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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Age Discrimination Bill 2003**

**No.     , 2003**

*(Attorney-General)*

**A Bill for an Act relating to discrimination on the  
ground of age**



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# Contents

<b>Part 1—Preliminary</b>	<b>1</b>
1 Short title .....	1
2 Commencement .....	1
3 Objects .....	2
4 Simplified outline .....	2
5 Definitions .....	3
6 Age discrimination not to include disability discrimination .....	6
7 Meaning of <i>act</i> —omission to act .....	6
8 Commonwealth taken to be employer .....	6
<b>Part 2—Application and constitutional provisions</b>	<b>7</b>
9 Geographical application of Act .....	7
10 Application of Act—constitutional powers .....	7
11 Compensation—constitutional safety net .....	10
12 Operation of State and Territory laws .....	10
13 Extent to which Act binds the Crown .....	11
<b>Part 3—Concept of age discrimination</b>	<b>12</b>
14 Discrimination on the ground of age—direct discrimination .....	12
15 Discrimination on the ground of age—indirect discrimination .....	12
16 Act done because of age and for other reason .....	13
<b>Part 4—Unlawful age discrimination</b>	<b>14</b>
<b>Division 1—Simplified outline</b>	<b>14</b>
17 Simplified outline .....	14
<b>Division 2—Discrimination in work</b>	<b>15</b>
18 Discrimination in employment .....	15
19 Discrimination against commission agents .....	16
20 Discrimination against contract workers .....	17
21 Partnerships .....	18
22 Qualifying bodies .....	19
23 Registered organisations under Schedule 1B to the <i>Workplace Relations Act 1996</i> .....	20
24 Employment agencies .....	21
25 Exemption for youth wages .....	22
<b>Division 3—Discrimination in other areas</b>	<b>23</b>
26 Education .....	23
27 Access to premises .....	24

---

---

28	Goods, services and facilities.....	24
29	Accommodation.....	25
30	Land.....	26
31	Administration of Commonwealth laws and programs .....	26
32	Requests for information .....	27
<b>Division 4—General exemptions</b>		28
33	Positive discrimination .....	28
34	Charities.....	28
35	Religious bodies.....	29
36	Voluntary bodies.....	29
37	Superannuation, insurance and credit—actuarial data etc. ....	30
38	Superannuation legislation.....	31
39	Direct compliance with laws, orders etc. ....	31
40	Taxation laws.....	33
41	Pensions, allowances and benefits etc. ....	33
42	Health.....	34
43	Migration and citizenship etc.....	35
<b>Division 5—Exemptions granted by Commission</b>		37
44	Commission may grant exemptions.....	37
45	Review by Administrative Appeals Tribunal .....	38
46	Notice of decisions to be published .....	38
47	Effect of exemptions.....	38
<b>Part 5—Offences</b>		39
<b>Division 1—General rules relating to offences</b>		39
48	Application of the <i>Criminal Code</i> .....	39
49	Unlawful act not offence unless expressly provided .....	39
<b>Division 2—Specific offences</b>		40
50	Advertisements .....	40
51	Victimisation .....	40
52	Failure to disclose source of actuarial or statistical data.....	42
<b>Part 6—Functions of Human Rights and Equal Opportunity Commission</b>		44
53	Functions of the Commission .....	44
<b>Part 7—Miscellaneous</b>		46
54	Power to require source of actuarial data or statistical data.....	46
55	Delegation.....	46
56	Liability of persons involved in unlawful acts.....	46
57	Conduct by directors, employees and agents.....	46

---

---

58	Protection from civil actions.....	48
59	Unlawful act not basis of civil action unless expressly so provided .....	49
60	Non-disclosure of private information.....	49
61	Regulations .....	51

**Schedule 1—Laws for which an exemption is provided  
by subsection 39(1)**

52



1     **A Bill for an Act relating to discrimination on the**  
2     **ground of age**

3     The Parliament of Australia enacts:

4     **Part 1—Preliminary**  
5

6     **1 Short title**

7             This Act may be cited as the *Age Discrimination Act 2003*.

8     **2 Commencement**

9             This Act commences on the day after it receives the Royal Assent.

Section 3

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**3 Objects**

The objects of this Act are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of age in the areas of work, education, access to premises, the provision of goods, services and facilities, accommodation, the disposal of land, the administration of Commonwealth laws and programs and requests for information; and
- (b) to ensure, as far as practicable, that everyone has the same rights to equality before the law, regardless of age, as the rest of the community; and
- (c) to allow appropriate benefits and other assistance to be given to people of a certain age, particularly younger and older persons, in recognition of their particular circumstances; and
- (d) to promote recognition and acceptance within the community of the principle that people of all ages have the same fundamental rights; and
- (e) to respond to demographic change by:
  - (i) removing barriers to older people participating in society, particularly in the workforce; and
  - (ii) changing negative stereotypes about older people; bearing in mind the international commitment to eliminate age discrimination reflected in the Political Declaration adopted in Madrid, Spain on 12 April 2002 by the Second World Assembly on Ageing.

**4 Simplified outline**

The following is a simplified outline of this Act:

- This Act makes it unlawful to discriminate on the ground of age.
- This Act has effect subject to certain geographical and constitutional limitations (see Part 2).
- Discrimination on the ground of age can be direct or indirect (see Part 3).



- It is unlawful to discriminate on the ground of age in relation to work (see Division 2 of Part 4) and certain other areas (see Division 3 of Part 4).
- It is not unlawful to discriminate on the ground of age if a particular exemption is applicable (see Divisions 4 and 5 of Part 4).
- It is an offence to do certain things related to age discrimination (see Part 5).
- Complaints can be made to the Commission about unlawful discrimination (see the definition of *unlawful discrimination* in subsection 3(1) of the *Human Rights and Equal Opportunity Commission Act 1986*, and section 46P of that Act).
- Functions are given to the Commission (see Part 6).
- Provision is made for miscellaneous matters such as delegation, protection from civil actions etc. (see Part 7).

## 5 Definitions

In this Act:

*act* has a meaning affected by section 7.

*administrative office* means:

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

but does not include:

Section 5

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- 1 (e) an office of member of the Assembly, member of the  
2 Executive, or Minister within the meaning of the *Australian*  
3 *Capital Territory (Self-Government) Act 1988*; or  
4 (f) an office of member of the Legislative Assembly, member of  
5 the Council or Minister of the Territory, within the meaning  
6 of the *Northern Territory (Self-Government) Act 1978*; or  
7 (g) an office of member of the Legislative Assembly within the  
8 meaning of the *Norfolk Island Act 1979*; or  
9 (h) an office or appointment in the Australian Public Service.

10 **age** includes age group.

11 Example: The reference in subsection 26(3) to students above a particular age  
12 includes a reference to students above a particular age group.

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

16 **Commonwealth employee** means a person who:

- 17 (a) is appointed or engaged under the *Public Service Act 1999*;  
18 or  
19 (b) holds an administrative office; or  
20 (c) is employed by a public authority of the Commonwealth; or  
21 (d) is employed under the *Australian Security Intelligence*  
22 *Organisation Act 1979*, the *Commonwealth Electoral Act*  
23 *1918* or the *Naval Defence Act 1910*; or  
24 (e) is a member of the Defence Force; or  
25 (f) is the Commissioner of the Australian Federal Police, a  
26 Deputy Commissioner of the Australian Federal Police, an  
27 AFP employee or a special member of the Australian Federal  
28 Police (all within the meaning of the *Australian Federal*  
29 *Police Act 1979*).

