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**A consolidation of the changes to the
Human Rights and Equal Opportunity Commission Act 1986 (Cth)
proposed in the
*Australian Human Rights Commission Bill 2003 (Cth)***

HREOC Act incorporates amendments up to 31 January 2003

AHRC Bill is as at 27 March 2003

This consolidation was prepared on 6 April 2003

This document was produced as an aid to analysis of the *Australian Human Rights Bill 2003 (Cth)* currently before the Senate Legal and Constitutional Legislation Committee. Each A4 sheet consists of two pages:

- on the left-hand side are the existing provisions of the *HREOC Act 1986 (Cth)*
 - the words “not in existing Act” appear in italics on this page when there are no provisions in the *HREOC Act* that correspond to the new *AHRC Bill* provisions.
- on the right-hand side are the same provisions, as modified by the *AHRC Bill 2003 (Cth)*. The modified provisions are shown in a two-column table:
 - the left column shows the section number of the amending *AHRC Bill* in square brackets
 - the right column shows modifications to the *Act* in a shaded region. Deleted text is shown with a line through it. Inserted text is shown as normal text (within the shaded area).
 - when there are no modifications to the *HREOC Act*, the word “unchanged” appears in italics on this page. This means that the consolidated provisions are identical to the *HREOC Act* and have not been reproduced in order to save ink.

Warning: all care has been taken in the preparation of this consolidation, but errors might exist in this document. Use this document as a guide only. You should confirm that the consolidation of a provision is correct by examining the *HREOC Act* and *AHRC Bill* yourself.

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An Act to establish the Human Rights and Equal Opportunity Commission, to make provision in relation to human rights and in relation to equal opportunity in employment, and for related purposes

Part I—Preliminary

1 Short title

This Act may be cited as the *Human Rights and Equal Opportunity Commission Act 1986*.

2 Commencement

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

3 Interpretation

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

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

act means an act done:

- (a) by or on behalf of the Commonwealth or an authority of the Commonwealth;
- (b) under an enactment;
- (c) wholly within a Territory; or
- (d) partly within a Territory, to the extent to which the act was done within a Territory.

affected person, in relation to a complaint, means a person on whose behalf the complaint was lodged.

alleged unlawful discrimination means:

- (a) in relation to a complaint—the acts, omissions or practices that are alleged in the complaint and that would, if proven, constitute unlawful discrimination; and
- (b) in relation to an application to the Federal Court or the Federal Magistrates Court under Division 2 of Part IIB—the acts, omissions or practices that are alleged in the application and that would, if proven, constitute unlawful discrimination.

appointed member means the President or the Human Rights Commissioner.

[1]	<p>An Act to establish the Human Rights and Equal Opportunity Australian Human Rights Commission, to make provision in relation to human rights and in relation to equal opportunity in employment, and for related purposes</p>
	<p>Part I—Preliminary</p>
[2]	<p>1 Short title This Act may be cited as the Human Rights and Equal Opportunity <i>Australian Human Rights Commission Act 1986</i>.</p>
	<p>2 Commencement This Act shall come into operation on a day to be fixed by Proclamation.</p>
	<p>3 Interpretation (1) In this Act, unless the contrary intention appears: <i>Aboriginal person</i> means a person of the Aboriginal race of Australia. <i>act</i> means an act done: <ul style="list-style-type: none"> (a) by or on behalf of the Commonwealth or an authority of the Commonwealth; (b) under an enactment; (c) wholly within a Territory; or (d) partly within a Territory, to the extent to which the act was done within a Territory. <i>affected person</i>, in relation to a complaint, means a person on whose behalf the complaint was lodged. <i>alleged unlawful discrimination</i> means: <ul style="list-style-type: none"> (a) in relation to a complaint—the acts, omissions or practices that are alleged in the complaint and that would, if proven, constitute unlawful discrimination; and (b) in relation to an application to the Federal Court or the Federal Magistrates Court under Division 2 of Part IIB—the acts, omissions or practices that are alleged in the application and that would, if proven, constitute unlawful discrimination. </p>
[3]	<p><i>appointed member</i> means the President or the Human Rights Commissioner.</p>

Australia includes the external Territories.

Australian Capital Territory enactment means an enactment of the Australian Capital Territory within the meaning of the *Australian Capital Territory (Self-Government) Act 1988*, or an instrument made under such an enactment.

authority means:

- (a) in relation to the Commonwealth:
 - (i) a body (whether incorporated or unincorporated) established for a purpose of the Commonwealth by or under a Commonwealth enactment;
 - (ii) an incorporated company over which the Commonwealth is in a position to exercise control;
 - (iii) a person holding or performing the duties of an office or appointment established or made under a Commonwealth enactment or by the Governor-General or a Minister of the Commonwealth (not being an office or appointment referred to in subparagraph (c)(iii));
 - (iv) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the Commonwealth for the purposes of this Act;
- (b) in relation to a State:
 - (i) a body (whether incorporated or unincorporated) established for a purpose of the State by or under a law of the State;
 - (ii) an incorporated company over which the State is in a position to exercise control;
 - (iii) a person holding or performing the duties of an office or appointment established or made under a law, or by the Governor or a Minister, of the State;
 - (iv) a local government body in the State; or
 - (v) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the State for the purposes of this Act; or
- (c) in relation to a Territory:
 - (i) a body (whether incorporated or unincorporated) established for a purpose of the Territory by or under a Commonwealth enactment or a law of the Territory;
 - (ii) an incorporated company over which the Administration of the Territory is in a position to exercise control;
 - (iii) a person holding or performing the duties of an office or appointment established or made under a law of the Territory or by the Administrator of a Territory; or
 - (iv) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the Territory for the purposes of this Act.

unchanged

class member, in relation to a representative complaint, means any of the persons on whose behalf the complaint was lodged, but does not include a person who has withdrawn under section 46PC.

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

Commonwealth enactment means an Act or an instrument (other than a Territory enactment, an Australian Capital Territory enactment or a Northern Territory enactment) made under an Act, and includes any other legislation applied as a law of the Commonwealth, to the extent that it operates as such a law.

complainant, in relation to a complaint, means a person who lodged the complaint, whether on the person's own behalf or on behalf of another person or persons.

complaint, except in Part IIC, means a complaint lodged under Division 1 of Part IIB.

compulsory conference means a conference under section 46PJ.

Convention means the Discrimination (Employment and Occupation) Convention, 1958 adopted by the General Conference of the International Labour Organization on 25 June 1958, a copy of the English text of which is set out in Schedule 1, as that Convention applies in relation to Australia.

Covenant means the International Covenant on Civil and Political Rights, a copy of the English text of which is set out in Schedule 2, as that International Covenant applies in relation to Australia.

Declarations means:

(a) the Declaration of the Rights of the Child proclaimed by the General Assembly of the United Nations on 20 November 1959, a copy of the English text of which is set out in Schedule 3;

(b) the Declaration on the Rights of Mentally Retarded Persons proclaimed by the General Assembly of the United Nations on 20 December 1971, a copy of the English text of which is set out in Schedule 4; and

(c) the Declaration on the Rights of Disabled Persons proclaimed by the General Assembly of the United Nations on 9 December 1975, a copy of the English text of which is set out in Schedule 5.

Disability Discrimination Commissioner means the Disability Discrimination Commissioner appointed under the *Disability Discrimination Act 1992*.

	class member , in relation to a representative complaint, means any of the persons on whose behalf the complaint was lodged, but does not include a person who has withdrawn under section 46PC.
[4]	Commission means the Human Rights and Equal Opportunity Australian Human Rights Commission established by this Act.
	Commonwealth enactment means an Act or an instrument (other than a Territory enactment, an Australian Capital Territory enactment or a Northern Territory enactment) made under an Act, and includes any other legislation applied as a law of the Commonwealth, to the extent that it operates as such a law.
	complainant , in relation to a complaint, means a person who lodged the complaint, whether on the person's own behalf or on behalf of another person or persons.
	complaint , except in Part IIC, means a complaint lodged under Division 1 of Part IIB.
[5]	Complaints Commissioner means a person appointed as a Complaints Commissioner under section 42A.
	compulsory conference means a conference under section 46PJ.
	Convention means the Discrimination (Employment and Occupation) Convention, 1958 adopted by the General Conference of the International Labour Organization on 25 June 1958, a copy of the English text of which is set out in Schedule 1, as that Convention applies in relation to Australia.
	Covenant means the International Covenant on Civil and Political Rights, a copy of the English text of which is set out in Schedule 2, as that International Covenant applies in relation to Australia.
	Declarations means:
	(a) the Declaration of the Rights of the Child proclaimed by the General Assembly of the United Nations on 20 November 1959, a copy of the English text of which is set out in Schedule 3;
	(b) the Declaration on the Rights of Mentally Retarded Persons proclaimed by the General Assembly of the United Nations on 20 December 1971, a copy of the English text of which is set out in Schedule 4; and
	(c) the Declaration on the Rights of Disabled Persons proclaimed by the General Assembly of the United Nations on 9 December 1975, a copy of the English text of which is set out in Schedule 5.
[6]	Disability Discrimination Commissioner means the Disability Discrimination Commissioner appointed under the Disability Discrimination Act 1992 .

discrimination, except in Part IIB, means:

- (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and
 - (b) any other distinction, exclusion or preference that:
 - (i) has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and
 - (ii) has been declared by the regulations to constitute discrimination for the purposes of this Act;
- but does not include any distinction, exclusion or preference:
- (c) in respect of a particular job based on the inherent requirements of the job; or
 - (d) in connection with employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, being a distinction, exclusion or preference made in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or that creed.

enactment means a Commonwealth enactment or a Territory enactment.

