a person of the opposite sex to the sex of the other person.

35 (2) Without limiting the generality of sub-section (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular sex (in this sub-section referred to as the "relevant sex") if—

40 (a) the duties of the position can be performed only by a person having particular physical attributes (other than attributes of strength or stamina) that are not possessed by persons of the opposite sex to the relevant sex;

 (b) the duties of the position involve performing in a dramatic performance or other entertainment in a role that, for reasons of

- authenticity, aesthetics or tradition, is required to be performed by a person of the relevant sex;
- (c) the duties of the position need to be performed by a person of the relevant sex to preserve decency or privacy because they involve the fitting of clothing for persons of that sex; 5
 - (d) the duties of the position include the conduct of searches of the clothing or bodies of persons of the relevant sex;
 - (e) the occupant of the position is required to enter a lavatory ordinarily used by persons of the relevant sex while the lavatory is in use by persons of that sex; 10
 - (f) the occupant of the position is required to live on premises provided by the employer or principal of the occupant of the position and—
 - (i) the premises are not equipped with separate sleeping accommodation and sanitary facilities for persons of each sex;
 - (ii) the premises are already occupied by a person or persons of the relevant sex and are not occupied by any person of the opposite sex to the relevant sex; and 15
 - (iii) it is not reasonable to expect the employer or principal to provide separate sleeping accommodation and sanitary facilities for persons of each sex; 20
 - (g) the occupant of the position is required to enter areas ordinarily used only by persons of the relevant sex while those persons are in a state of undress; or
 - (h) the position is declared, by regulations made for the purposes of this paragraph, to be a position in relation to which it is a genuine occupational qualification to be a person of a particular sex. 25

Pregnancy or childbirth

31. Nothing in Division 1 or 2 renders it unlawful for a person to discriminate against a man on the ground of his sex by reason only of the fact that the first-mentioned person grants to a woman rights or privileges in connection with pregnancy or childbirth. 30

Services for members of one sex

32. Nothing in Division 1 or 2 applies to or in relation to the provision of services the nature of which is such that they can only be provided to members of one sex. 35

Measures intended to achieve equality

33. Nothing in Division 1 or 2 renders it unlawful to do an act a purpose of which is to ensure that persons of a particular sex or marital status or persons who are pregnant have equal opportunities with other persons in circumstances in relation to which provision is made by this Act. 40

Accommodation provided for employees or students

34. (1) Nothing in Division 1 or 2 renders it unlawful for an employer who provides accommodation to employees of the employer to provide accommodation of different standards to different employees where—

- 5 (a) the standard of the accommodation provided to each employee is determined having regard to the number of persons in the household of the employee; and
- (b) it is not reasonable to expect the employer to provide accommodation of the same standard for all employees.

10 (2) Nothing in Division 1 or 2 applies to or in relation to the provision of accommodation, where the accommodation is provided solely for persons of one sex who are students at an educational institution.

Residential care of children

15 35. (1) Nothing in paragraph 14 (1) (a) or (b) or 16 (b) renders it unlawful for a person to discriminate against another person on the ground of the other person's sex in connection with a position as an employee or contract worker, where the duties of the position involve the care of a child or children in the place where the child or children resides or reside.

20 (2) Nothing in paragraph 14 (1) (a) or (b), 14 (2) (c) or 16 (b) renders it unlawful for a person to discriminate against another person on the ground of the other person's marital status in connection with a position as an employee or contract worker of a particular employer or principal, where—

- 25 (a) the duties of the position involve the care of a child or children in the place where the child or children resides or reside; and
- (b) it is intended that the spouse of the occupant of the position would also occupy a position as an employee or contract worker of that employer or principal.

Charities

36. (1) Nothing in Division 1 or 2 affects—

- 30 (a) a provision of a deed, will or other document, whether made before or after the commencement of this Act, that confers charitable benefits or enables charitable benefits to be conferred on persons of a class identified by reference to any one or more of the grounds of discrimination referred to in this Act; or
- 35 (b) an act that is done in order to give effect to such a provision.

(2) In this section—

“Australia” includes the external Territories;

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

Religious bodies

37. Nothing in Division 1 or 2 affects—

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order; 5
- (c) the selection or appointment of persons to perform duties or functions for the purposes of or in connection with, or otherwise to participate in, any religious observance or practice; or
- (d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion. 10

Educational institutions established for religious purposes

38. (1) Nothing in paragraph 14 (1) (a) or (b) or 14 (2) (c) renders it unlawful for a person to discriminate against another person on the ground of the other person's sex, marital status or pregnancy in connection with employment as a member of the staff of an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed. 15

(2) Nothing in paragraph 16 (b) renders it unlawful for a person to discriminate against another person on the ground of the other person's sex, marital status or pregnancy in connection with a position as a contract worker that involves the doing of work in an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed. 20 25 30

(3) Nothing in section 21 renders it unlawful for a person to discriminate against another person on the ground of the other person's marital status or pregnancy in connection with the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed. 35

Voluntary bodies

39. Nothing in Division 1 or 2 renders it unlawful for a voluntary body to discriminate against a person, on the ground of the person's sex, marital status or pregnancy, in connection with— 40

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

Acts done under statutory authority

40. (1) Nothing in Division 1 or 2 affects anything done by a person in direct compliance with—

- 5 (a) any other Act, any State Act, or any law of a Territory, in force at the commencement of this Act;
- (b) a regulation, rule, by-law, determination or direction in force at the commencement of this Act made under an Act, State Act or law of a Territory;
- (c) a determination or decision of the Commission;
- 10 (d) an order of a court; or
- (e) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment.