30 **Commonwealth law** means:

- 31 (a) an Act, regulation, or other instrument made under an Act; or  
32 (b) an ordinance of a Territory, a regulation made under an  
33 ordinance of a Territory, or another instrument made under  
34 an ordinance of a Territory; or

- 1 (c) an order or award made under a law mentioned in  
2 paragraph (a) or (b).

3 ***discriminate*** has the meaning given by sections 14 and 15.

4 ***employment*** includes:

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

10 ***function*** includes duty.

11 ***instrumentality of a State*** means a body or authority established  
12 for a public purpose by a law of a State and includes a local  
13 government body.

14 ***premises*** includes:

- 15 (a) a structure, building, aircraft, vehicle or vessel; and  
16 (b) a place (whether enclosed or built on or not); and  
17 (c) a part of premises (including premises of a kind mentioned in  
18 paragraph (a) or (b)).

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

20 ***public authority of the Commonwealth*** means:

- 21 (a) a body incorporated, whether before or after the  
22 commencement of this Act, for a public purpose by a law of  
23 the Commonwealth or a law of a Territory, being a body  
24 corporate employing staff on its own behalf; or  
25 (b) an authority or body, not being a body corporate, established,  
26 whether before or after the commencement of this Act, for a  
27 public purpose by, or in accordance with the provisions of, a  
28 law of the Commonwealth or a law of a Territory, being an  
29 authority or body employing staff on its own behalf; or  
30 (c) an incorporated company over which the Commonwealth, or  
31 a body or authority mentioned in paragraph (a) or (b), is in a  
32 position to exercise control.

33 ***services*** includes:

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Section 6

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- 1 (a) services relating to banking, insurance, superannuation and  
2 the provision of grants, loans, credit or finance; or  
3 (b) services relating to entertainment, recreation or refreshment;  
4 or  
5 (c) services relating to transport or travel; or  
6 (d) services relating to telecommunications; or  
7 (e) services of the kind provided by the members of any  
8 profession or trade; or  
9 (f) services of the kind provided by a government, a government  
10 authority or a local government body.

11 **State**, except in subsections 10(10) and (11), includes the  
12 Australian Capital Territory and the Northern Territory.

13 **Territory**, except in subsection 10(11) or in paragraph (c) of the  
14 definition of **administrative office** in this section, does not include  
15 the Australian Capital Territory or the Northern Territory.

16 **this Act** includes the regulations.

17 **6 Age discrimination not to include disability discrimination**

18 For the purposes of this Act, a reference to discrimination against a  
19 person on the ground of the person's age is taken not to include a  
20 reference to discrimination against a person on the ground of a  
21 disability of the person (within the meaning of the *Disability*  
22 *Discrimination Act 1992*).

23 **7 Meaning of act—omission to act**

24 For the purposes of this Act, omitting to do an act is taken to be the  
25 doing of an act and a reference to an act includes a reference to an  
26 omission to do an act.

27 **8 Commonwealth taken to be employer**

28 For the purposes of this Act, the Commonwealth is taken to be the  
29 employer of all Commonwealth employees.

## Part 2—Application and constitutional provisions

### 9 Geographical application of Act

(1) In this section:

*Australia* includes the external Territories.

*limited application provisions* means the provisions of Divisions 2 and 3 of Part 4 (other than sections 23, 31 and 32).

(2) Subject to this section and section 10, this Act has effect throughout Australia.

(3) Subject to section 10, the limited application provisions have effect in relation to discrimination within Australia even if the discrimination involves persons or things, or matters arising, outside Australia.

### 10 Application of Act—constitutional powers

(1) In this section:

*Australia* includes the external Territories.

*banking* has the same meaning as in paragraph 51(xiii) of the Constitution.

*foreign corporation* has the same meaning as in paragraph 51(xx) of the Constitution.

*insurance* has the same meaning as in paragraph 51(xiv) of the Constitution.

*limited application provisions* means the provisions of Divisions 2 and 3 of Part 4 (other than sections 23, 31 and 32).

*State banking* has the same meaning as in paragraph 51(xiii) of the Constitution.

Section 10

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1                   ***State insurance*** has the same meaning as in paragraph 51(xiv) of  
2                   the Constitution.

3                   ***trading or financial corporation*** has the same meaning as in  
4                   paragraph 51(xx) of the Constitution.

5                   (2) The limited application provisions have effect as provided in  
6                   section 9 and the following provisions of this section and not  
7                   otherwise.

8                   (3) Sections 18, 19 and 20 have effect in relation to discrimination  
9                   against:

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

12                   (b) persons seeking to become Commonwealth employees.

13                   (4) Section 22 has effect in relation to discrimination by an authority  
14                   or body in the exercise of a power under a Commonwealth law to  
15                   confer, renew, extend, revoke or withdraw an authorisation or  
16                   qualification.

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

18                   (6) The limited application provisions have effect in relation to acts  
19                   done by, or on behalf of:

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

21                   (b) a body or authority established for a public purpose by a law  
22                   of the Commonwealth or a law of a Territory;

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

25                   (7) The limited application provisions have effect in relation to  
26                   discrimination against a person on the ground of age to the extent  
27                   that the provisions:

28                   (a) give effect to the Discrimination (Employment and  
29                   Occupation) Convention, 1958 adopted by the General  
30                   Conference of the International Labour Organization on  
31                   25 June 1958 (a copy of the English text of which is set out  
32                   in Schedule 1 to the *Human Rights and Equal Opportunity*  
33                   *Commission Act 1986*); or

- 1 (b) give effect to the International Covenant on Civil and  
2 Political Rights (a copy of the English text of which is set out  
3 in Schedule 2 to the *Human Rights and Equal Opportunity*  
4 *Commission Act 1986*); or
- 5 (c) give effect to the International Covenant on Economic, Social  
6 and Cultural Rights; or
- 7 (d) give effect to the Convention on the Rights of the Child; or
- 8 (e) relate to matters external to Australia; or
- 9 (f) relate to matters of international concern.

10 Note: In 2003, the text of the international instruments mentioned in this  
11 subsection was available in the Australian Treaties Library of the  
12 Department of Foreign Affairs and Trade, accessible on the Internet  
13 through that Department's world-wide web site.

- 14 (8) The limited application provisions have effect in relation to  
15 discrimination:  
16 (a) by a foreign corporation, or a trading or financial corporation  
17 formed within the limits of the Commonwealth; or  
18 (b) by a person in the course of the person's duties or purported  
19 duties as an officer or employee of such a corporation.
- 20 (9) Without limiting the effect of subsection (8), the limited  
21 application provisions have effect in relation to discrimination:  
22 (a) by a trading or financial corporation formed within the limits  
23 of the Commonwealth; or  
24 (b) by a person in the course of the person's duties or purported  
25 duties as an officer or employee of such a corporation;  
26 to the extent that the discrimination takes place in the course of the  
27 trading activities of the trading corporation or the financial  
28 activities of the financial corporation, as the case may be.
- 29 (10) The limited application provisions have effect in relation to  
30 discrimination in the course of, or in relation to, the carrying on of  
31 the business of:  
32 (a) banking, other than State banking not extending beyond the  
33 limits of the State concerned; or  
34 (b) insurance, other than State insurance not extending beyond  
35 the limits of the State concerned.

Section 11

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- (11) The limited application provisions 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; or
  - (b) among the States; or
  - (c) between a State and a Territory; or
  - (d) between 2 Territories.

**11 Compensation—constitutional safety net**

- (1) If:
- (a) the operation of this Act would result in the acquisition of property otherwise than on just terms; and
  - (b) the acquisition would not be valid, apart from this section, because a particular person has not been compensated;
- the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (3) In this section:
- acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.
- just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**12 Operation of State and Territory laws**

- (1) A reference in this section to this Act is a reference to this Act as it has effect because of a provision of sections 9 and 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 age.