Federal Court means the Federal Court of Australia.

human rights means the rights and freedoms recognised in the Covenant, declared by the Declarations or recognised or declared by any relevant international instrument.

instrument includes a rule, regulation or by-law.

instrumentality, in relation to a State, includes:

- (a) a person holding or performing the duties of an office established by or under a law of that State;
- (b) a person employed in the public service of that State; and
- (c) a person employed by a body established for a purpose of that State by or under a law of that State.

international instrument includes a declaration made by an international organisation.

	<p>discrimination, except in Part IIB, means:</p> <ul style="list-style-type: none"> (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin that has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and (b) any other distinction, exclusion or preference that: <ul style="list-style-type: none"> (i) has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and (ii) has been declared by the regulations to constitute discrimination for the purposes of this Act; <p>but does not include any distinction, exclusion or preference:</p> <ul style="list-style-type: none"> (c) in respect of a particular job based on the inherent requirements of the job; or (d) in connection with employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, being a distinction, exclusion or preference made in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or that creed.
	<p>enactment means a Commonwealth enactment or a Territory enactment.</p>
	<p>Federal Court means the Federal Court of Australia.</p>
	<p>human rights means the rights and freedoms recognised in the Covenant, declared by the Declarations or recognised or declared by any relevant international instrument.</p>
[7]	<p>Human Rights Commissioner means a member of the Commission appointed under section 8B.</p>
	<p>instrument includes a rule, regulation or by-law.</p>
	<p>instrumentality, in relation to a State, includes:</p> <ul style="list-style-type: none"> (a) a person holding or performing the duties of an office established by or under a law of that State; (b) a person employed in the public service of that State; and (c) a person employed by a body established for a purpose of that State by or under a law of that State.
	<p>international instrument includes a declaration made by an international organisation.</p>

Judge means:

- (a) a Judge of a court created by the Parliament or of a court of a State; or
- (b) a person who has the same designation and status as a Judge of a court created by the Parliament.

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

law of a State means a State enactment or any other law in force in a State, other than a law of the Commonwealth.

law of a Territory means a Territory enactment or any other law in force in a Territory, other than a law of the Commonwealth.

law of the Commonwealth means a Commonwealth enactment or any other law in force throughout Australia.

member means a member of the Commission, and includes the President.

Minister means:

- (a) in relation to a State—a Minister of the Crown of that State; and
- (b) in relation to the Australian Capital Territory or the Northern Territory—a Minister of that Territory.

Northern Territory enactment means an enactment of the Northern Territory within the meaning of the *Northern Territory (Self-Government) Act 1978* or an instrument made under such an enactment.

practice means a practice engaged in:

- (a) by or behalf of the Commonwealth or an authority of the Commonwealth;
- (b) under an enactment;
- (c) wholly within a Territory; or
- (d) partly within a Territory, to the extent to which the practice was or is engaged in within a Territory.

	<p>Judge means:</p> <ul style="list-style-type: none"> (a) a Judge of a court created by the Parliament or of a court of a State; or (b) a person who has the same designation and status as a Judge of a court created by the Parliament.
	<p>law means a law of the Commonwealth, a law of a Territory or a law of a State.</p>
	<p>law of a State means a State enactment or any other law in force in a State, other than a law of the Commonwealth.</p>
	<p>law of a Territory means a Territory enactment or any other law in force in a Territory, other than a law of the Commonwealth.</p>
	<p>law of the Commonwealth means a Commonwealth enactment or any other law in force throughout Australia.</p>
[8]	<p>member means a member of the Commission, and includes the President.</p>
	<p>Minister means:</p> <ul style="list-style-type: none"> (a) in relation to a State—a Minister of the Crown of that State; and (b) in relation to the Australian Capital Territory or the Northern Territory—a Minister of that Territory.
	<p>Northern Territory enactment means an enactment of the Northern Territory within the meaning of the <i>Northern Territory (Self-Government) Act 1978</i> or an instrument made under such an enactment.</p>
	<p>practice means a practice engaged in:</p> <ul style="list-style-type: none"> (a) by or behalf of the Commonwealth or an authority of the Commonwealth; (b) under an enactment; (c) wholly within a Territory; or (d) partly within a Territory, to the extent to which the practice was or is engaged in within a Territory.

President means President of the Commission.

Privacy Commissioner means the Privacy Commissioner appointed under the *Privacy Act 1988*.

proposed enactment means:

- (a) a proposed law introduced into the Parliament of the Commonwealth or the legislature of a Territory;
- (b) a proposed law prepared on behalf of:
 - (i) the Government of the Commonwealth or the Administration of a Territory;
 - (ii) a Minister of State of the Commonwealth; or
 - (iii) a body established by law that has the function of recommending proposed laws of the Commonwealth or of a Territory; or
- (c) an instrument proposed to be made under a law of the Commonwealth or under a law of a Territory.

Race Discrimination Commissioner means the Race Discrimination Commissioner appointed under the *Racial Discrimination Act 1975*.

relevant international instrument means an international instrument in respect of which a declaration under section 47 is in force.

representative complaint means a complaint lodged on behalf of at least one person who is not a complainant.

respondent, in relation to a complaint, means the person or persons against whom the complaint is made.

Sex Discrimination Commissioner means the Sex Discrimination Commissioner appointed under the *Sex Discrimination Act 1984*.

State includes the Australian Capital Territory and the Northern Territory.

State enactment means a State Act or an instrument made under a State Act and includes an Australian Capital Territory enactment and a Northern Territory enactment.

terminate, in relation to a complaint, means decline to inquire into the complaint, or discontinue an inquiry into the complaint.

Territory does not include the Australian Capital Territory or the Northern Territory.

Territory Act means an Act passed by a legislature of a Territory

Territory enactment means a Territory Act, an Ordinance of a Territory or an instrument made under such an Act or Ordinance, and includes any other legislation applied as a law of the Commonwealth, to the extent that it operates as such a law.

	President means President of the Commission.
	Privacy Commissioner means the Privacy Commissioner appointed under the <i>Privacy Act 1988</i> .
	proposed enactment means: <ul style="list-style-type: none"> (a) a proposed law introduced into the Parliament of the Commonwealth or the legislature of a Territory; (b) a proposed law prepared on behalf of: <ul style="list-style-type: none"> (i) the Government of the Commonwealth or the Administration of a Territory; (ii) a Minister of State of the Commonwealth; or (iii) a body established by law that has the function of recommending proposed laws of the Commonwealth or of a Territory; or (c) an instrument proposed to be made under a law of the Commonwealth or under a law of a Territory.
[9]	Race Discrimination Commissioner means the Race Discrimination Commissioner appointed under the <i>Racial Discrimination Act 1975</i>.
	relevant international instrument means an international instrument in respect of which a declaration under section 47 is in force.
	representative complaint means a complaint lodged on behalf of at least one person who is not a complainant.
	respondent , in relation to a complaint, means the person or persons against whom the complaint is made.
[10]	Sex Discrimination Commissioner means the Sex Discrimination Commissioner appointed under the <i>Sex Discrimination Act 1984</i>.
	State includes the Australian Capital Territory and the Northern Territory.
	State enactment means a State Act or an instrument made under a State Act and includes an Australian Capital Territory enactment and a Northern Territory enactment.
	terminate , in relation to a complaint, means decline to inquire into the complaint, or discontinue an inquiry into the complaint.
	Territory does not include the Australian Capital Territory or the Northern Territory.
	Territory Act means an Act passed by a legislature of a Territory
	Territory enactment means a Territory Act, an Ordinance of a Territory or an instrument made under such an Act or Ordinance, and includes any other legislation applied as a law of the Commonwealth, to the extent that it operates as such a law.

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

trade union means:

- (a) an organization of employees that is a registered organization within the meaning of the *Workplace Relations Act 1996*; or
- (b) a trade union within the meaning of any State Act or law of a Territory; or
- (c) any other similar body.

unlawful discrimination means any acts, omissions or practices that are unlawful under:

- (a) Part 2 of the *Disability Discrimination Act 1992*; or
- (b) Part II or IIA of the *Racial Discrimination Act 1975*; or
- (c) Part II of the *Sex Discrimination Act 1984*;

and includes any conduct that is an offence under:

- (d) Division 4 of Part 2 of the *Disability Discrimination Act 1992*; or
- (e) subsection 27(2) of the *Racial Discrimination Act 1975*; or
- (f) section 94 of the *Sex Discrimination Act 1984*.