(2) Except in relation to the operation of—

- (a) the *Social Security Act 1947*;
- 15 (b) the *Compensation (Commonwealth Government Employees) Act 1971*;
- (c) the *Repatriation Act 1920*;
- (d) the *Seamen's War Pensions and Allowances Act 1940*; and
- 20 (e) the *Papua New Guinea (Members of the Forces Benefits) Act 1957*,

paragraphs (1) (a) and (b) shall, except to the extent that regulations made for the purposes of this sub-section otherwise provide, cease to be in force at the expiration of 2 years after the commencement of this Act.

(3) Regulations made for the purposes of sub-section (2) may provide generally in relation to the application of paragraphs (1) (a) and (b) or may make provision in relation to the application of paragraph (1) (a) or (b) in relation to specified legislation.

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(4) Where paragraph (1) (a) or (b) ceases, by virtue of sub-section (2) or of regulations made under that sub-section, to be in force, whether generally or in relation to particular legislation, that paragraph shall, to the extent that it so ceases to be in force, be deemed for all purposes to have been repealed by an Act other than this Act.

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(5) The reference in sub-section (2) to the *Repatriation Act 1920* includes a reference to that Act as it has effect by virtue of the operation of the *Interim Forces Benefits Act 1947*, the *Repatriation (Far East Strategic Reserve) Act 1956* or the *Repatriation (Special Overseas Service) Act 1962*.

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(6) Nothing in Division 1 or 2 affects anything done by a person in compliance with a provision of a law of the Commonwealth, of a State or of a Territory, being a provision that is included for the purpose referred to in section 33.

40 **Superannuation and insurance**

41. (1) Nothing in Division 1 or 2 renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex or

marital status, in the terms or conditions appertaining to a superannuation or provident fund or scheme.

(2) Sub-section (1) may be repealed by a regulation, and such a regulation shall come into operation—

- (a) on a date specified in the regulation, being a date not earlier than 12 months after the making of the regulation; or
- (b) at the expiration of the period of 2 years immediately after the commencement of this Act,

whichever is later.

(3) Where a regulation made under sub-section (2) comes into operation, sub-section (1) shall thereupon be deemed for all purposes to have been repealed by an Act other than this Act.

(4) Nothing in Division 1 or 2 renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, with respect to the terms on which an annuity, a life assurance policy, a policy of insurance against accident or any other policy of insurance is offered to, or may be obtained by, the other person, where the discrimination is—

- (a) based upon actuarial or statistical data from a source on which it is reasonable for the first-mentioned person to rely; and
- (b) reasonable having regard to the matter of the data and any other relevant factors.

Sport

42. (1) Nothing in Division 1 or 2 renders it unlawful to exclude persons of one sex from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.

(2) Sub-section (1) does not apply in relation to the exclusion of persons from participation in—

- (a) the coaching of persons engaged in any sporting activity;
- (b) the umpiring or refereeing of any sporting activity;
- (c) the administration of any sporting activity;
- (d) any prescribed sporting activity; or
- (e) sporting activities by children who have not yet attained the age of 12 years.

Combat duties, &c.

43. (1) Nothing in Division 1 or 2 renders it unlawful for a person to discriminate against a woman on the ground of her sex in connection with employment, engagement or appointment in the Defence Force—

- (a) in a position involving the performance of combat duties or combat-related duties; or
- (b) in prescribed circumstances in relation to combat duties or combat-related duties.

(2) In this section—

“combat duties” means such duties as are declared by the regulations to be combat duties for the purposes of this section;

“combat-related duties” means such duties as are declared by the regulations to be combat-related duties for the purposes of this section.

Commission may grant exemptions

44. (1) The Commission may, on application by a person, by instrument in writing, grant to the person an exemption from the operation of a specified provision of Division 1 or 2.

(2) The Commission may, on application by a person to whom an exemption from a provision of Division 1 or 2 has been granted under sub-section (1), being an application made before the expiration of the period for which that exemption was granted, grant to the person a further exemption from the operation of that provision.

(3) An exemption or further exemption—

(a) may be granted subject to such terms and conditions as are specified in the instrument;

(b) may be expressed to apply only in such circumstances, or in relation to such activities, as are specified in the instrument; and

(c) shall be granted for a specified period not exceeding 5 years.