(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) If:

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

(b) a person has made a complaint or initiated a proceeding under that law in respect of an act in respect of which the person would, apart from this subsection, have been entitled to make a complaint under the *Human Rights and Equal Opportunity Commission Act 1986* alleging that the act is unlawful under a provision of Part 4 of this Act;

the person is not entitled to make a complaint or institute a proceeding under the *Human Rights and Equal Opportunity Commission Act 1986* alleging that the act is unlawful under a provision of Part 4 of this Act.

(5) If:

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

(b) an act 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

(6) Nothing in subsection (5) makes a person liable to be punished more than once in respect of the same act.

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

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

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

## Part 3—Concept of age discrimination

### 14 Discrimination on the ground of age—direct discrimination

For the purposes of this Act, a person (the *discriminator*) *discriminates* against another person (the *aggrieved person*) on the ground of the age of the aggrieved person if:

- (a) the discriminator treats or proposes to treat 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 age; and
- (b) the discriminator does so because of:
  - (i) the age of the aggrieved person; or
  - (ii) a characteristic that appertains generally to persons of the age of the aggrieved person; or
  - (iii) a characteristic that is generally imputed to persons of the age of the aggrieved person.

### 15 Discrimination on the ground of age—indirect discrimination

- (1) For the purposes of this Act, a person (the *discriminator*) *discriminates* against another person (the *aggrieved person*) on the ground of the age of the aggrieved person if:

- (a) the discriminator imposes, or proposes to impose, a condition, requirement or practice; and
- (b) the condition, requirement or practice is not reasonable in the circumstances; and
- (c) the condition, requirement or practice has, or is likely to have, the effect of disadvantaging persons of the same age as the aggrieved person.

- (2) For the purposes of paragraph (1)(b), the burden of proving that the condition, requirement or practice is reasonable in the circumstances lies on the discriminator.

1     **16 Act done because of age and for other reason**

2             If an act is done for 2 or more reasons, then, for the purposes of  
3             this Act, the act is taken to be done for the reason of the age of a  
4             person only if:

- 5                 (a) one of the reasons is the age of the person; and  
6                 (b) that reason is the dominant reason for doing the act.

1

2 **Part 4—Unlawful age discrimination**

3 **Division 1—Simplified outline**

4 **17 Simplified outline**

5 The following is a simplified outline of this Part:

- 6
- 7
- 8 (a) employment and related matters;
  - 9 (b) education;
  - 10 (c) access to premises;
  - 11 (d) provision of goods, services and facilities;
  - 12 (e) provision of accommodation;
  - 13 (f) disposal of land;
  - 14 (g) administration of Commonwealth laws and
  - 15 programs;
  - 16 (h) requests for information on which age
  - 17 discrimination might be based.
- 18
- 19 • This discrimination is unlawful in the particular circumstances
  - 20 set out in Divisions 2 and 3, unless one of the exemptions
  - applies as set out in Divisions 4 and 5.

**Division 2—Discrimination in work**

**18 Discrimination in employment**

- (1) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against a person on the ground of the other person's age:
- (a) in the arrangements made for the purpose of determining who should be offered employment; or
  - (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 or a person acting or purporting to act on behalf of an employer to discriminate against an employee on the ground of the employee's age:
- (a) in the terms or conditions of employment that the employer affords the employee; or
  - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.

*Exemption for domestic duties*

- (3) Paragraphs (1)(a) and (b) do not make it unlawful for a person to discriminate against another person, on the ground of the other person's age, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

*Exemption for inherent requirements*

- (4) Paragraphs (1)(a), (1)(b) and (2)(c) do not make it unlawful for an employer to discriminate against another person, on the ground of the other person's age, if the other person is unable to carry out the inherent requirements of the particular employment because of his or her age.

**Section 19**

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- 1                   (5) In deciding whether the other person is unable to carry out those  
2                   requirements because of his or her age, take into account:  
3                   (a) the other person's past training, qualifications and experience  
4                   relevant to the particular employment; and  
5                   (b) if the other person is already employed by the employer—the  
6                   other person's performance as an employee; and  
7                   (c) all other relevant factors that it is reasonable to take into  
8                   account.

9                   **19 Discrimination against commission agents**

- 10                   (1) It is unlawful for a principal to discriminate against a person on the  
11                   ground of the person's age:  
12                   (a) in the arrangements the principal makes for the purpose of  
13                   determining who should be engaged as a commission agent;  
14                   or  
15                   (b) in determining who should be engaged as a commission  
16                   agent; or  
17                   (c) in the terms or conditions on which the person is engaged as  
18                   a commission agent.
- 19                   (2) It is unlawful for a principal to discriminate against a commission  
20                   agent on the ground of the commission agent's age:  
21                   (a) in the terms or conditions that the principal affords the  
22                   commission agent as a commission agent; or  
23                   (b) by denying the commission agent access, or limiting the  
24                   commission agent's access, to opportunities for promotion,  
25                   transfer or training, or to any other benefits associated with  
26                   the position as a commission agent; or  
27                   (c) by terminating the engagement; or  
28                   (d) by subjecting the commission agent to any other detriment.

29                   *Exemption for inherent requirements*

- 30                   (3) Paragraphs (1)(a), (1)(b) and (2)(c) do not make it unlawful for a  
31                   principal to discriminate against another person, on the ground of  
32                   the other person's age, if the other person is unable to carry out the  
33                   inherent requirements of a commission agent because of his or her  
34                   age.

- 1 (4) In deciding whether the other person is unable to carry out those  
2 requirements because of his or her age, take into account:
- 3 (a) the other person's past training, qualifications and experience  
4 relevant to engagement as a commission agent; and
  - 5 (b) if the other person is already engaged by the principal as a  
6 commission agent—the other person's performance as a  
7 commission agent; and
  - 8 (c) all other relevant factors that it is reasonable to take into  
9 account.

10 *Definitions*

- 11 (5) In this section:

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

15 ***principal***, in relation to a commission agent, means a person for  
16 whom the commission agent does work as a commission agent.

17 **20 Discrimination against contract workers**

- 18 (1) It is unlawful for a principal to discriminate against a contract  
19 worker on the ground of the contract worker's age:
- 20 (a) in the terms or conditions on which the principal allows the  
21 contract worker to work; or
  - 22 (b) by not allowing the contract worker to work or continue to  
23 work; or
  - 24 (c) by denying the contract worker access, or limiting the  
25 contract worker's access, to any benefit associated with the  
26 work in respect of which the contract with the employer is  
27 made; or
  - 28 (d) by subjecting the contract worker to any other detriment.

29 *Exemption for inherent requirements*

- 30 (2) Paragraph (1)(b) does not make it unlawful for a principal to  
31 discriminate against another person, on the ground of the other

**Part 4** Unlawful age discrimination

**Division 2** Discrimination in work

Section 21

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1                    person's age, if the other person is unable to carry out the inherent  
2                    requirements of a contract worker because of his or her age.

- 3                    (3) In deciding whether the other person is unable to carry out those  
4                    requirements because of his or her age, take into account:
- 5                    (a) the other person's past training, qualifications and experience  
6                    relevant to working as a contract worker; and
  - 7                    (b) if the other person is already working for the principal as a  
8                    contract worker—the other person's performance as a  
9                    contract worker; and
  - 10                    (c) all other relevant factors that it is reasonable to take into  
11                    account.