(2) In this Act, a reference to the Governor of a State shall, in relation to the Northern Territory, be construed as a reference to the Administrator of the Northern Territory.

(3) In this Act:

- (a) a reference to, or to the doing of, an act includes a reference to a refusal or failure to do an act; and
- (b) a reference, in relation to the doing of an act or the engaging in of a practice, to the person who did the act or engaged in the practice shall, in the case of an act done or practice engaged in by an unincorporated body of persons, be read as a reference to that body.

(4) In the definition of **human rights** in subsection (1):

- (a) the reference to the rights and freedoms recognised in the Covenant shall be read as a reference to the rights and freedoms recognised in the Covenant as it applies to Australia; and
- (b) the reference to the rights and freedoms recognised or declared by any relevant international instrument shall:
 - (i) in the case of an instrument (not being a declaration referred to in subparagraph (ii)) that applies to Australia—be read as a reference to the rights and freedoms recognised or declared by the instrument as it applies to Australia; or
 - (ii) in the case of an instrument being a declaration made by an international organisation that was adopted by Australia—be read as a reference to the rights and freedoms recognised or declared by the declaration as it was adopted by Australia.

unchanged

(5) A reference in this Act to the making of a declaration by an international organisation shall be read as a reference to the making or adopting of a declaration, proclamation or other statement by such an organisation in any way, whether by the passing of a resolution, the issuing of an instrument or otherwise.

(6) A reference in this Act to the adoption by Australia of an international instrument being a declaration made by an international organisation shall be read as a reference to the casting by Australia of a vote in favour of the making of the declaration by the organisation at the meeting of the organisation at which the declaration was made or to the giving of some other public notification by Australia expressing its support for the declaration.

(7) A reference in this Act to a person acting on behalf of the Commission is a reference to:

(a) a person, or each of a body of persons, acting pursuant to a delegation under section 19; or

(b) an instrumentality of a State performing a function of the Commission pursuant to an arrangement in force under section 16.

(8) Except so far as the contrary intention appears, an expression that is used both in this Act and in the Convention (whether or not a particular meaning is assigned to it by the Convention) has, in this Act, for the purposes of the operation of this Act in relation to the Convention, the same meaning as it has in the Convention.

(9) A reference in this Act to prejudice to the security, defence or international relations of Australia includes a reference to any such prejudice that might result from the divulging of information or matters communicated in confidence by or on behalf of the government of a foreign country, an authority of a government of a foreign country or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

unchanged

4 Operation of State and Territory laws

(1) 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.

(2) If:

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

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

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

5 Extension to external Territories

This Act extends to every external Territory.

6 Extent to which Act binds the Crown

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

(1A) Part IIB binds the Crown in right of the States.

(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.

6A Application of the *Criminal Code*

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

unchanged

Part II—Human Rights and Equal Opportunity Commission

Division 1—Establishment and Constitution of Commission

7 Human Rights and Equal Opportunity Commission

- (1) There is established by this Act a Commission by the name of the Human Rights and Equal Opportunity Commission.
- (2) The Commission:
- (a) is a body corporate, with perpetual succession;
 - (b) shall have a common seal;
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that the document was duly sealed.

[11]	Part II—Human Rights and Equal Opportunity Australian Human Rights Commission
	Division 1—Establishment and Constitution of Commission
	7 Human Rights and Equal Opportunity Australian Human Rights Commission
[12]	<p>(1) There is established by this Act a Commission by the name of the Human Rights and Equal Opportunity Australian Human Rights Commission.</p> <p>(2) The Commission:</p> <ul style="list-style-type: none">(a) is a body corporate, with perpetual succession;(b) shall have a common seal;(c) may acquire, hold and dispose of real and personal property; and(d) may sue and be sued in its corporate name. <p>(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that the document was duly sealed.</p>

8 Constitution of Commission

- (1) The Commission shall consist of:
- (a) a President; and
 - (b) a Human Rights Commissioner; and
 - (c) the Race Discrimination Commissioner; and
 - (ca) the Aboriginal and Torres Strait Islander Social Justice Commissioner; and
 - (d) the Sex Discrimination Commissioner; and
- (f) the Disability Discrimination Commissioner.
- (2) The members must act in a way that promotes the collegiate nature of the Commission.
- (6) The functions of the Commission under paragraphs 11(1)(aa), 11(1)(ab), 11(1)(f) and 31(b) and the functions of the Commission under paragraphs 11(1)(p) and 31(k), to the extent that they relate to the performance of the first-mentioned functions, shall be performed by the President, and a reference in this Act to the Commission or to a member of the Commission shall, in relation to the performance of any of those functions, be read as a reference to the President.
- (7) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only of a vacancy in the office of President, Human Rights Commissioner, Race Discrimination Commissioner, Aboriginal and Torres Strait Islander Social Justice Commissioner, Sex Discrimination Commissioner or Disability Discrimination Commissioner.

8A The President

- (1) The President is to be appointed by the Governor-General as a full-time member or a part-time member.
- (2) The President is the senior member of the Commission.
- (3) The President is responsible for managing the administrative affairs of the Commission.

	<p>8 Constitution of Commission</p> <p>(1) The Commission shall consist of:</p> <ul style="list-style-type: none"> (a) a President; and (b) a Human Rights Commissioner; and (c) the Race Discrimination Commissioner; and (ca) the Aboriginal and Torres Strait Islander Social Justice Commissioner; and (d) the Sex Discrimination Commissioner; and (f) the Disability Discrimination Commissioner. <p>(1) The Commission consists of the following members:</p> <ul style="list-style-type: none"> (a) a President; and (b) 3 Human Rights Commissioners.
[13]	<p>(2) The members must act in a way that promotes the collegiate nature of the Commission.</p>
[14], [15]	<p>(6) The functions of the Commission under paragraphs 11(1)(aa), 11(1)(ab), 11(1)(f) and 31(b) 31(1)(b) and the functions of the Commission under paragraphs 11(1)(p) and 31(k) 31(1)(k), to the extent that they relate to the performance of the first-mentioned functions, shall be performed by the President, and a reference in this Act to the Commission or to a member of the Commission shall, in relation to the performance of any of those functions, be read as a reference to the President.</p>
[16]	<p>(7) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only of a vacancy in the office of President, Human Rights Commissioner, Race Discrimination Commissioner, Aboriginal and Torres Strait Islander Social Justice Commissioner, Sex Discrimination Commissioner or Disability Discrimination Commissioner the President or a Human Rights Commissioner.</p>
	<p>8A The President</p>
	<p>(1) The President is to be appointed by the Governor-General as a full-time member or a part-time member.</p>
	<p>(2) The President is the senior member of the Commission.</p>
	<p>(3) The President is responsible for managing the administrative affairs of the Commission.</p>

8B The Human Rights Commissioner

(1) The Human Rights Commissioner is to be appointed by the Governor-General as a full-time member.

(2) A person is not qualified to be appointed as the Human Rights Commissioner unless the Governor-General is satisfied that the person has appropriate qualifications, knowledge or experience.

9 Arrangement for appointment of the holder of a judicial office of a State

(1) The Governor-General may, for the purpose of appointing to the Commission a person who is the holder of a judicial office of a State, enter into such arrangement with the Governor of that State as is necessary to secure that person's services.

(2) An arrangement under subsection (1) may provide for the Commonwealth to reimburse a State with respect to the services of the person to whom the arrangement relates.

10 Appointment of Judge as member not to affect tenure etc.

(1) The appointment of the holder of a judicial office as a member, or service by the holder of a judicial office as a member, does not affect the person's tenure of that judicial office or the person's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, the person's service as a member shall be taken to be service as the holder of that judicial office.

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

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

[17]	<p>8B The Human Rights Commissioners</p> <p>(1) The Human Rights Commissioner Each Human Rights Commissioner is to be appointed by the Governor-General as a full-time member.</p>
[18]	<p>(2) A person is not qualified to be appointed as the Human Rights Commissioner unless the Governor-General a Human Rights Commissioner unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.</p>
[19]	<p>(3) Before the Governor-General makes an appointment under subsection (1), the Minister must be satisfied that the President, the other Human Rights Commissioners and the person, as a group, have expertise in the variety of matters likely to come before the Commission.</p>
	<p>9 Arrangement for appointment of the holder of a judicial office of a State</p> <p>(1) The Governor-General may, for the purpose of appointing to the Commission a person who is the holder of a judicial office of a State, enter into such arrangement with the Governor of that State as is necessary to secure that person's services.</p> <p>(2) An arrangement under subsection (1) may provide for the Commonwealth to reimburse a State with respect to the services of the person to whom the arrangement relates.</p>
	<p>10 Appointment of Judge as member not to affect tenure etc.</p> <p>(1) The appointment of the holder of a judicial office as a member, or service by the holder of a judicial office as a member, does not affect the person's tenure of that judicial office or the person's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, the person's service as a member shall be taken to be service as the holder of that judicial office.</p> <p>(2) In this section, <i>judicial office</i> means:</p> <ul style="list-style-type: none"> (a) an office of Judge of a court created by the Parliament; or (b) an office the holder of which has, by virtue of holding that office, the same status as a Judge of a court created by the Parliament.