Review by Administrative Appeals Tribunal

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

Notice of decisions to be published

46. (1) The Commission shall, not later than one month after it makes a decision under section 44, cause to be published in the *Gazette* a notice of the making of the decision—

(a) setting out its findings on material questions of fact;

(b) referring to the evidence on which those findings were based;

(c) giving the reasons for the making of the decision; and

(d) containing a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates by or on behalf of any person or persons whose interests are affected by the decision.

(2) Any failure to comply with the requirements of sub-section (1) in relation to a decision does not affect the validity of the decision.

Effect of exemptions

47. Nothing in Division 1 or 2 renders it unlawful for a person who has been granted an exemption from a provision of that Division, or a person in the

employment or under the direction or control of a person who has been granted such an exemption, to do an act in accordance with the provisions of the instrument by which the exemption was granted.

PART III—INQUIRIES AND CIVIL PROCEEDINGS

Division 1—Preliminary

5

Functions of Human Rights Commission

48. (1) In addition to the functions of the Human Rights Commission under the *Human Rights Commission Act 1981*, the Commission has the following functions:

- (a) to inquire into alleged infringements of Part II, 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 44; 15
- (d) to promote an understanding and acceptance of, and compliance with, this Act;
- (e) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting the objects of this Act; 20
- (f) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to the objects of this Act, and to report to the Minister the results of any such examination; 25
- (g) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to discrimination on the ground of sex, marital status or pregnancy or to discrimination involving sexual harassment; and 30
- (h) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Commission shall not regard an enactment or proposed enactment as being inconsistent with or contrary to the objects of this Act for the purposes of paragraph (1) (f) by reason of a provision of the enactment or proposed enactment that is included for the purpose referred to in section 33. 35

(3) If the Commissioner is a member of the Commission, the Commissioner shall not participate in any inquiry held by the Commission under Division 3 or attend any meeting of the Commission, be present during any deliberation of the Commission, or take part in any decision of the Commission, in connection with such an inquiry. 40

Functions of Commissioner

5 **49. (1)** The functions of the Commission under paragraph 48 (1) (a) and the function of the Commission under paragraph 48 (1) (h), to the extent that it relates to the performance of the first-mentioned functions, shall be performed by the Commissioner on behalf of the Commission.

(2) In the performance of a function on behalf of the Commission, the Commissioner is subject to the directions of the Commission.

(3) The Commission is not entitled to give to the Commissioner for the purposes of sub-section (2)—

- 10 (a) a direction in relation to a particular matter; or
(b) a direction that is inconsistent with the objects of this Act.

Complaints

15 **50. (1)** A complaint in writing alleging that a person has done an act that is unlawful by virtue of a provision of Part II 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 another person or other persons aggrieved by the act;
20 (b) 2 or more persons aggrieved by the act, on their own behalf or on behalf of themselves and another person or other persons aggrieved by the act;
(c) a person or persons included in a class of persons aggrieved by the act, on behalf of the persons included in that class of persons; or
25 (d) a trade union of which a person or persons, or persons included in a class of persons, aggrieved by the act is a member or are members, on behalf of that person, those persons or persons included in that class of persons, as the case may be.

(2) In this section, "trade union" means—

- 30 (a) an organization of employees that is a registered organization;
(b) a trade union within the meaning of any State Act or law of a Territory; or
(c) any other similar body.

Commissioner deemed to be a complainant

51. Where—

- 35 (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 58, then, for the purposes of any inquiry into the matter by the Commission, this
40 Act has effect as if—
(c) the matter had been the subject of a complaint;

- (d) the reference to the complainant in section 64 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 persons who are, alleged to have done the act to which the matter relates.

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Division 2—Inquiries by Commissioner

Inquiries by Commissioner

52. (1) Where—

- (a) a complaint relating to an alleged unlawful act is made to the Commission under section 50; or
- (b) it appears to the Commission that a person has done an act that is unlawful by virtue of a provision of Part II,

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

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(2) The Commissioner may decide not to inquire into an act, or, if the Commissioner has commenced to inquire into an act, decide not to continue to inquire into the act, if—

- (a) the Commissioner is satisfied that the act is not unlawful by reason of a provision of Part II;
- (b) the Commissioner is of the opinion that the person aggrieved by the act does not desire, or none of the persons aggrieved by the act desires, that the inquiry be made or continued;
- (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; or
- (d) in a case where a complaint has been made to the Commission in relation to the act, the Commissioner is of the opinion that the complaint was frivolous, vexatious, misconceived or lacking in substance.

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(3) Where the Commissioner decides not to inquire into, or not to continue to inquire into, an act in respect of which a complaint was made to the Commission, the Commissioner shall give notice in writing to the complainant or each of the complainants of that decision, of the reasons for that decision and of the rights of the complainant or each of the complainants under sub-section (4).

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(4) Where the Commissioner has given a complainant a notice under sub-section (3), the complainant may, within 21 days after receipt of the notice, by notice in writing served on the Commissioner, require the Commissioner to refer the complaint to the Commission.

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(5) On receipt of a notice under sub-section (4), the Commissioner shall refer the complaint to the Commission together with a report relating to any inquiries made by the Commissioner into the complaint.