12                    *Definitions*

- 13                    (4) In this section:

14                    ***contract worker*** means a person who does work for another person  
15                    under a contract between the employer of the first-mentioned  
16                    person and that other person.

17                    ***principal***, in relation to a contract worker, means a person for  
18                    whom the contract worker does work under a contract between the  
19                    employer of the contract worker and the person.

20                    **21 Partnerships**

- 21                    (1) It is unlawful for 6 or more persons who are proposing to form  
22                    themselves into a partnership to discriminate against another  
23                    person on the ground of the other person's age:
- 24                    (a) in determining who should be invited to become a partner in  
25                    the partnership; or
  - 26                    (b) in the terms or conditions on which the other person is  
27                    invited to become a partner in the partnership.
- 28                    (2) It is unlawful for any one or more of the partners in a partnership  
29                    consisting of 6 or more partners to discriminate against another  
30                    person on the ground of the other person's age:
- 31                    (a) in determining who should be invited to become a partner in  
32                    the partnership; or



- 1 (b) in the terms or conditions on which the other person is  
2 invited to become a partner in the partnership.
- 3 (3) It is unlawful for any one or more of the partners in a partnership  
4 consisting of 6 or more partners to discriminate against another  
5 partner in the partnership on the ground of the other partner's age:  
6 (a) by denying the other partner access, or limiting the other  
7 partner's access, to any benefit arising from being a partner  
8 in the partnership; or  
9 (b) by expelling the other partner from the partnership; or  
10 (c) by subjecting the partner to any other detriment.

11 *Exemption for inherent requirements*

- 12 (4) Paragraphs (1)(a), (2)(a) and (3)(b) do not make it unlawful for a  
13 person to discriminate against another person, on the ground of the  
14 other person's age, if the other person is unable to carry out the  
15 inherent requirements of a partner (in the proposed partnership or  
16 the partnership) because of his or her age.
- 17 (5) In deciding whether the other person is unable to carry out those  
18 requirements because of his or her age, take into account:  
19 (a) the other person's past training, qualifications and experience  
20 relevant to the proposed partnership or the partnership; and  
21 (b) if the other person is already a partner—the other person's  
22 performance as a partner; and  
23 (c) all other relevant factors that it is reasonable to take into  
24 account.

25 **22 Qualifying bodies**

- 26 (1) It is unlawful for an authority or body that is empowered to confer,  
27 renew, extend, revoke or withdraw an authorisation or qualification  
28 that is needed for or facilitates the practice of a profession, the  
29 carrying on of a trade or the engaging in of an occupation to  
30 discriminate against a person on the ground of the person's age:  
31 (a) by refusing or failing to confer, renew or extend the  
32 authorisation or qualification; or

**Part 4** Unlawful age discrimination

**Division 2** Discrimination in work

**Section 23**

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- 1 (b) in the terms or conditions on which it is prepared to confer  
2 the authorisation or qualification or to renew or extend the  
3 authorisation or qualification; or  
4 (c) by revoking or withdrawing the authorisation or qualification  
5 or varying the terms or the conditions upon which it is held.

6 *Exemption for inherent requirements*

- 7 (2) This section does not make it unlawful for an authority or body to  
8 discriminate against a person, on the ground of the person's age, if  
9 the person is unable to carry out the inherent requirements of the  
10 profession, trade or occupation because of his or her age.
- 11 (3) In deciding whether the person is unable to carry out those  
12 requirements because of his or her age, take into account:
- 13 (a) the person's past training, qualifications and experience  
14 relevant to the particular profession, trade or occupation; and  
15 (b) if the person is already a member of the profession, carrying  
16 on the trade or engaged in the occupation—the person's  
17 performance in the profession, trade or occupation; and  
18 (c) all other relevant factors that it is reasonable to take into  
19 account.

20 **23 Registered organisations under Schedule 1B to the *Workplace***  
21 ***Relations Act 1996***

- 22 (1) It is unlawful for a registered organisation, the committee of  
23 management of a registered organisation or a member of the  
24 committee of management of a registered organisation to  
25 discriminate against a person, on the ground of the person's age:
- 26 (a) by refusing or failing to accept the person's application for  
27 membership; or  
28 (b) in the terms or conditions on which the organisation is  
29 prepared to admit the person to membership.
- 30 (2) It is unlawful for a registered organisation, the committee of  
31 management of a registered organisation or a member of the  
32 committee of management of a registered organisation to  
33 discriminate against a person who is a member of the registered  
34 organisation, on the ground of the member's age:

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

6 *Definitions*

- 7 (3) In this section:

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

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

13 **24 Employment agencies**

- 14 (1) It is unlawful for an employment agency to discriminate against a  
15 person on the ground of the person's age:  
16 (a) by refusing to provide the person with any of its services; or  
17 (b) in the terms or conditions on which it offers to provide the  
18 person with any of its services; or  
19 (c) in the manner in which it provides the person with any of its  
20 services.

21 *Exemption for inherent requirements*

- 22 (2) This section does not make it unlawful for an employment agency  
23 to discriminate against a person, on the ground of the person's age,  
24 if the person is unable to carry out the inherent requirements of the  
25 work sought because of his or her age.
- 26 (3) In deciding whether the person is unable to carry out those  
27 requirements because of his or her age, take into account:  
28 (a) the person's past training, qualifications and experience  
29 relevant to the work sought; and  
30 (b) all other relevant factors that it is reasonable to take into  
31 account.

**Part 4** Unlawful age discrimination

**Division 2** Discrimination in work

Section 25

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1                                *Definition*

2                                (4) In this section:

3                                ***employment agency*** means any person who, or body that, whether  
4                                for payment or not, assists persons to find employment or other  
5                                work or assists employers to find employees or workers.

6                                **25 Exemption for youth wages**

7                                (1) This Division does not make it unlawful for a person to  
8                                discriminate against another person on the ground of the other  
9                                person's age, in relation to youth wages:

10                                (a) in the arrangements made for the purpose of determining who  
11                                should be offered work; or

12                                (b) in determining who should be offered work; or

13                                (c) in payment, or offer of payment, of remuneration for work.

14                                (2) In this section:

15                                ***youth wages*** means remuneration for persons who are under 21.

**Division 3—Discrimination in other areas**

**26 Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's age:
- (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 age:
- (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority; or
  - (b) by expelling the student; or
  - (c) by subjecting the student to any other detriment.

*Exemption for educational institutions established wholly or primarily for students above a particular age*

- (3) This section does not make it unlawful to discriminate against a person on the ground of the person's age in respect of admission to an educational institution established wholly or primarily for students above a particular age, if the person is not above that age.

*Definitions*

- (4) In this section:

**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.

Section 27

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**27 Access to premises**

It is unlawful for a person to discriminate against another person on the ground of the other person's age:

- (a) by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or
- (b) in the terms or conditions on which the first-mentioned person is prepared to allow the other person access to, or the use of, any such premises; or
- (c) in relation to the provision of means of access to such premises; or
- (d) by refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or
- (e) in the terms or conditions on which the first-mentioned person is prepared to allow the other person the use of any such facilities; or
- (f) by requiring the other person to leave such premises or cease to use such facilities.

**28 Goods, services and facilities**

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 age:

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

**29 Accommodation**

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

*Exemption for accommodation provider who is resident etc.*

- (3) This section does not apply to or in respect of the provision of accommodation in premises if:
- (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside on those premises; and
  - (b) the accommodation provided in those premises is for no more than 3 persons other than a person mentioned in paragraph (a) or near relatives of such a person.

*Definitions*

- (4) In this section:

Section 30

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1                    *accommodation* includes residential or business accommodation.