Division 2—Duties, functions and powers of Commission

10A Duties of Commission

(1) It is the duty of the Commission to ensure that the functions of the Commission under this or any other Act are performed:

- (a) with regard for:
 - (i) the indivisibility and universality of human rights; and
 - (ii) the principle that every person is free and equal in dignity and rights; and
- (b) efficiently and with the greatest possible benefit to the people of Australia.

(2) Nothing in this section imposes a duty on the Commission that is enforceable by proceedings in a court.

11 Functions of Commission

(1) The functions of the Commission are:

(a) such functions as are conferred on the Commission by the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* or any other enactment;

- (aa) to inquire into, and attempt to conciliate, complaints of unlawful discrimination;
- (ab) to deal with complaints lodged under Part IIC;

(b) such functions as are to be performed by the Commission pursuant to an arrangement in force under section 16;

Division 2—Duties, functions and powers of Commission

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 - (ii) the principle that every person is free and equal in dignity and rights; and
- (b) efficiently and with the greatest possible benefit to the people of Australia.

(2) Nothing in this section imposes a duty on the Commission that is enforceable by proceedings in a court.

11 Functions of Commission

(1) The functions of the Commission are:

[20] (aaa) to promote an understanding and acceptance, and the public discussion, of human rights in Australia and of the responsibility of persons and organisations to respect those rights;
 (aab) to disseminate information on human rights and on the responsibility of persons and organisations to respect those rights;
 (aac) to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting human rights, and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;
 (aad) to prepare, and to publish in the manner the Commission considers appropriate, guidelines for avoiding acts or practices of a kind in respect of which the Commission has a function under paragraph (f);

[21] (a) such functions as are conferred on the Commission by the *Disability Discrimination Act 1992*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* or any other enactment;

- (aa) to inquire into, and attempt to conciliate, complaints of unlawful discrimination;
- (ab) to deal with complaints lodged under Part IIC;

(b) such functions as are to be performed by the Commission pursuant to an arrangement in force under section 16;

- (c) such functions as are expressed to be conferred on the Commission by any State enactment, being functions in relation to which the Minister has made a declaration under section 18;
- (d) the functions conferred on the Commission by section 31;
- (e) 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, as the case may be, are, or would be, inconsistent with or contrary to any human right, and to report to the Minister the results of any such examination;
- (f) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and:
 - (i) where the Commission considers it appropriate to do so—to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and
 - (ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement—to report to the Minister in relation to the inquiry;
- (g) to promote an understanding and acceptance, and the public discussion, of human rights in Australia;
- (h) to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting human rights, and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;
- (i) 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 human rights;
- (k) on its own initiative or when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or of any relevant international instrument;
- (m) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;
- (n) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of acts or practices of a kind in respect of which the Commission has a function under paragraph (f);

	(c) such functions as are expressed to be conferred on the Commission by any State enactment, being functions in relation to which the Minister has made a declaration under section 18;
[22]	(d) the functions conferred on the Commission by section 31 subsection 31(1);
	(e) 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, as the case may be, are, or would be, inconsistent with or contrary to any human right, and to report to the Minister the results of any such examination;
	(f) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and: <ul style="list-style-type: none"> (i) where the Commission considers it appropriate to do so—to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and (ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement—to report to the Minister in relation to the inquiry;
[23]	(g) to promote an understanding and acceptance, and the public discussion, of human rights in Australia;
[23]	(h) to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting human rights, and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;
	(i) 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 human rights;
	(k) on its own initiative or when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or of any relevant international instrument;
	(m) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;
[23]	(n) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of acts or practices of a kind in respect of which the Commission has a function under paragraph (f);

(o) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve human rights issues; and

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

(2) The Commission shall not:

(a) regard an enactment or proposed enactment as being inconsistent with or contrary to any human right for the purposes of paragraph (1)(c) by reason of a provision of the enactment or proposed enactment that is included solely for the purpose of securing adequate advancement of particular persons or groups of persons in order to enable them to enjoy or exercise human rights equally with other persons; or

(b) regard an act or practice as being inconsistent with or contrary to any human right for the purposes of paragraph (1)(f) where the act or practice is done or engaged in solely for the purpose referred to in paragraph (a) of this subsection.

(3) Notwithstanding paragraphs (1)(a), (d) and (f), the functions of the Commission do not include inquiring into an act or practice of an intelligence agency, and, where a complaint is made to the Commission alleging that an act or practice of such an agency is inconsistent with or contrary to any human right, constitutes discrimination, or is unlawful under the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* or the *Disability Discrimination Act 1992*, the Commission shall refer the complaint to the Inspector-General of Intelligence and Security.

(4) A reference in subsection (3) to an intelligence agency is a reference to the Australian Secret Intelligence Service, the Australian Security Intelligence Organisation, the Office of National Assessments, that part of the Department of Defence known as the Defence Signals Directorate (including any part of the Defence Force that performs functions on behalf of that part of the Department) or that part of the Department of Defence known as the Defence Intelligence Organisation.

[24]	(o) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve human rights issues, subject to subsections (5) and (6); and
	(p) to do anything incidental or conducive to the performance of any of the preceding functions.
[25]	(1A) As part of its functions under paragraphs (1)(aaa) and (aab), the Commission must seek to raise public awareness of the importance of human rights by using, and encouraging the use of, the expression human rights—everyone’s responsibility . (1B) For the purposes of subsection (1A), the Commission may incorporate the expression in its logo and on its stationery.
	(2) The Commission shall not:
	(a) regard an enactment or proposed enactment as being inconsistent with or contrary to any human right for the purposes of paragraph (1)(c) by reason of a provision of the enactment or proposed enactment that is included solely for the purpose of securing adequate advancement of particular persons or groups of persons in order to enable them to enjoy or exercise human rights equally with other persons; or
	(b) regard an act or practice as being inconsistent with or contrary to any human right for the purposes of paragraph (1)(f) where the act or practice is done or engaged in solely for the purpose referred to in paragraph (a) of this subsection.
	(3) Notwithstanding paragraphs (1)(a), (d) and (f), the functions of the Commission do not include inquiring into an act or practice of an intelligence agency, and, where a complaint is made to the Commission alleging that an act or practice of such an agency is inconsistent with or contrary to any human right, constitutes discrimination, or is unlawful under the <i>Racial Discrimination Act 1975</i> , the <i>Sex Discrimination Act 1984</i> or the <i>Disability Discrimination Act 1992</i> , the Commission shall refer the complaint to the Inspector-General of Intelligence and Security.
	(4) A reference in subsection (3) to an intelligence agency is a reference to the Australian Secret Intelligence Service, the Australian Security Intelligence Organisation, the Office of National Assessments, that part of the Department of Defence known as the Defence Signals Directorate (including any part of the Defence Force that performs functions on behalf of that part of the Department) or that part of the Department of Defence known as the Defence Intelligence Organisation.

not in existing Act

[26]	<p>(5) Except in a case to which subsection (6) applies, the Commission may only intervene in proceedings as mentioned in paragraph (1)(o) if the Attorney-General approves the intervention. In deciding whether to approve the intervention, the Attorney-General may (but need not) have regard to the following matters:</p> <ul style="list-style-type: none">(a) whether the Commonwealth, or a person on behalf of the Commonwealth, has already intervened in the proceedings;(b) whether, in the Attorney-General's opinion, the proceedings may affect to a significant extent the human rights of, or involve significant issues of discrimination against, persons who are not parties to them;(c) whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of this Act, the <i>Disability Discrimination Act 1992</i>, the <i>Racial Discrimination Act 1975</i> or the <i>Sex Discrimination Act 1984</i>;(d) whether, in the Attorney-General's opinion, there are special circumstances such that it would be in the public interest for the Commission to intervene. <p>This subsection does not, by implication, limit the matters to which the Attorney-General may have regard.</p>
[26]	<p>(6) If the President is:</p> <ul style="list-style-type: none">(a) a Justice of the High Court, or was such a Justice immediately before becoming President; or(b) a Judge of a court created by the Parliament, or was such a Judge immediately before becoming President; <p>then, before the Commission seeks leave to intervene in proceedings as mentioned in paragraph (1)(o), the Commission must give the Attorney-General written notice of the Commission's intention to seek leave to intervene, together with a statement of why the Commission considers it appropriate to intervene. The notice must be given at a time when there is still a reasonable period before the Commission seeks leave to intervene.</p>

13 Powers of Commission

(1) The Commission has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

The Commission may at any time report to the Minister on any matter arising in the course of the performance of its functions and shall report to the Minister on such a matter if requested by the Minister to do so.