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

Application for interim determination under section 80

10 53. (1) The Commissioner, 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 sub-section 57 (1), may apply to the Commission for the making of an interim determination under section 80 or for the variation or revocation of any such determination.

15 (2) In relation to a matter arising under paragraph 52 (1) (b), the Commissioner may apply to the Commission for the making of an interim determination under section 80, or for the variation or revocation of any such determination, at any time.

Power to obtain information and documents

20 54. (1) Where the Commissioner has reason to believe that a person is capable of furnishing information (in this sub-section referred to as "relevant information") or producing documents (in this sub-section referred to as "relevant documents") relevant to an inquiry under this Division, the Commissioner may, by notice in writing served on the person, require the person, at such place, and within such period or on such date and at such time,
25 as are specified in the notice—

- (a) to furnish to the Commissioner, by writing signed by the person or, in the case of a body corporate, by an officer of the body corporate, such relevant information (if any) as is specified in the notice; and
- 30 (b) to produce to the Commissioner such relevant documents (if any) as are specified in the notice.

(2) Where documents are produced to the Commissioner in accordance with a requirement under sub-section (1), the Commissioner—

- (a) may take possession of, and may make copies of, or take extracts from, the documents;
- 35 (b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry to which the documents relate; and
- (c) during that period shall 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 such
40 of the documents as that person would be so entitled to inspect.

Directions to persons to attend compulsory conference

55. (1) For the purpose of inquiring into an act, and endeavouring to settle the matter to which the act relates, in accordance with section 52, the Commissioner may, by notice in writing, direct the persons referred to in sub-section (2) of this section to attend, at a time and place specified in the notice, a conference presided over by the Commissioner or a person appointed by the Commissioner. 5

(2) Directions under sub-section (1) to attend a conference in relation to an act shall be given to—

- (a)** where a complaint was made to the Commission in relation to that act—the complainant, or all the complainants, as the case requires; 10
- (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. 15

(3) A person who has been given a direction under sub-section (1) to attend a conference is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at the conference. 20

(4) The Commissioner may, in a notice given to a person under sub-section (1), require the person to produce such documents at the conference as are specified in the notice.

Compulsory conference

56. (1) The person presiding at a conference held under this Division may require a person attending the conference to produce a document. 25

(2) A conference under this Division shall be held in private and, subject to this Act, shall be conducted in such manner as the person presiding at the conference thinks fit.

(3) Subject to sub-section (4), a body of persons, whether corporate or unincorporate, that is directed under section 55 to attend a conference shall be deemed to attend if an officer or employee of that body attends on behalf of that body. 30

(4) Except with the consent of the person presiding at a conference under this Division— 35

- (a)** a natural person is not entitled to be represented at the conference by another person; and
- (b)** a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than an officer or employee of that body. 40

Reference of matters to the Commission

57. (1) Where the Commissioner—

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

the Commissioner shall 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 sub-section (1) shall 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).

(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.

Division 3—Inquiries by Human Rights Commission

Reference of matter to the Commission by the Minister

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

Inquiries into complaints

59. (1) Subject to sub-section (2), the Commission shall hold an inquiry into each complaint or matter referred to it under sub-section 52 (5) or 57 (1) or section 58.

(2) The Commission shall not hold, or shall discontinue, an inquiry into a complaint or matter referred to it—

- (a) in the case of a complaint or matter referred to it under sub-section 52 (5) or 57 (1)—if the complainant notifies the Commission that the complainant does not wish the inquiry to be held or to continue; or
- (b) in the case of a matter referred to it under section 58—if the Minister notifies the Commission that the Minister does not wish the inquiry to be held or to continue.

Quorum for purpose of inquiry

60. (1) Notwithstanding section 28 of the *Human Rights Commission Act 1981*, for the purpose of the holding of inquiries by the Commission under this Act, a quorum of the Commission is constituted by 3 members at least one of whom is a legally qualified person.

(2) Where the Chairman is not present at an inquiry held by the Commission—

(a) if only one of the members present is a legally qualified person—that member shall preside; or

(b) if 2 or more of the members present are legally qualified persons—the members present shall elect one of those persons to preside at that inquiry. 5

(3) In this section, “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 10

(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.

Single inquiry in relation to several complaints

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61. Where 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 in relation to those complaints.

Joinder of parties by the Commission

62. Where, before the holding of an inquiry, or at any stage 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 that person, join that person as a party to the inquiry. 20

Notice of inquiry and rights of parties at inquiry

63. (1) The Commission— 25

(a) shall 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) shall give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Commission. 30

(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. 35

Parties to an inquiry

64. The parties to an inquiry shall 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

65. (1) A party to an inquiry—

(a) shall appear personally or, where the party is a body of persons, whether corporate or unincorporate, by an officer, employee or agent of the body; and

(b) may—

(i) if the Commission has made arrangements under sub-section 68 (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.

(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

66. (1) Subject to sub-section (2), an inquiry shall be held in public.

(2) The Commission may, of its own motion 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, &c.