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

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

7                    **30 Land**

8                    (1) It is unlawful for a person, whether as principal or agent, to  
9                    discriminate against another person on the ground of the other  
10                    person's age:

- 11                    (a) by refusing or failing to dispose of an estate or interest in  
12                    land to the other person; or  
13                    (b) in the terms or conditions on which an estate or interest in  
14                    land is offered to the other person.

15                    *Exemption for disposal by will or by way of gift*

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

18                    **31 Administration of Commonwealth laws and programs**

19                    (1) It is unlawful for a person who:

- 20                    (a) performs any function or exercises any power under a  
21                    Commonwealth law or for the purposes of a Commonwealth  
22                    program; or  
23                    (b) has any other responsibility for the administration of a  
24                    Commonwealth law or the conduct of a Commonwealth  
25                    program;

26                    to discriminate against another person on the ground of the other  
27                    person's age in the performance of that function, the exercise of  
28                    that power or the fulfilment of that responsibility.

29                    *Definition*

30                    (2) In this section:



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

3                    **32 Requests for information**

4                    It is unlawful for a person (the ***first person***) to request or require  
5                    another person (the ***other person***) to provide information (whether  
6                    by way of completing a form or otherwise) if:

- 7                    (a) the information is requested or required in connection with,  
8                    or for the purposes of, the first person doing a particular act;  
9                    and  
10                    (b) under Division 2 or this Division, it would be unlawful in  
11                    particular circumstances for the first person, in doing that act,  
12                    to discriminate against the other person on the ground of the  
13                    other person's age; and  
14                    (c) persons of a different age would not be requested or required  
15                    to provide the information in circumstances that are the same  
16                    or not materially different.

**Division 4—General exemptions**

**33 Positive discrimination**

This Part does not make it unlawful for a person to discriminate against another person, on the ground of the other person's age, by an act that is consistent with the purposes of this Act, if:

- (a) the act provides a bona fide benefit to persons of a particular age; or

Example: This paragraph would cover a hairdresser giving a discount to a person holding a Seniors Card or a similar card, because giving the discount is an act that provides a bona fide benefit to older persons.

- (b) the act is intended to meet a need that arises out of the age of persons of a particular age; or

Example: Young people often have a greater need for welfare services (including information, support and referral) than other people. This paragraph would therefore cover the provision of welfare services to young homeless people, because such services are intended to meet a need arising out of the age of such people.

- (c) the act is intended to reduce a disadvantage experienced by people of a particular age.

Example: Older people are often more disadvantaged by retrenchment than are other people. This paragraph would therefore cover the provision of additional notice entitlements for older workers, because such entitlements are intended to reduce a disadvantage experienced by older people.

**34 Charities**

- (1) This Part does not:

- (a) affect a provision in a charitable instrument that confers charitable benefits, or enables charitable benefits to be conferred, wholly or in part on persons of a particular age; or  
(b) make unlawful any act done to give effect to such a provision.

- (2) In this section:

***Australia*** includes the external Territories.

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

4           **charitable instrument** means a deed, will or other document,  
5           whether made before or after the commencement of this Act, that  
6           confers charitable benefits or enables charitable benefits to be  
7           conferred on persons.

### 8           **35 Religious bodies**

9           This Part does not affect an act or practice of a body established for  
10          religious purposes that:

- 11           (a) conforms to the doctrines, tenets or beliefs of that religion; or  
12           (b) is necessary to avoid injury to the religious sensitivities of  
13          adherents of that religion.

### 14          **36 Voluntary bodies**

- 15           (1) This Part does not make it unlawful for a voluntary body to  
16          discriminate against a person, on the ground of the person's age, in  
17          connection with:

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

- 21           (2) In this section:

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

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

- 27           (a) a registered organisation; or  
28           (b) a body established by a law of the Commonwealth, of a State  
29          or of a Territory; or  
30           (c) an association that provides grants, loans, credit or finance to  
31          its members.

**37 Superannuation, insurance and credit—actuarial data etc.**

*Superannuation and insurance*

(1) Subsections (2) and (3) apply to the following:

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

(2) This Part does not make it unlawful for a person to discriminate against another person, on the ground of the other person's age:

- (a) in respect of the terms or conditions on which the annuity, policy or membership is offered to, or may be obtained by, the other person; or
- (b) by refusing to offer the annuity, policy or membership to the other person;

if the condition in subsection (3) is satisfied.

(3) The condition is satisfied if:

- (a) the discrimination:
  - (i) is based upon actuarial or statistical data on which it is reasonable for the first-mentioned person to rely; and
  - (ii) is reasonable having regard to the matter of the data and other relevant factors; or

**Note:** The Commission and the President can require the disclosure of the source of the actuarial or statistical data (see section 54).

- (b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the discrimination is reasonable having regard to any other relevant factors.

*Credit*

(4) This Part does not make it unlawful for a person to discriminate against another person, on the ground of the other person's age:

- 1 (a) in respect of the terms or conditions on which credit is  
2 provided to, or may be obtained by, the other person; or  
3 (b) by refusing to offer credit to the other person;  
4 if the condition in subsection (5) is satisfied.

5 (5) The condition is satisfied if the discrimination:

- 6 (a) is based upon actuarial or statistical data on which it is  
7 reasonable for the first-mentioned person to rely; and  
8 (b) is reasonable having regard to the matter of the data.

9 Note: The Commission and the President can require the disclosure of  
10 the source of the actuarial or statistical data (see section 54).

### 11 **38 Superannuation legislation**

- 12 (1) This Part does not make unlawful anything done by a person in  
13 direct compliance with:  
14 (a) a Commonwealth Act relating to superannuation; or  
15 (b) a regulation or any other instrument made under such an Act.
- 16 (2) This Part does not make unlawful anything done by an exempt  
17 public sector superannuation scheme (within the meaning of the  
18 *Superannuation Industry (Supervision) Act 1993*) in accordance  
19 with an Act of the Commonwealth, a State or a Territory, or a trust  
20 deed, by or under which the scheme is established.

### 21 **39 Direct compliance with laws, orders etc.**

22 *Acts, regulations and instruments mentioned in Schedule 1*

- 23 (1) This Part does not make unlawful anything done by a person in  
24 direct compliance with:  
25 (a) an Act mentioned in Schedule 1; or  
26 (b) a regulation or any other instrument mentioned in  
27 Schedule 1.

28 *Other Acts or regulations—2 year exemption period*

- 29 (2) This Part does not make unlawful anything done by a person, in  
30 direct compliance with any other Commonwealth Act or  
31 regulation, during the period:

**Part 4** Unlawful age discrimination

**Division 4** General exemptions

Section 39

---

- 1 (a) beginning on the day on which this Act commences; and  
2 (b) ending 2 years after that day.
- 3 (3) To avoid doubt, subsection (2) does not affect the operation of any  
4 other provision in this Division.

5 *State and Territory Acts, regulations and instruments*

- 6 (4) This Part does not make unlawful anything done by a person in  
7 direct compliance with:  
8 (a) an Act of a State or Territory; or  
9 (b) a regulation or any other instrument made under an Act of a  
10 State or Territory.
- 11 (5) Subsection (4) does not apply in relation to an Act, regulation or  
12 other instrument of a State or Territory if the Act, regulation or  
13 instrument is specified in regulations made for the purposes of this  
14 subsection.
- 15 (6) To avoid doubt, section 49A of the *Acts Interpretation Act 1901*  
16 does not prevent a regulation made for the purposes of  
17 subsection (5) from specifying an Act, regulation or instrument as  
18 in force at a particular time or as in force from time to time.

19 *Court orders*

- 20 (7) This Part does not make unlawful anything done by a person in  
21 direct compliance with an order of a court.