14 Form of examinations or inquiries to be at discretion of Commission etc.

(1) For the purpose of the performance of its functions, the Commission may make an examination or hold an inquiry in such manner as it thinks fit and, in informing itself in the course of an examination or inquiry, is not bound by the rules of evidence.

(2) Where the Commission considers that the preservation of the anonymity of a person:

- (a) who has made a complaint to the Commission; or
- (b) who:
 - (i) has furnished or proposes to furnish information;
 - (ii) has produced or proposes to produce a document;
 - (iii) has given or proposes to give evidence; or
 - (iv) has made or proposes to make a submission;

to the Commission or to a person acting on behalf of the Commission;

is necessary to protect the security of employment, the privacy or any human right of the person, the Commission may give directions prohibiting the disclosure of the identity of the person.

(3) The Commission may direct that:

- (a) any evidence given before the Commission or any information given to the Commission; or
- (b) the contents of any document produced to the Commission;

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

(4) Where the Commission has given a direction under subsection (3) in relation to the publication of any evidence or information or of the contents of a document, the direction does not prevent a person from communicating to another person a matter contained in the evidence, information or document if the first-mentioned person has knowledge of the matter otherwise than by reason of the evidence or information having been given or the document having been produced to the Commission.

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(5) In deciding whether or not to give a direction under subsection (3), the Commission shall have regard to the need to prevent such of the following as are relevant to the circumstances:

- (a) prejudice to the security, defence or international relations of Australia;
- (b) prejudice to relations between the Commonwealth Government and the Government of a State or between the Government of a State and the Government of another State;
- (c) the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet, of the Commonwealth or of a State;
- (d) the disclosure of deliberations or advice of the Federal Executive Council or the Executive Council of a State;
- (e) the disclosure, or the ascertaining by a person, of the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;
- (f) the endangering of the life or physical safety of any person;
- (g) prejudice to the proper enforcement of the law or the protection of public safety;
- (h) the disclosure of information the disclosure of which is prohibited, absolutely or subject to qualifications, by or under another enactment;
- (i) the unreasonable disclosure of the personal affairs of any person;
- (k) the unreasonable disclosure of confidential commercial information.

(6) In having regard to the matters mentioned in paragraphs (5)(a) to (k), inclusive, the Commission shall try to achieve an appropriate balance between the need to have regard to those matters and the desirability of ensuring that interested persons are sufficiently informed of the results of the Commission's examination or inquiry.

(7) A person shall not contravene a direction given by the Commission under subsection (2) or (3) that is applicable to the person.

Penalty:

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

(7A) Subsection (7) is an offence of strict liability.

(8) In subsection (1), **function** does not include a function conferred on the Commission by the *Sex Discrimination Act 1984* or the *Disability Discrimination Act 1992*.

15 Commission may engage in consultations

For the purposes of the performance of its functions, the Commission may work with and consult appropriate persons, governmental organisations and non-governmental organisations.

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16 Inter-governmental arrangements

- (1) The Minister may make an arrangement with a Minister of a State for or in relation to:
- (a) the performance on a joint basis of any functions of the Commission;
 - (b) the performance by that State or by an instrumentality of that State on behalf of the Commonwealth of any functions of the Commission; or
- (c) the performance by the Commission of functions on behalf of that State relating to human rights or to discrimination in employment or occupation.
- (2) An arrangement under this section may contain such incidental or supplementary provisions as the Minister and the Minister of the State with whom the arrangement is made think necessary.
- (2A) An act done by or in relation to a State, or an instrumentality of a State, acting (whether on a joint basis or otherwise) under an arrangement made under this section shall be deemed, for the purposes of this Act, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* and the *Disability Discrimination Act 1992*, to have been done by, or in relation to, the President.
- (3) The Minister may arrange with the Minister of a State with whom an arrangement is in force under this section for the variation or revocation of the arrangement.
- (4) An arrangement under this section, or the variation or revocation of such an arrangement, shall be in writing, and a copy of each instrument by which an arrangement under this section is made, varied or revoked shall be published in the *Gazette*.

17 Advisory committees

- (1) The Minister shall establish at least one advisory committee, and may, if the Minister considers it desirable, establish 2 or more advisory committees, to perform such of the following functions as the Minister directs:
- (a) to advise the Commission in relation to the performance of the Commission's functions;
 - (b) when requested by the Minister, to report to the Minister as to the action (if any) that needs to be taken by Australia in order to comply with the provisions of the Convention and, in particular, to advise the Minister in respect of national policies relating to equality of opportunity and treatment in employment and occupation.

The Commission may, with the approval of the Minister, establish an advisory committee or advisory committees to advise the Commission in relation to the performance of the Commission's functions.

18 Declarations by Minister

Minister is satisfied that a function expressed to be conferred on the Commission by a State enactment could conveniently be performed by the Commission, the Minister may, by notice in writing published in the *Gazette*, so declare.

	<h2>16 Inter-governmental arrangements</h2> <p>(1) The Minister may make an arrangement with a Minister of a State for or in relation to:</p> <ol style="list-style-type: none"> (a) the performance on a joint basis of any functions of the Commission; (b) the performance by that State or by an instrumentality of that State on behalf of the Commonwealth of any functions of the Commission; or <p>(c) the performance by the Commission of functions on behalf of that State relating to human rights or to discrimination in employment or occupation.</p> <p>(2) An arrangement under this section may contain such incidental or supplementary provisions as the Minister and the Minister of the State with whom the arrangement is made think necessary.</p> <p>(2A) An act done by or in relation to a State, or an instrumentality of a State, acting (whether on a joint basis or otherwise) under an arrangement made under this section shall be deemed, for the purposes of this Act, the <i>Racial Discrimination Act 1975</i>, the <i>Sex Discrimination Act 1984</i> and the <i>Disability Discrimination Act 1992</i>, to have been done by, or in relation to, the President.</p> <p>(3) The Minister may arrange with the Minister of a State with whom an arrangement is in force under this section for the variation or revocation of the arrangement.</p> <p>(4) An arrangement under this section, or the variation or revocation of such an arrangement, shall be in writing, and a copy of each instrument by which an arrangement under this section is made, varied or revoked shall be published in the <i>Gazette</i>.</p>
	<h2>17 Advisory committees</h2> <p>(1) The Minister shall establish at least one advisory committee, and may, if the Minister considers it desirable, establish 2 or more advisory committees, to perform such of the following functions as the Minister directs:</p> <p>— (a) — to advise the Commission in relation to the performance of the Commission's functions;</p> <p>— (b) — when requested by the Minister, to report to the Minister as to the action (if any) that needs to be taken by Australia in order to comply with the provisions of the Convention and, in particular, to advise the Minister in respect of national policies relating to equality of opportunity and treatment in employment and occupation.</p> <p>The Commission may, with the approval of the Minister, establish an advisory committee or advisory committees to advise the Commission in relation to the performance of the Commission's functions.</p>
[27]	<h2>18 Declarations by Minister</h2> <p>Minister is satisfied that a function expressed to be conferred on the Commission by a State enactment could conveniently be performed by the Commission, the Minister may, by notice in writing published in the <i>Gazette</i>, so declare.</p>

19 Delegation

(1) The Commission may, by writing under its common seal, delegate to a member of the Commission, a member of the staff of the Commission or another person or body of persons all or any of the powers conferred on the Commission under this Act.

(2) A member may, by writing signed by the member, delegate to:

- (aa) a member of the Commission; or
- (a) a member of the staff of the Commission; or
- (b) any other person or body of persons;

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

(2A) Subsection (2) does not allow the President to delegate to another member of the Commission any of the President's powers under Part IIB or IIC.

(2B) Subsection (2) does not allow the President to delegate any of the President's powers relating to:

- (a) functions of the Commission under paragraphs 11(1)(f) and 11(1)(p) that are to be performed by the President because of subsection 8(6); or
- (b) functions of the Commission under paragraphs 31(b) and 31(k) that are to be performed by the President because of subsection 8(6);

to a member of the Commission other than the Human Rights Commissioner.

(2C) The requirement in subsection (2) for approval by the Commission does not apply to a delegation by the President.