67. (1) The Commission may direct that—

(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,

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

(2) Nothing in this section shall be taken to derogate from the Commission's powers under section 66.

Counsel assisting the Commission

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

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

Determination of representative complaints

69. At an inquiry held in respect of a complaint that appears to the Commission to be a representative complaint, the Commission shall determine, as a preliminary matter, whether that complaint should be dealt with as a representative complaint.

Matters to be considered in determination of representative complaints

70. (1) The Commission shall not deal with a complaint as a representative complaint unless it is satisfied that the complaint was made on behalf of persons other than the complainant in good faith.

(2) In considering whether a complaint was made on behalf of persons other than the complainant in good faith, the Commission shall satisfy itself—

(a) that—

- (i) the complainant is a member of a class of persons, the members of which class have been affected, or may reasonably be likely to be affected, by the conduct of the respondent; 10
- (ii) the complainant has in fact been affected by the conduct of the respondent;
- (iii) the class is so numerous that joinder of all its members is impracticable;
- (iv) there are questions of law or fact common to all members of the class; 15
- (v) the claims of the complainant are typical of the claims of the class;
- (vi) multiple complaints would be likely to produce varying determinations that could have incompatible or inconsistent results for the individual members of the class; and 20
- (vii) the respondent has acted on grounds apparently applying to the class as a whole, thereby making relief appropriate for the class as a whole; or

(b) that, notwithstanding that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint. 25

Amendment of representative complaints

71. (1) Where the Commission is satisfied that a complaint could be dealt with as a representative complaint if the class of persons 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. 30

(2) Where 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 persons or the description of the class of persons on whose behalf the complaint was lodged so that the complaint can be dealt with as a complaint other than a representative complaint. 35

Ordinary complaints not precluded by representative complaints

72. Nothing in this Part prevents a person from lodging a complaint, other than a representative complaint, under section 50, notwithstanding that the conduct in respect of which the complaint is lodged is also the conduct in respect of which a representative complaint has been lodged. 40

Resolution of complaint by conciliation

73. 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
- (b) shall 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.

Evidence and findings in other proceedings

74. 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;
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the inquiry; and
- (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

75. (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.

(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.

(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.

Retention and copying of documents

76. 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, &c.

77. (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 such manner as it thinks fit;
- (b) shall 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, in its opinion, 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 shall determine any question relating to the admissibility of evidence and any other question of law or procedure.

Consideration of exceptions and exemptions

78. In determining whether an act is unlawful by reason of a provision of Division 1 or 2 of Part II, 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, &c., complaints

79. Where, at any stage of an inquiry, the Commission is satisfied that a complaint is frivolous, vexatious, misconceived, lacking in substance or relates to an act that is not unlawful by reason of a provision of Part II, it may dismiss the complaint.

Making of interim determination

80. (1) The Commission, or, where the Chairman is of the opinion that it is expedient that the Chairman alone should perform the functions of the Commission under this section, the Chairman, may, on the application of the Commissioner under section 53 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—

- (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) An interim determination under sub-section (1) is not binding or conclusive between any of the parties to the determination.

Determination or other decision of the Commission

81. (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 rendered unlawful by this Act and should not repeat or continue such unlawful conduct;
 - (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;

- (iii) a declaration that the respondent should employ or re-employ the complainant;
- (iv) except where the complaint was dealt with as a representative complaint—a declaration that the respondent should pay to the complainant damages by way of compensation for any loss or damage suffered by reason of the conduct of the respondent;
- (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;
- (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 sub-section (1) is not binding or conclusive between any of the parties to the determination.

(3) The Commission may, in the making of a determination under sub-section (1), state any findings of fact upon which the determination is based.

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

Proceedings in Federal Court

82. (1) The Commission or complainant may institute a proceeding in the Federal Court for an order to enforce a determination made pursuant to sub-section 80 (1) or 81 (1).

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

(3) Orders made by the Federal Court under sub-section (2) may give effect to a determination of the Commission.

Assistance in proceedings before Commission

83. (1) Where—

- (a) a person has made a complaint in respect of which the Commission has held an inquiry under section 59 and the Commission has found the complaint to be substantiated; or
- (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 59 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.

(2) Where a recommendation is made by the Commission under sub-section (1) in relation to a person, the Attorney-General may authorize the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such financial assistance in respect of expenses incurred by the person in connection with the inquiry as the Attorney-General determines. 5

Assistance in proceedings before Federal Court

84. (1) A person who—

(a) has instituted or proposes to institute a proceeding before the Federal Court under section 82; or 10

(b) has done or is alleged to have done an act in respect of which a proceeding has been instituted in the Federal Court under section 82,

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

(2) Where an application is made by a person under sub-section (1) and the Attorney-General is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application be granted, the Attorney-General may authorize the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in respect of the proceedings as the Attorney-General determines. 15 20

PART IV—OFFENCES

Unlawful act not offence unless expressly so provided

85. Except as expressly provided by this Part, nothing in this Act makes it an offence to do an act that is unlawful by reason of a provision of Part II. 25

Advertisements

86. (1) A person shall 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 by reason of a provision of Part II. 30

Penalty:

(a) in the case of a natural person—\$1,000; or

(b) in the case of a body corporate—\$5,000.