22 *Workplace relations*

- 23 (8) This Part does not make unlawful anything done by a person in  
24 direct compliance with any of the following:  
25 (a) an order or award of a court or tribunal having power to fix  
26 minimum wages;  
27 (b) a certified agreement (within the meaning of the *Workplace*  
28 *Relations Act 1996*);  
29 (c) an Australian workplace agreement (within the meaning of  
30 the *Workplace Relations Act 1996*).

1     **40 Taxation laws**

2             This Part does not make unlawful anything done by a person in  
3             direct compliance with a taxation law (within the meaning of the  
4             *Income Tax Assessment Act 1997*).

5     **41 Pensions, allowances and benefits etc.**

- 6             (1) This Part does not make unlawful anything done by a person in  
7             direct compliance with:
- 8                 (a) the *A New Tax System (Family Assistance) Act 1999*; or  
9                 (b) the *A New Tax System (Family Assistance) (Administration)*  
10                *Act 1999*; or  
11                (c) the *Child Support (Assessment) Act 1989*; or  
12                (d) the *Child Support (Registration and Collection) Act 1988*; or  
13                (e) the *Defence Service Homes Act 1918*; or  
14                (f) the *Disability Services Act 1986*; or  
15                (g) the *Social Security Act 1991*; or  
16                (h) the *Social Security (Administration) Act 1999*; or  
17                (i) the *Social Security (International Agreements) Act 1999*; or  
18                (j) the *Veterans' Entitlements Act 1986*.
- 19            (2) This Part does not make unlawful anything done by a person in  
20            direct compliance with a regulation under an Act mentioned in  
21            paragraph (1)(a), (b), (c), (d), (f), (g), (h) or (i).
- 22            (3) This Part does not make unlawful anything done by a person in  
23            direct compliance with the CDEP Scheme (within the meaning of  
24            the *Social Security Act 1991*).
- 25            (4) This Part does not make unlawful anything done by a person in  
26            direct compliance with a determination in force under paragraph  
27            88A(1)(c) of the *Veterans' Entitlements Act 1986*.
- 28            (5) This Part does not make unlawful anything done by a person in  
29            direct compliance with the Approved Guide to the Assessment of  
30            Rates of Veterans' Pensions (within the meaning of the *Veterans'*  
31            *Entitlements Act 1986*).

**42 Health**

*Exempted health programs*

- (1) This Part does not make an exempted health program (see subsection (6)) unlawful.

Example: A program for providing free influenza vaccines to older people, based on evidence showing that older people are at greater risk of complications as a result of influenza than are people of different ages, would be covered by this subsection.

- (2) This Part does not make unlawful anything done by a person in accordance with an exempted health program.

Example: A person providing free influenza vaccines to older people in accordance with an exempted health program would be covered by this subsection.

*Individual decisions—health or medical goods or services*

- (3) This Part does not make it unlawful for a person to discriminate against another person, on the ground of the other person's age, by taking the other person's age into account in making a decision relating to health goods or services or medical goods or services, if:

(a) taking the other person's age into account in making the decision is reasonably based on evidence, and professional knowledge, about the ability of persons of the other person's age to benefit from the goods or services; and

(b) the decision is not in accordance with an exempted health program.

Note: The exemption in subsection (2) covers anything done by a person in accordance with an exempted health program.

- (4) The evidence mentioned in paragraph (3)(a) is the evidence that was reasonably available at the time the decision was made.

*Administration of certain health legislation*

- (5) This Part does not make unlawful anything done by a person in relation to the administration of:



- 
- (a) the *Health Insurance Act 1973*, or a regulation or any other instrument made under that Act, to the extent that the thing done relates to:
- (i) the release of, or the giving of access to, information held by the Health Insurance Commission; or
  - (ii) the issue of a medicare card; or
- (b) the *National Health Act 1953*, or a regulation or any other instrument made under that Act, to the extent that the thing done relates to the release of, or the giving of access to, information held by the Health Insurance Commission; or
- (c) the *Therapeutic Goods Act 1989*, or a regulation or any other instrument made under that Act.

### *Definitions*

- (6) In this section:

**evidence** includes medical, clinical and scientific evidence.

**exempted health program** means a program, scheme or arrangement that:

- (a) relates to health goods or services or medical goods or services; and
- (b) is reasonably based on evidence about matters (including safety, effectiveness, risks, benefits and health needs) that affect people of a particular age in a different way to people of a different age.

The evidence mentioned in paragraph (b) is the evidence that was reasonably available at the time the program, scheme or arrangement was established.

**medicare card** has the meaning given by subsection 84(1) of the *National Health Act 1953*.

## **43 Migration and citizenship etc.**

- (1) This Part does not make unlawful anything done by a person in relation to the administration of:
- (a) the *Migration Act 1958*; or
  - (b) the *Immigration (Guardianship of Children) Act 1946*; or
-

**Part 4** Unlawful age discrimination

**Division 4** General exemptions

Section 43

---

- 1                           (c) a regulation or any other instrument made under either of  
2                           those Acts.
- 3                   (2) This Part does not make unlawful anything done by a person in  
4                   direct compliance with:
- 5                           (a) the *Australian Citizenship Act 1948*; or  
6                           (b) the *Immigration (Education) Act 1971*.

**Division 5—Exemptions granted by Commission**

**44 Commission may grant exemptions**

- (1) The Commission may, on application by:
- (a) a person:
    - (i) on that person's own behalf; or
    - (ii) on behalf of that person and another person or other persons; or
    - (iii) on behalf of another person or other persons; or
  - (b) 2 or more persons:
    - (i) on their own behalf; or
    - (ii) on behalf of themselves and another person or other persons; or
    - (iii) on behalf of another person or other persons;
- by instrument, grant to the person or persons to whom the application relates, as the case may be, an exemption from the operation of a provision of Division 2 or 3, as specified in the instrument.
- (2) The Commission may, on application by a person to, or in respect of, whom an exemption from a provision of Division 2 or 3 has been granted under subsection (1), being an application made before the expiration of the period to which the exemption was granted, grant a further exemption from the operation of that provision.
- (3) An exemption granted under this section:
- (a) may be granted subject to such terms and conditions as are specified in the instrument; and
  - (b) may be expressed to apply only in such circumstances, or in relation to such activities, as are specified in the instrument; and
  - (c) is to be granted for a specified period not exceeding 5 years.

1       **45 Review by Administrative Appeals Tribunal**

2                       An application may be made to the Administrative Appeals  
3                       Tribunal for a review of a decision made by the Commission under  
4                       section 44.

5       **46 Notice of decisions to be published**

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

21       **47 Effect of exemptions**

22                      This Part does not make it unlawful for:

- 23                      (a) a person who has been granted an exemption from a
- 24                      provision of Division 2 or 3; or
- 25                      (b) a person in the employment or under the direction or control
- 26                      of a person who has been granted such an exemption;
- 27                      to do an act in accordance with the provisions of the instrument by
- 28                      which the exemption was granted.

1

2 **Part 5—Offences**

3 **Division 1—General rules relating to offences**

4 **48 Application of the *Criminal Code***

5 Part 2.5 of Chapter 2 of the *Criminal Code* does not apply to  
6 offences against this Act.

7 Note: Part 2.5 of Chapter 2 of the *Criminal Code* sets out the general  
8 principles of corporate criminal responsibility.

9 **49 Unlawful act not offence unless expressly provided**

10 Except as expressly provided by this Part, nothing in this Act  
11 makes it an offence to do an act that is unlawful because of a  
12 provision of Division 2 or 3 of Part 4.