	19 Delegation
[28]	(1) The Commission may, by writing under its common seal, delegate to a member of the Commission, 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 or any other law.
[29]	(1A) The President may, by writing signed by the President, delegate to a Complaints Commissioner: <ul style="list-style-type: none"> (a) the performance of the Commission's functions: <ul style="list-style-type: none"> (i) in relation to an act or practice that is alleged to be inconsistent with or contrary to any human right if a complaint is made under paragraph 20(1)(b); or (ii) under paragraph 31(1)(b) in relation to an act or practice that may constitute discrimination; and (b) the preparation of a notice to be served, or a report to be given, under section 29 or 35.
[30]	(2) A member may, by writing signed by the member, delegate to: <ul style="list-style-type: none"> (aa) a member of the Commission; or (a) a member of the staff of the Commission; or (b) any other person or body of persons; <p>approved by the Commission, all or any of the powers exercisable by the member under this Act or any other law.</p>
[31]	(2A) Subsection (2) does not allow the President to delegate to another member of the Commission any of the President's powers under Part IIB or IIC.
[31]	(2A) Subsection (2) does not allow the President to delegate to another member of the Commission: <ul style="list-style-type: none"> (a) any of the President's powers under Part IIB or IIC; or (b) any of the President's powers relating to functions of the Commission under paragraphs 11(1)(f) and 11(1)(p) that are to be performed by the President because of subsection 8(6); or (c) any of the President's powers relating to functions of the Commission under paragraphs 31(1)(b) and 31(1)(k) that are to be performed by the President because of subsection 8(6).
[31]	(2B) Subsection (2) does not allow the President to delegate any of the President's powers relating to: <ul style="list-style-type: none"> (a) functions of the Commission under paragraphs 11(1)(f) and 11(1)(p) that are to be performed by the President because of subsection 8(6); or (b) functions of the Commission under paragraphs 31(b) and 31(k) that are to be performed by the President because of subsection 8(6); to a member of the Commission other than the Human Rights Commissioner.
	(2C) The requirement in subsection (2) for approval by the Commission does not apply to a delegation by the President.

(5) Subject to any provision in the instrument of delegation, a person to whom a power of the Commission has been delegated under subsection (1) may, for the purposes of the exercise of that power, exercise any power conferred on a member of the Commission by this Act.

(6) In subsection (1), **power** does not include a power conferred on the Commission by the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* or the *Disability Discrimination Act 1992*.

(7) In this section, unless the contrary intention appears, **member** means a member of the Commission.

	(5) Subject to any provision in the instrument of delegation, a person to whom a power of the Commission has been delegated under subsection (1) may, for the purposes of the exercise of that power, exercise any power conferred on a member of the Commission by this Act.
[32]	(6) In subsection (1), power does not include a power conferred on the Commission by the <i>Racial Discrimination Act 1975</i>, the <i>Sex Discrimination Act 1984</i> or the <i>Disability Discrimination Act 1992</i>.
[32]	(6) Subject to any provision in the instrument of delegation, a Complaints Commissioner to whom a power has been delegated under subsection (1A) may, for the purposes of the exercise of that power, exercise any power conferred on a member of the Commission by this Act.
	(7) In this section, unless the contrary intention appears, member means a member of the Commission.

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Division 3—Functions relating to human rights

19A Division applies to victimisation offences

In this Division, a reference to an act or practice that is inconsistent with or contrary to any human right includes a reference to an act that is an offence under subsection 26(2).

20 Performance of functions relating to human rights

(1) Subject to subsection (2), the Commission shall perform the functions referred to in paragraph 11(1)(f) when:

- (a) the Commission is requested to do so by the Minister;
- (b) a complaint is made in writing to the Commission alleging that an act or practice is inconsistent with or contrary to any human right; or
- (c) it appears to the Commission to be desirable to do so.

(2) The Commission may decide not to inquire into an act or practice, or, if the Commission has commenced to inquire into an act or practice, may decide not to continue to inquire into the act or practice, if:

- (a) the Commission is satisfied that the act or practice is not inconsistent with or contrary to any human right;
- (b) the Commission is satisfied that the person aggrieved by the act or practice does not desire that the inquiry be held or continued; or
- (c) in a case where a complaint has been made to the Commission in relation to the act or practice:
 - (i) the complaint was made more than 12 months after the act was done or after the last occasion when an act was done pursuant to the practice;
 - (ii) the Commission is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance;
 - (iii) where some other remedy has been sought in relation to the subject matter of the complaint—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with;
 - (iv) the Commission is of the opinion that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the person aggrieved by the act or practice;
 - (v) where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with; or
 - (vi) the Commission is of the opinion that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.

(3) The Commission shall, before the expiration of the period of 2 months commencing when a complaint is made to the Commission in respect of an act or practice, decide whether or not to inquire into the act or practice.

(4) Where the Commission decides not to inquire into, or not to continue to inquire into, an act or practice in respect of which a complaint was made to the Commission, the Commission shall, unless the complaint has been transferred under subsection (4A), forthwith give notice in writing to the complainant of that decision and of the reasons for that decision.

(4A) Where:

- (a) a complaint has been made to the Commission in relation to an act or practice; and
- (b) because the Commission is of the opinion that the subject-matter of the complaint could be more effectively or conveniently dealt with by the Privacy Commissioner in the performance of the functions referred to in paragraph 27(1)(a) or 28(1)(b) or (c) of the *Privacy Act 1988*, the Commission decides not to inquire, or not to continue to inquire, into that act or practice; the Commission shall:
 - (c) transfer the complaint to the Privacy Commissioner;
 - (d) forthwith give notice in writing to the complainant stating that the complaint has been so transferred; and
- (e) give to the Privacy Commissioner any information or documents that relate to the complaint and are in the possession, or under the control, of the Commission.

(4B) A complaint transferred under subsection (4A) shall be taken to be a complaint made to the Privacy Commissioner under Part V of the *Privacy Act 1988*.

(5) Where it appears to the Commission that:

- (a) a person wishes to make a complaint to the effect that another person has done an act, or engaged in a practice, that is inconsistent with or contrary to any human right; and
 - (b) that person requires assistance to formulate the complaint or to reduce it to writing;
- it is the duty of the Commission to take reasonable steps to provide appropriate assistance to that person.

unchanged

(6) A person who is detained in custody (in this subsection and subsection (7) referred to as the **detainee**) is entitled:

(a) upon making a request to the person (in this subsection and subsection (7) referred to as the **custodian**) in whose custody the detainee is detained, or to any other person (in this subsection and subsection (7) referred to as a **custodial officer**) performing duties in connection with the detention:

(i) to be provided with facilities for preparing a complaint in writing under this Division, for giving in writing to the Commission, after the complaint has been made, any other relevant information and for enclosing the complaint or the other information (if any) in a sealed envelope; and

(ii) to have sent to the Commission, without undue delay, a sealed envelope delivered by the detainee to the custodian or to a custodial officer and addressed to the Commission; and
(b) to have delivered to the detainee, without undue delay, any sealed envelope, addressed to the detainee and sent by the Commission, that comes into the possession or under the control of the custodian or of a custodial officer.

(7) Where a sealed envelope addressed to the Commission is delivered by the detainee to the custodian or to a custodial officer for sending to the Commission, or a sealed envelope addressed to the detainee and sent by the Commission comes into the possession or under the control of the custodian or of a custodial officer, neither the custodian nor any custodial officer is entitled to open the envelope or to inspect any document enclosed in the envelope.

(8) For the purposes of subsections (6) and (7), the Commission may make arrangements with the appropriate authority of a State or Territory for the identification and delivery of sealed envelopes sent by the Commission to persons detained in custody in that State or Territory.

unchanged

21 Power to obtain information and documents

(1) Where the Commission has reason to believe that a person is capable of giving information or producing documents relevant to a matter under examination or inquiry under this Division, a member may, by notice in writing served on that person, require that person at such place, and within such period or on such date and at such time, as are specified in the notice:

- (a) to give to the Commission, by writing signed by that person or, in the case of a body corporate, on behalf of the body corporate, any such information; or
- (b) to produce to the Commission any such documents.

(2) Where:

- (a) a person is required by a notice under subsection (1) to give information or produce a document to the Commission; and
 - (b) the information or document originated with, or has been received from, an intelligence agency;
- the person shall forthwith notify that agency of the making of the requirement.

(3) A reference in subsection (2) to an intelligence agency is a reference to the Australian Secret Intelligence Service, the Australian Security Intelligence Organisation, the Office of National Assessments, or the Defence Intelligence Organisation or the Defence Signals Directorate of the Department of Defence.

(4) Where documents are produced to the Commission in accordance with a requirement under subsection (1), the Commission:

- (a) may take possession of, and may make copies of, or take extracts from, the documents;
- (b) may retain possession of the documents for such period as is necessary for the purposes of the examination or 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 Commission to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.

(5) Where the Commission has reason to believe that a person is capable of giving information relevant to a matter under inquiry under this Division, a member may, by notice in writing served on the person, require the person to attend before the member, on such date and at such time and place as are specified in the notice, to answer questions relevant to the matter under inquiry.

(6) A person who attends at a place pursuant to a requirement made of the person under subsection (1) or (5) is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at that place.

unchanged

22 Power to examine witnesses

- (1) A member may administer an oath or affirmation to a person required to attend before the member pursuant to section 21 and may examine the person on oath or affirmation.
- (2) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

23 Failure to comply with requirement

- (1) A person shall not refuse or fail:
 - (a) to be sworn or make an affirmation; or
 - (b) to give information or produce a document;when so required under this Act.