(2) For the purposes of sub-section (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 sub-section to publish or display, in relation to an advertisement, shall be construed accordingly. 35 40

Failure to provide actuarial or statistical data

5 87. Where a person has engaged in an act of discrimination that would, but for sub-section 41 (4), be unlawful, the Commissioner or the Commission may, by notice in writing served on the person as prescribed, require the person, within 28 days after service of the notice on the person, to disclose to the Commissioner or to the Commission, as the case may be, the source of the actuarial or statistical data on which the act of discrimination was based and, where the Commissioner or the Commission, as the case may be, makes such a requirement of a person, the person shall not, without reasonable excuse, fail to
10 comply with the requirement.

Penalty:

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

Failure to attend conference

15 88. A person who has been given a direction under sub-section 55 (1) to attend a conference shall 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.

20 Penalty:

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

Failure to furnish information, &c.

25 89. A person shall not, without reasonable excuse, refuse or fail—

- (a) to furnish information; or
- (b) to produce a document,

when so required pursuant to section 54, 55 or 56.

Penalty:

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

Offences in relation to Commission

90. (1) A person served, as prescribed, with a summons to appear before the Commission as a witness shall not, without reasonable excuse—

- 35 (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 shall not, without reasonable excuse—

- 40 (a) refuse or fail to be sworn or make an affirmation;
- (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.

(3) A person shall not—

(a) interrupt an inquiry or proceedings of the Commission;

(b) use insulting language towards a member of the Commission when the member is exercising any powers or performing any functions as a member; 5

(c) make a publication in contravention of any direction given under section 67;

(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 10

(e) do any other act or thing that would, if the Commission were a court of record, constitute a contempt of that court. 15

Penalty:

(a) in the case of a natural person—\$1,000; or

(b) in the case of a body corporate—\$5,000.

Self-incrimination

91. (1) It is not a reasonable excuse for the purposes of section 89 for a person to refuse or fail to furnish information or produce a document that the furnishing of the information or the production of the document might incriminate the person, but evidence of the furnishing of the information or the production of the document is not admissible in evidence against the person in any civil or criminal proceeding before a court, other than a proceeding for an offence under section 93. 20 25

(2) Without limiting the generality of the expression “reasonable excuse” in section 90, it is hereby declared for the removal of doubt that it is a reasonable excuse for the purposes of that section for a person to refuse or fail to answer a question put to the person at an inquiry, or to refuse to produce a document, that the answer to the question or the production of the document might incriminate the person. 30

Particulars of complaints not to be communicated, &c.

92. (1) Subject to sub-section (2), where a complaint alleging that a person has done an act that is unlawful under Division 3 of Part II is lodged with the Commission under sub-section 50 (1), a person shall not make a record of, or divulge or communicate to any other person, any particulars of that complaint until— 35

(a) the Commissioner has commenced to inquire into the act; or

(b) where, under sub-section 52 (2), the Commissioner decides not to inquire into the act— 40

(i) if, within the period of 21 days after the complainant receives a notice under sub-section 52 (3) in relation to the complaint, the complainant has not served a notice under sub-section 52 (4)

on the Commissioner—the expiration of that period of 21 days;
or

(ii) in any other case—

(A) the Commission commences to hold an inquiry into the
complaint; or

(B) the complainant notifies the Commission that the
complainant does not wish the inquiry to be held,

whichever is the earlier.

(2) Nothing in sub-section (1) prohibits—

(a) the Commissioner, a member of the Commission, a member of the
staff assisting the Commission or a person acting under the direction or
authority of the Commission or of the Commissioner or pursuant to a
delegation under section 104 from making a record of, or divulging or
communicating, any particulars of a complaint in the performance of a
duty under or in connection with this Act or in the performance or
exercise of a function or power under this Act;

(b) a person from divulging or communicating any particulars of a
complaint to an authority of a State in accordance with an
arrangement in force under section 11 of the *Human Rights
Commission Act 1981*;

(c) a person from divulging or communicating any particulars of a
complaint to—

(i) the complainant or a person on whose behalf the complaint was
made;

(ii) the person alleged to have done the act to which the complaint
relates;

(iii) the legal representative of a person referred to in sub-paragraph
(i) or (ii); or

(iv) the employer or principal of the person referred to in
sub-paragraph (i) or (ii);

(d) a person who has made a complaint in respect of a particular matter
from divulging or communicating any particulars of the complaint
to—

(i) a person to whom, or an officer of a body to which, the
complainant is making a complaint or application in respect of
the same matter;

(ii) an officer of a tribunal in which the complainant is instituting
proceedings, or to which the complainant is making an
application, in respect of the same matter;

(iii) a near relative of the complainant; or

(iv) a person from whom the complainant is seeking or receiving
professional treatment, counselling or advice;

(e) a person (in this paragraph referred to as the “relevant person”) on
whose behalf a complaint has been made in respect of a particular

matter from divulging or communicating any particulars of the complaint to—

- (i) a person to whom, or an officer of a body to which, the relevant person is making a complaint or application in respect of the same matter; 5
 - (ii) an officer of a tribunal in which the relevant person is instituting proceedings, or to which the relevant person is making an application, in respect of the same matter;
 - (iii) a near relative of the relevant person; or
 - (iv) a person from whom the relevant person is seeking or receiving professional treatment, counselling or advice; or 10
- (f) an authority or person to whom particulars of a complaint may be divulged or communicated under paragraph (b), (c), (d) or (e) from making a record of those particulars.