## Division 2—Specific offences

### 50 Advertisements

(1) A person commits an offence if:

- (a) the person publishes or displays an advertisement or notice, or causes or permits an advertisement or notice to be published or displayed; and
- (b) the advertisement or notice is published or displayed (whether or not to the public):
  - (i) in a newspaper or other publication; or
  - (ii) by television or radio; or
  - (iii) by display of notices, signs, labels, show cards or goods; or
  - (iv) by distribution of samples, circulars, catalogues, price lists or other material; or
  - (v) by exhibition of pictures, models or films; or
  - (vi) in any other way; and
- (c) the advertisement indicates, or could reasonably be understood as indicating, an intention to do an act; and
- (d) that act would be unlawful under Part 4.

Penalty: 10 penalty units.

Note: Complaints can be made to the Commission about conduct that is an offence under this subsection (see the definition of **unlawful discrimination** in subsection 3(1) of the *Human Rights and Equal Opportunity Commission Act 1986*, and section 46P of that Act).

(2) Strict liability applies to paragraph (1)(c).

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

### 51 Victimisation

*Victimisation—actual detriment*

(1) A person (the **first person**) commits an offence if:

- (a) the first person engages in conduct; and

- 1 (b) the first person's conduct causes detriment to another person  
2 (the ***second person***); and  
3 (c) the first person intends that his or her conduct cause  
4 detriment to the second person; and  
5 (d) the detriment is caused without the consent of the second  
6 person; and  
7 (e) the first person engages in his or her conduct because he or  
8 she believes that:  
9 (i) the second person has made, or proposes to make, a  
10 complaint under the *Human Rights and Equal*  
11 *Opportunity Commission Act 1986*; or  
12 (ii) the second person has brought, or proposes to bring,  
13 proceedings under the *Human Rights and Equal*  
14 *Opportunity Commission Act 1986* against any person;  
15 or  
16 (iii) the second person has given, or proposes to give, any  
17 information, or has produced, or proposes to produce,  
18 any documents to a person exercising or performing any  
19 power or function under this Act or the *Human Rights*  
20 *and Equal Opportunity Commission Act 1986*; or  
21 (iv) the second person has attended, or proposes to attend, a  
22 conference held under the *Human Rights and Equal*  
23 *Opportunity Commission Act 1986*; or  
24 (v) the second person has appeared, or proposes to appear,  
25 as a witness in a proceeding under this Act or the  
26 *Human Rights and Equal Opportunity Commission Act*  
27 *1986*; or  
28 (vi) the second person has reasonably asserted, or proposes  
29 to assert, any rights of the person or the rights of any  
30 other person under this Act or the *Human Rights and*  
31 *Equal Opportunity Commission Act 1986*; or  
32 (vii) the second person has made an allegation that a person  
33 has done an act that is unlawful by reason of a provision  
34 of Part 4 of this Act.

35 **Penalty:** Imprisonment for 6 months.

36 **Note:** Complaints can be made to the Commission about conduct that is an  
37 offence under this subsection (see the definition of ***unlawful***

**Part 5** Offences

**Division 2** Specific offences

**Section 52**

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1 *discrimination* in subsection 3(1) of the *Human Rights and Equal*  
2 *Opportunity Commission Act 1986*, and section 46P of that Act).

3 *Victimisation—threat of detriment*

- 4 (2) A person (the **first person**) commits an offence if:
- 5 (a) the first person makes to another person (the **second person**)
- 6 a threat to cause detriment to the second person or to a third
- 7 person; and
- 8 (b) the first person:
- 9 (i) intends the second person to fear that the threat will be
- 10 carried out; or
- 11 (ii) is reckless as to causing the second person to fear that
- 12 the threat will be carried out; and
- 13 (c) the first person makes the threat because he or she believes in
- 14 a matter mentioned in paragraph (1)(e).

15 **Penalty:** Imprisonment for 6 months.

16 **Note:** Complaints can be made to the Commission about conduct that is an  
17 offence under this subsection (see the definition of **unlawful**  
18 **discrimination** in subsection 3(1) of the *Human Rights and Equal*  
19 *Opportunity Commission Act 1986*, and section 46P of that Act).

- 20 (3) For the purposes of subsection (2), a **threat** may be:
- 21 (a) express or implied; or
- 22 (b) conditional or unconditional.
- 23 (4) In a prosecution for an offence against subsection (2), it is not
- 24 necessary to prove that the person threatened actually feared that
- 25 the threat would be carried out.

26 **52 Failure to disclose source of actuarial or statistical data**

- 27 (1) A person commits an offence if:
- 28 (a) the President or the Commission gives the person a notice in
- 29 writing under subsection 54(2), requiring the person to
- 30 disclose the source of actuarial or statistical data; and
- 31 (b) the person does not comply with the requirement within 28
- 32 days after being given the notice.

33 **Penalty:** 10 penalty units.



- 1           (2) Subsection (1) does not apply if the person has a reasonable  
2           excuse.
- 3           Note:     A defendant bears an evidential burden in relation to the matter in  
4           subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 5           (3) Subsection (1) is an offence of strict liability.
- 6           Note:     For *strict liability*, see section 6.1 of the *Criminal Code*.
- 7           (4) Subsection 4K(2) of the *Crimes Act 1914* does not apply to  
8           subsection (1).

**Part 6—Functions of Human Rights and Equal  
Opportunity Commission**

**53 Functions of the Commission**

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

- (a) to exercise the powers conferred on it by section 44;
- (b) to promote an understanding and acceptance of, and compliance with, this Act;
- (c) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting the objects of this Act;
- (d) 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;
- (e) 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 age;
- (f) to prepare, and to publish in the manner the Commission considers appropriate, guidelines for avoiding discrimination on the ground of age;
- (g) where the Commission thinks it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve issues of discrimination on the ground of age;
- (h) to do anything incidental or conducive to the performance of any of the preceding functions.

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

1           (2) In this section:

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

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

**Part 7—Miscellaneous**

**54 Power to require source of actuarial data or statistical data**

(1) Subsection (2) applies if a person has acted in a way that would, apart from paragraph 37(3)(a) or subsection 37(5), be unlawful under Part 4.

(2) The President or the Commission may give the person a notice in writing, as prescribed, requiring the person to disclose to the President or to the Commission, as the case may be, the source of the actuarial or statistical data on which the act of discrimination was based.

Note: Failure to comply with the requirement is an offence under section 52.

**55 Delegation**

The Commission may, by writing under its seal, delegate all or any of the powers conferred on it under this Act to:

- (a) a member of the Commission; or
- (b) a member of the staff of the Commission; or
- (c) another person or body of persons.

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

A person who causes, instructs, induces, aids or permits another person to do an act that is unlawful under Part 4 is, for the purposes of this Act, taken also to have done the act.