Penalty:

- (a) in the case of a natural person—\$1,000; or
 - (b) in the case of a body corporate—\$5,000.
- (2) A person who, after having been served with a notice under subsection 21(5):
 - (a) refuses or fails to comply with the notice; or
 - (b) when attending before a member in compliance with the notice, refuses or fails to answer a question that is required by the member to be answered;is guilty of an offence punishable on conviction by a fine not exceeding:
 - (c) in the case of a natural person—\$1,000; or
 - (d) in the case of a body corporate—\$5,000.
- (2A) Subsections (1) and (2) do not apply if the person has a reasonable excuse.
- (3) Without limiting the generality of the expression *reasonable excuse* in this section, it is hereby declared for the avoidance of doubt that it is a reasonable excuse for a person to refuse or fail to furnish information, produce a document or answer a question when required to do so under this Act, that the information, the production of the document or the answer to a question might tend to incriminate that person.

unchanged

24 Disclosure of information or contents of documents

(1) Where the Attorney-General furnishes to the Commission a certificate certifying that the giving to the Commission, or to a person acting on behalf of the Commission, of information concerning a specified matter (including the giving of information in answer to a question) or the production to the Commission, or to a person acting on behalf of the Commission, of a specified document would be contrary to the public interest:

- (a) by reason that it would prejudice the security, defence or international relations of Australia;
 - (b) by reason that it would involve the disclosure of communications between a Minister of the Commonwealth and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State;
 - (c) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;
 - (d) by reason that it would involve the disclosure of deliberations or advice of the Executive Council;
 - (e) by reason that it would prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued or would prejudice the fair trial of any person;
 - (f) by reason that it would disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;
 - (g) by reason that it would prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or
 - (h) by reason that it would endanger the life or physical safety of any person;
- neither the Commission nor any other person is entitled to require a person to give any information concerning the matter or to produce the document.

(1A) In relation to the performance of functions by the Aboriginal and Torres Strait Islander Social Justice Commissioner under Part IIA, subsection (1) (other than paragraphs (1)(a) and (b)) has effect in relation to a certificate given by the Attorney-General of a State or Territory in the same way as it has effect in relation to a certificate given by the Attorney-General of the Commonwealth. For the purposes of this additional effect, references to the Cabinet, a Committee of the Cabinet or the Executive Council are to be treated as references to the corresponding body or committee of the State or Territory concerned.

24 Disclosure of information or contents of documents

(1) Where the Attorney-General furnishes to the Commission a certificate certifying that the giving to the Commission, or to a person acting on behalf of the Commission, of information concerning a specified matter (including the giving of information in answer to a question) or the production to the Commission, or to a person acting on behalf of the Commission, of a specified document would be contrary to the public interest:

- (a) by reason that it would prejudice the security, defence or international relations of Australia;
 - (b) by reason that it would involve the disclosure of communications between a Minister of the Commonwealth and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State;
 - (c) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;
 - (d) by reason that it would involve the disclosure of deliberations or advice of the Executive Council;
 - (e) by reason that it would prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued or would prejudice the fair trial of any person;
 - (f) by reason that it would disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;
 - (g) by reason that it would prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or
 - (h) by reason that it would endanger the life or physical safety of any person;
- neither the Commission nor any other person is entitled to require a person to give any information concerning the matter or to produce the document.

[33],
[34]

(1A) In relation to the performance of functions by the ~~Aboriginal and Torres Strait Islander Social Justice Commissioner~~ Commission under Part IIA (relating to Aboriginal persons and Torres Strait Islanders), subsection (1) (other than paragraphs (1)(a) and (b)) has effect in relation to a certificate given by the Attorney-General of a State or Territory in the same way as it has effect in relation to a certificate given by the Attorney-General of the Commonwealth. For the purposes of this additional effect, references to the Cabinet, a Committee of the Cabinet or the Executive Council are to be treated as references to the corresponding body or committee of the State or Territory concerned.

(2) Without limiting the operation of subsection (1), where the Attorney-General furnishes to the Commission a certificate certifying that the giving to the Commission, or to a person acting on behalf of the Commission, of information as to the existence or non-existence of information concerning a specified matter (including the giving of information in answer to a question) or as to the existence or non-existence of any one or more documents required to be produced to the Commission, or to a person acting on behalf of the Commission, would be contrary to the public interest:

(a) by reason that it would prejudice the security, defence or international relations of Australia; or

(b) by reason that it would prejudice the proper performance of the functions of the National Crime Authority;

neither the Commission nor a person acting on behalf of the Commission is entitled, pursuant to this Act, to require a person to give any information as to the existence or non-existence of information concerning that matter or as to the existence or non-existence of that document or those documents.

(3) Notwithstanding the provisions of any law, a person is not excused:

(a) from giving any information, or producing a document, when required to do so pursuant to this Act; or

(b) from answering a question that the person is required to answer by a member before whom the person is attending in compliance with a notice served on the person under subsection 21(5);

on the ground that the giving of the information, the production of the document or the answering of the question:

(c) would disclose legal advice furnished to a Minister, to a person or body that acts on behalf of the Commonwealth, or to an authority of the Commonwealth;

(d) would contravene the provisions of any other Act or would be contrary to the public interest; or

(e) might make the person liable to a penalty.

(4) A person is not liable to any penalty under the provisions of any other law by reason of:

(a) giving information or producing a document when required to do so pursuant to this Act; or

(b) answering a question that the person is required to answer by a member before whom the person is attending in compliance with a notice served on the person under subsection 21(5).

unchanged

26 Offences relating to administration of Act

(1) A person shall not hinder, obstruct, molest or interfere with:

(a) a member participating in an inquiry or examination under this Act; or

(b) a person acting on behalf of the Commission, while that person is holding an inquiry or carrying out an investigation under this Act.

Penalty:

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

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

(2) A person who:

(a) refuses to employ another person;

(b) dismisses, or threatens to dismiss, another person from the other person's employment;

(c) prejudices, or threatens to prejudice, another person in the other person's employment; or

(d) intimidates or coerces, imposes any pecuniary or other penalty upon, or takes any other disciplinary action in relation to, another person;

by reason that the other person:

(e) has made, or proposes to make, a complaint to the Commission;

(f) has alleged, or proposes to allege, that a person has done an act or engaged in a practice that is inconsistent with or contrary to any human right;

(g) has furnished, or proposes to furnish, any information or documents to the Commission or to a person acting on behalf of the Commission; or

(h) has given or proposes to give evidence before the Commission or to a person acting on behalf of the Commission;

is guilty of an offence punishable upon conviction:

(i) in the case of a natural person—by a fine not exceeding \$2,500 or imprisonment for a period not exceeding 3 months, or both; or

(k) in the case of a body corporate—by a fine not exceeding \$10,000.

(3) It is a defence to a prosecution for an offence under subsection (2) constituted by subjecting, or threatening to subject, a person to a detriment specified in paragraph (2)(a), (b), (c) or (d) on the ground that the person has alleged that another person has done an act or engaged in a practice that is inconsistent with or contrary to any human right if it is proved that the allegation was false and was not made in good faith.

unchanged

27 Commission to give opportunity for making of submissions

Where it appears to the Commission as a result of an inquiry into an act or practice that the act or practice is inconsistent with or contrary to any human right, the Commission shall not furnish a report to the Minister in relation to the act or practice until it has given a reasonable opportunity to the person who did the act or engaged in the practice, to do, at the option of the person, either or both of the following:

- (a) to appear before the Commission, whether in person or by a representative, and make oral submissions in relation to the act or practice;
- (b) to make written submissions to the Commission in relation to the act or practice.

28 Nature of settlements

tion shall, in endeavouring to effect a settlement of a matter that gave rise to an inquiry, have regard to the need to ensure that any settlement of the matter reflects a recognition of human rights and the need to protect those rights.

unchanged

29 Reports to contain recommendations

(1) Where, after an examination of an enactment or proposed enactment, the Commission finds that the enactment is, or the proposed enactment would be, inconsistent with or contrary to any human right, the Commission shall include in its report to the Minister relating to the results of the examination any recommendations by the Commission for amendment of the enactment or proposed enactment to ensure that the enactment is not, or the proposed enactment would not be, inconsistent with or contrary to any human right.

(2) Where, after an inquiry into an act done or practice engaged in by a person, the Commission finds that the act or practice is inconsistent with or contrary to any human right, the Commission:

- (a) shall serve notice in writing on the person setting out its findings and the reasons for those findings;
- (b) may include in the notice any recommendations by the Commission for preventing a repetition of the act or a continuation of the practice;
- (c) may include in the notice any recommendation by the Commission for either or both of the following:
 - (i) the payment of compensation to, or in respect of, a person who has suffered loss or damage as a result of the act or practice;
 - (ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice;

(d) shall include in any report to the Minister relating to the results of the inquiry particulars of any recommendations that it has made pursuant to paragraph (b) or (c);

(e) shall state in that report whether, to the knowledge of the Commission, the person has taken or is taking any action as a result of the findings, and recommendations (if any), of the Commission and, if the person has taken or is taking any such action, the nature of that action; and

(f) shall serve a copy of that report on the person and, if a complaint was made to the Commission in relation to the act or practice:

- (i) where the complaint was made by a person affected by the act or practice—shall serve a copy of that report on the complainant; or
- (ii) if the complaint was made by another person—may serve a copy of that report on the complainant.