False or misleading information

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93. A person shall not furnish 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.

Penalty:

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- (a) in the case of a natural person—\$2,500 or imprisonment for 3 months, or both; or
- (b) in the case of a body corporate—\$10,000.

Victimization

94. (1) A person shall not commit an act of victimization against another person. 25

Penalty:

- (a) in the case of a natural person—\$2,500 or imprisonment for 3 months, or both; or
- (b) in the case of a body corporate—\$10,000. 30

(2) For the purposes of sub-section (1), a person shall be taken to commit an act of victimization against another person if the first-mentioned person subjects, or threatens to subject, the other person to any detriment on the ground that the other person—

- (a) has made, or proposes to make, a complaint under this Act; 35
- (b) has brought, or proposes to bring, proceedings under this Act against any person;
- (c) has furnished, or proposes to furnish, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act; 40
- (d) has attended, or proposes to attend, a conference held under Part III;

- (e) has appeared, or proposes to appear, as a witness before the Commission in a proceeding under this Act;
- (f) has reasonably asserted, or proposes to assert, any rights of the person or the rights of any other person under this Act; or
- 5 (g) has made an allegation that a person has done an act that is unlawful by reason of a provision of Part II,

or on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in any of paragraphs (a) to (g), inclusive.

10 (3) It is a defence to a prosecution for an offence under sub-section (1) constituted by subjecting, or threatening to subject, a person to a detriment on the ground that the person has made an allegation that another person had done an act that was unlawful by reason of a provision of Part II if it is proved that the allegation was false and was not made in good faith.

15 **Obstruction, &c.**

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

Penalty:

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

PART V—SEX DISCRIMINATION COMMISSIONER

Sex Discrimination Commissioner

96. There shall be a Sex Discrimination Commissioner, who shall be appointed by the Governor-General.

25 **Terms and conditions of appointment**

97. (1) Subject to this section, the Commissioner holds office for such period, not exceeding 5 years, as is specified in the instrument of the person's appointment, but is eligible for re-appointment.

30 (2) A person who has attained the age of 65 years shall not be appointed or re-appointed as the Commissioner and a person shall not be appointed or re-appointed as the Commissioner for a period that extends beyond the day on which the person will attain the age of 65 years.

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

Remuneration of Commissioner

40 98. (1) The Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Remuneration Tribunal is in operation, the Commissioner shall be paid such remuneration as is prescribed.

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

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

Leave of absence

99. The Minister may grant leave of absence from duty to the Commissioner upon such terms and conditions as to remuneration or otherwise as the Minister determines. 5

Outside employment

100. The Commissioner shall not, except with the approval of the Minister, engage in paid employment outside the duties of the office of Commissioner. 10

Resignation

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

Termination of appointment

102. (1) The Governor-General may terminate the appointment of the Commissioner by reason of misbehaviour or of physical or mental incapacity. 15

(2) The Governor-General shall terminate the appointment of the Commissioner if the Commissioner—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; 20
- (b) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months; or
- (c) engages in paid employment outside the duties of the office of Commissioner otherwise than with the consent of the Minister. 25

Acting Commissioner

103. (1) The Minister may appoint a person to act as Commissioner—

- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or 30
- (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,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months. 35

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Commissioner; and
- (b) terminate such an appointment at any time.

5 (4) Where a person is acting as Commissioner in circumstances referred to in paragraph (1) (b) and the office of Commissioner becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

10 (5) The appointment of a person to act as Commissioner ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

15 (6) While a person is acting as Commissioner, the person has and may exercise all the powers and shall perform all the functions of the Commissioner under this Act.

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

PART VI—MISCELLANEOUS

Delegation

25 **104. (1)** The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its seal, delegate to a member of the Commission, the Commissioner, a member of the staff of the Commission or another person or body of persons all or any of the powers conferred on the Commission under this Act, other than—

- 30 (a) powers in connection with the performance of the functions that, under section 49, are to be performed by the Commissioner on behalf of the Commission; and
- (b) this power of delegation.

35 (2) The Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Commissioner, delegate to—

- (a) a member of the staff of the Commission; or
 - (b) any other person or body of persons,
- 40 approved by the Commission, all or any of the powers exercisable by the Commissioner under this Act, other than this power of delegation.

(3) A power delegated by the Commission under sub-section (1) or by the Commissioner under sub-section (2), when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commission or by the Commissioner, as the case may be.

(4) A delegation under this section by the Commission or by the Commissioner does not prevent the exercise of a power by the Commission or by the Commissioner, as the case may be.