**57 Conduct by directors, employees and agents**

*Bodies corporate*

(1) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

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Section 57

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- 1 (a) that the conduct was engaged in by a director, employee or  
2 agent of the body corporate within the scope of his or her  
3 actual or apparent authority; and  
4 (b) that the director, employee or agent had the state of mind.
- 5 (2) Any conduct engaged in on behalf of a body corporate by a  
6 director, employee or agent of the body corporate within the scope  
7 of his or her actual or apparent authority is taken, for the purposes  
8 of this Act, to have been engaged in also by the body corporate  
9 unless the body corporate establishes that the body corporate took  
10 reasonable precautions and exercised due diligence to avoid the  
11 conduct.
- 12 *Persons other than bodies corporate*
- 13 (3) If, for the purposes of this Act, it is necessary to establish the state  
14 of mind of a person other than a body corporate in relation to a  
15 particular conduct, it is sufficient to show:  
16 (a) that the conduct was engaged in by an employee or agent of  
17 the person within the scope of his or her actual or apparent  
18 authority; and  
19 (b) that the employee or agent had the state of mind.
- 20 (4) Any conduct engaged in on behalf of a person other than a body  
21 corporate by an employee or agent of the person within the scope  
22 of his or her actual or apparent authority is taken, for the purposes  
23 of this Act, to have been engaged in also by the first-mentioned  
24 person unless the first-mentioned person establishes that the  
25 first-mentioned person took reasonable precautions and exercised  
26 due diligence to avoid the conduct.
- 27 (5) If:  
28 (a) a person other than a body corporate is convicted of an  
29 offence; and  
30 (b) the person would not have been convicted of the offence if  
31 subsections (3) and (4) had not been enacted;  
32 the person is not liable to be punished by imprisonment for that  
33 offence.

Section 58

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*Interpretation*

- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

**58 Protection from civil actions**

- (1) The Commission, a member of the Commission or a person acting for or on behalf of the Commission or a member of the Commission is not liable to an action or other proceeding for damages for or in relation to an act done in good faith:
- (a) in performance or purported performance of any function conferred on the Commission; or
  - (b) in exercise or purported exercise of any power conferred on the Commission.
- (2) Subsection (3) applies if a submission has been made, a document or information has been given, or evidence has been given, to the Commission or to a person acting for or on behalf of the Commission.
- (3) A person is not liable to an action, suit or proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the submission was made, the document or information was given or the evidence was given.

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

- (1) This Act does not confer on a person a right of action in respect of the doing of an act that is unlawful under a provision of Part 4 unless a provision of this Act expressly provides otherwise.
- (2) For the purposes of subsection (1), a reference to an act that is unlawful under a provision of Part 4 includes a reference to an act that is an offence under a provision of Part 5.

**60 Non-disclosure of private information**

- (1) A person bound by this section because of office, employment or authorisation must not, either directly or indirectly:
- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the first-mentioned person because of that person's office or employment under or for the purposes of this Act or because of that person being or having been so authorised; or
  - (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 given for the purposes of this Act.

Penalty: Imprisonment for 2 years.

- (2) A person bound by this section because of office, employment or authorisation must not be required:
- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the first-mentioned person because of that person's office or employment under or for the purposes of this Act or because of that person being or having been so authorised; or
  - (b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, because of that person's office or employment under or for the purposes of this Act or because of that person being or having been so authorised;

Section 60

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

2 (3) This section does not prohibit a person from:

3 (a) making a record of information that is required or permitted  
4 by an Act to be recorded, if the record is made for the  
5 purposes of or under that Act; or

6 (b) divulging or communicating information, or producing a  
7 document, to any person in accordance with an arrangement  
8 in force under section 16 of the *Human Rights and Equal*  
9 *Opportunity Commission Act 1986*; or

10 (c) divulging or communicating information, or producing a  
11 document that is required or permitted by an Act to be  
12 divulged, communicated or produced as the case may be, if  
13 the information is divulged or communicated, or the  
14 document is produced, for the purposes of or under that Act.

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

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

20 (a) in the performance of a duty under or in connection with this  
21 Act; or

22 (b) in the performance or exercise of a function or power  
23 conferred on the Commission under this Act.

24 Note: A defendant bears an evidential burden in relation to the matter in  
25 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

26 (5) Subsection (2) does not prevent a person from being required, for  
27 the purposes of or under an Act, to divulge or communicate  
28 information, or to produce a document, that is required or  
29 permitted by that Act to be divulged, communicated or produced.

30 (6) In this section:

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

33 **person bound by this section because of office, employment or**  
34 **authorisation** means a person who is, or has at any time been:

35 (a) a member of the Commission; or



- 1 (b) a member of the staff assisting the Commission; or  
2 (c) a person authorised to perform or exercise any function or  
3 power of the Commission or any function or power for or on  
4 behalf of the Commission, being a function or power  
5 conferred on the Commission under this Act.

6 *produce* includes permit access to.

## 7 **61 Regulations**

- 8 The Governor-General may make regulations prescribing matters:  
9 (a) required or permitted by this Act to be prescribed; or  
10 (b) necessary or convenient to be prescribed for carrying out or  
11 giving effect to this Act.

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4

## **Schedule 1—Laws for which an exemption is provided by subsection 39(1)**

<b>Laws for which an exemption is provided by subsection 39(1)</b>	
<b>Item</b>	<b>Law</b>
1	<i>Aboriginal and Torres Strait Islanders (Queensland Reserves and Communities Self-management) Act 1978</i>
2	<i>Aboriginal Councils and Associations Act 1976</i>
3	<i>Aboriginal Land Grant (Jervis Bay Territory) Act 1986</i>
4	<i>Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987</i>
5	<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>
6	<i>Administrative Appeals Tribunal Act 1975</i>
7	<i>Air Force Act 1923</i>
8	<i>Airports (Control of On-Airport Activities) Regulations 1997</i>
9	<i>Auditor-General Act 1997</i>
10	<i>Australian Hearing Services Act 1991</i>
11	<i>Australian Hearing Services Regulations 1992</i>
12	<i>Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989</i>
13	<i>Australian Law Reform Commission Act 1996</i>
14	<i>Australian Sports Drug Agency Regulations 1999</i>
15	<i>Australian War Memorial Regulations 1983</i>
16	<i>Classification (Publications, Films and Computer Games) Act 1995</i>
17	<i>Commonwealth Electoral Act 1918</i>
18	<i>Corporations Act 2001</i>
19	<i>Crimes Act 1914</i>
20	<i>Criminal Code Act 1995</i>
21	<i>Defence Act 1903</i>
22	<i>Defence Force Discipline Appeals Act 1955</i>
23	<i>Defence Instructions (General), Defence Instructions (Navy), Defence Instructions (Army) and Defence Instructions (Air Force) (within the meaning of section 9A of the Defence Act 1903)</i>
24	<i>Defence (Personnel) Regulations 2002</i>
25	<i>Family Law Act 1975</i>

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<b>Laws for which an exemption is provided by subsection 39(1)</b>	
<b>Item</b>	<b>Law</b>
26	<i>Federal Magistrates Act 1999</i>
27	<i>Health Insurance Act 1973</i>
28	<i>Hearing Services Administration Act 1997</i>
29	<i>Inspector-General of Intelligence and Security Act 1986</i>
30	<i>Marriage Act 1961</i>
31	<i>Motor Vehicle Standards Regulations 1989</i>
32	<i>National Health Act 1953</i>
33	<i>Native Title Act 1993</i>
34	<i>Naval Defence Act 1910</i>
35	<i>Office of National Assessments Act 1977</i>
36	<i>Ombudsman Act 1976</i>
37	<i>Papua New Guinea (Members of the Forces Benefits) Regulations</i>
38	<i>Passports Regulations 1939</i>
39	<i>Public Service Act 1999</i>
40	<i>Radiocommunications Act 1992</i>
41	<i>Referendum (Machinery Provisions) Act 1984</i>
42	<i>Resource Assessment Commission Act 1989</i>
43	<i>Safety, Rehabilitation and Compensation Act 1988</i>
44	<i>Seafarers Rehabilitation and Compensation Act 1992</i>
45	<i>Therapeutic Goods Act 1989</i>
46	<i>Therapeutic Goods (Medical Devices) Regulations 2002</i>
47	<i>Therapeutic Goods Regulations 1990</i>
48	<i>Workplace Relations Act 1996</i>

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