Liability of persons involved in unlawful acts

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

Vicarious liability, &c.

106. (1) Subject to sub-section (2), where an employee or agent of a person does, in connection with the employment of the employee or with the duties of the agent as an agent—

(a) an act that would, if it were done by the person, be unlawful under Division 1 or 2 of Part II (whether or not the act done by the employee or agent is unlawful under Division 1 or 2 of Part II); or

(b) an act that is unlawful under Division 3 of Part II,

this Act applies in relation to that person as if that person had also done the act.

(2) Sub-section (1) does not apply in relation to an act of a kind referred to in paragraph (1) (a) or (b) done by an employee or agent of a person if it is established that the person took all reasonable steps to prevent the employee or agent from doing acts of the kind referred to in that paragraph.

Acts done on behalf of bodies

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

(2) Where a person attends a conference under Division 2 of Part III, or appears before the Commission under Division 3 of Part III, on behalf of a body of persons, whether corporate or unincorporate, any conduct by that person when so attending or appearing shall be deemed, for the purposes of this Act, to be conduct of the body.

Commonwealth deemed to be employer

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

Awards inconsistent with this Act not to be made

109. This Act is a prescribed Act for the purposes of sub-section 41A (1) of the *Conciliation and Arbitration Act 1904*.

Unlawful act not basis of civil action unless expressly so provided

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

Protection from civil actions

10 111. (1) The Commission, a member of the Commission, the Commissioner or a person acting under the direction or authority of the Commission or of the Commissioner or pursuant to a delegation under section 104 is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function, or in the exercise or purported exercise
15 of any power or authority, conferred on the Commission or the Commissioner.

(2) Where—

(a) a complaint has been made to the Commission; or

20 (b) a submission has been made, a document or information has been furnished, 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 furnished or the evidence was given.

25 Non-disclosure of private information

112. (1) A person who is, or has at any time been, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorized to perform or exercise any function or power of the Commission or the Commissioner or any function or power on
30 behalf of the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act, shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act or in the performance or exercise of such a function or power—

35 (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized;

40 (b) make use of any such information as is mentioned in paragraph (a); or
(c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$2,500 or imprisonment for 3 months, or both.

(2) A person who is, or has at any time been, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorized to perform or exercise any function or power of the Commission or the Commissioner or any function or power on behalf of the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act, shall not be required— 5

(a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized; or 10

(b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorized, 15

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

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

(a) divulging or communicating information, or producing a document, to an authority of a State in accordance with an arrangement in force under section 11 of the *Human Rights Commission Act 1981*; or 20

(b) divulging or communicating information, or producing a document, that is, or is included in a class of information that is or a class of documents that are, required or permitted by an Act to be divulged, communicated or produced, as the case may be. 25

(4) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to.

Information stored otherwise than in written form 30

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

Commissioner to furnish information 35

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

Jurisdiction of Federal Court

115. The Federal Court has jurisdiction with respect to matters arising under Part III. 40

Regulations

116. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
 - 5 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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SCHEDULE

Section 4

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION
AGAINST WOMEN

The States Parties to the present Convention,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE—continued

Have agreed on the following:

PART 1

Article 1

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

Article 2

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

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

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

Article 4

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

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

Article 5

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

SCHEDULE—continued**Article 6**

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

PART II**Article 7**

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

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

Article 8

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

Article 9

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

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

PART III**Article 10**

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

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely;
- (g) The same opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

SCHEDULE—continued

Article 11

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

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

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

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

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

Article 12

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

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

Article 13

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

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

Article 14

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

SCHEDULE—continued

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

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

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

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

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

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

Article 16

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

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

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

SCHEDULE—continued

PART V

Article 17

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

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

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

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

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

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

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

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

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

Article 18

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

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

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

Article 19

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

SCHEDULE—continued

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with Article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

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

Article 22

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

PART VI

Article 23

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

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

Article 24

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

Article 25

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

Article 26

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

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

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

SCHEDULE—continued

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

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

Article 29

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

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

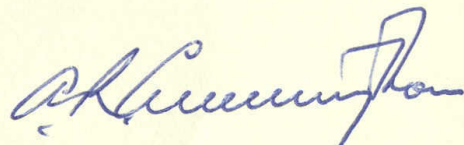
3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

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

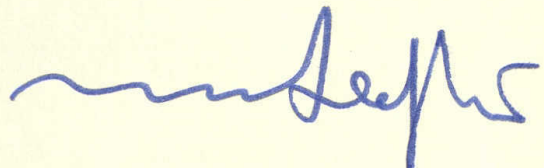
IN WITNESS WHEREOF the undersigned, duly authorised, have signed the present Convention.

I HEREBY CERTIFY that the above is a fair print of the Sex Discrimination Bill 1984 which originated in the Senate as the Sex Discrimination Bill 1983 and has been finally passed by the Senate and the House of Representatives.



Clerk of the Senate

IN THE NAME OF HER MAJESTY, I assent to this Act.



Governor-General

21 March 1984