29 Reports to contain recommendations	
	<p>(1) Where, after an examination of an enactment or proposed enactment, the Commission finds that the enactment is, or the proposed enactment would be, inconsistent with or contrary to any human right, the Commission shall include in its report to the Minister relating to the results of the examination any recommendations by the Commission for amendment of the enactment or proposed enactment to ensure that the enactment is not, or the proposed enactment would not be, inconsistent with or contrary to any human right.</p>
	<p>(2) Where, after an inquiry into an act done or practice engaged in by a person, the Commission finds that the act or practice is inconsistent with or contrary to any human right, the Commission:</p> <ul style="list-style-type: none"> (a) shall serve notice in writing on the person setting out its findings and the reasons for those findings; (b) may include in the notice any recommendations by the Commission for preventing a repetition of the act or a continuation of the practice;
[35]	<p>(c) may include in the notice any recommendation by the Commission for either or both of the following:</p> <ul style="list-style-type: none"> (i) the payment of compensation to, or in respect of, a person who has suffered loss or damage as a result of the act or practice; (ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice; <p>(c) may include in the notice any recommendation by the Commission that action (other than the payment of compensation or damages to any person) be taken to remedy or reduce loss or damage suffered by a person as a result of the act or practice; and</p>
	<p>(d) shall include in any report to the Minister relating to the results of the inquiry particulars of any recommendations that it has made pursuant to paragraph (b) or (c);</p> <p>(e) shall state in that report whether, to the knowledge of the Commission, the person has taken or is taking any action as a result of the findings, and recommendations (if any), of the Commission and, if the person has taken or is taking any such action, the nature of that action; and</p> <p>(f) shall serve a copy of that report on the person and, if a complaint was made to the Commission in relation to the act or practice:</p> <ul style="list-style-type: none"> (i) where the complaint was made by a person affected by the act or practice—shall serve a copy of that report on the complainant; or (ii) if the complaint was made by another person—may serve a copy of that report on the complainant.

(3) Where:

- (a) a complaint is made to the Commission in relation to an act or practice; and
- (b) after an inquiry into the act or practice, the Commission finds that:
 - (i) the existence of the act or practice has not been established; or
 - (ii) the act or practice is not inconsistent with or contrary to any human right;

the Commission shall give a copy of a report setting out its findings, and the reasons for those findings, to the complainant and:

- (c) in a case to which subparagraph (b)(i) applies—to the person alleged to have done the act or engaged in the practice; or
- (d) in a case to which subparagraph (b)(ii) applies—to the person who did the act or engaged in the practice.

(4) In setting out findings and reasons in a notice to be served or a report to be given under this section the Commission may exclude any matter if the Commission considers it desirable to do so having regard to any of the matters mentioned in subsection 14(5) and to the obligations of the Commission under subsection 14(6).

(5) Where, under subsection (4), the Commission excludes any matter from a report, the Commission shall prepare a report setting out the excluded matter and its reasons for excluding the matter and shall furnish the report to the Minister.

Division 4—Functions relating to equal opportunity in employment

30 Interpretation etc.

(1) In this Division:

act includes an act done:

- (a) by or on behalf of a State or an authority of a State;
- (b) under a law of a State;
- (c) wholly within a State; or
- (d) partly within a State, to the extent to which the act was done within a State.

practice includes a practice engaged in:

- (a) by or on behalf of a State or an authority of a State;
- (b) under a law of a State;
- (c) wholly within a State; or

(d) partly within a State, to the extent to which the practice was or is engaged in within a State.

(1A) In this Division, a reference to an act or practice that constitutes discrimination includes a reference to an act that is an offence under subsection 26(2).

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

unchanged

31 Functions of Commission relating to equal opportunity

The following functions are hereby conferred on the Commission:

- (a) 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, as the case may be, have, or would have, the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, and to report to the Minister the results of any such examination;
- (b) to inquire into any act or practice, including any systemic practice, that may constitute discrimination and:
 - (i) where the Commission considers it appropriate to do so—to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and
 - (ii) where the Commission is of the opinion that the act or practice constitutes discrimination, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement—to report to the Minister in relation to the inquiry;
- (c) to promote an understanding and acceptance, and the public discussion, of equality of opportunity and treatment in employment and occupation in Australia;
- (d) to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting equality of opportunity and treatment in employment and occupation, and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;
- (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 equality of opportunity and treatment in employment and occupation;
- (f) when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Convention;

31 Functions of Commission relating to equal opportunity	
	The following functions are hereby conferred on the Commission:
[36]	<ul style="list-style-type: none"> (aa) to promote an understanding and acceptance, and the public discussion, of equality of opportunity and treatment in employment and occupation in Australia and of the responsibility of persons and organisations to respect that equality; (ab) to disseminate information on equality of opportunity and treatment in employment and occupation and on the responsibility of persons and organisations to respect that equality; (ac) to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting that equality, and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth; (ad) to prepare, and to publish in the manner the Commission considers appropriate, guidelines for avoiding acts or practices of a kind in respect of which the Commission has a function under paragraph (b);
	(a) 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, as the case may be, have, or would have, the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, and to report to the Minister the results of any such examination;
	(b) to inquire into any act or practice, including any systemic practice, that may constitute discrimination and: <ul style="list-style-type: none"> (i) where the Commission considers it appropriate to do so—to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and (ii) where the Commission is of the opinion that the act or practice constitutes discrimination, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement—to report to the Minister in relation to the inquiry;
[37]	(c) to promote an understanding and acceptance, and the public discussion, of equality of opportunity and treatment in employment and occupation in Australia;
[37]	(d) to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting equality of opportunity and treatment in employment and occupation, and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;
	(c) 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 equality of opportunity and treatment in employment and occupation;
	(f) when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Convention;

- (g) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Convention, and to report to the Minister the results of any such examination;
- (h) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of acts or practices of a kind in respect of which the Commission has a function under paragraph (b);
- (j) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve discrimination issues;
- (k) to do anything incidental or conducive to the performance of any of the preceding functions.

	(g) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Convention, and to report to the Minister the results of any such examination;
[37]	(h) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of acts or practices of a kind in respect of which the Commission has a function under paragraph (b);
[38]	(j) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve discrimination issues, subject to subsections (2) and (3);
	(k) to do anything incidental or conducive to the performance of any of the preceding functions.
[39]	<p>(2) Except in a case to which subsection (3) applies, the Commission may only intervene in proceedings as mentioned in paragraph (1)(j) if the Attorney-General approves the intervention. In deciding whether to approve the intervention, the Attorney-General may (but need not) have regard to the following matters:</p> <ul style="list-style-type: none"> (a) whether the Commonwealth, or a person on behalf of the Commonwealth, has already intervened in the proceedings; (b) whether, in the Attorney-General's opinion, the proceedings may affect to a significant extent the human rights of, or involve significant issues of discrimination against, persons who are not parties to them; (c) whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of this Act, the <i>Disability Discrimination Act 1992</i>, the <i>Racial Discrimination Act 1975</i> or the <i>Sex Discrimination Act 1984</i>; (d) whether, in the Attorney-General's opinion, there are special circumstances such that it would be in the public interest for the Commission to intervene. <p>This subsection does not, by implication, limit the matters to which the Attorney-General may have regard.</p>
[39]	<p>(3) If the President is:</p> <ul style="list-style-type: none"> (a) a Justice of the High Court, or was such a Justice immediately before becoming President; or (b) a Judge of a court created by the Parliament, or was such a Judge immediately before becoming President; <p>then, before the Commission seeks leave to intervene in proceedings as mentioned in paragraph (1)(j), the Commission must give the Attorney-General written notice of the Commission's intention to seek leave to intervene, together with a statement of why the Commission considers it appropriate to intervene. The notice must be given at a time when there is still a reasonable period before the Commission seeks leave to intervene.</p>

32 Performance of functions relating to equal opportunity

- (1) Subject to subsections (2) and (3), the Commission shall perform the functions referred to in paragraph 31(b) when:
- (a) the Commission is requested to do so by the Minister;
 - (b) a complaint is made in writing to the Commission alleging that an act or practice constitutes discrimination; or
 - (c) it appears to the Commission to be desirable to do so.
- (2) The Commission shall not inquire into an act or practice, or, if the Commission has commenced to inquire into an act or practice, shall not continue to inquire into the act or practice, if the Commission is satisfied that the subject matter of the complaint is dealt with under a prescribed enactment or a prescribed State enactment.
- (3) The Commission may decide not to inquire into an act or practice, or, if the Commission has commenced to inquire into an act or practice, may decide not to continue to inquire into the act or practice, if:
- (a) the Commission is satisfied that the act or practice does not constitute discrimination;
 - (b) the Commission is satisfied that the person aggrieved by the act or practice does not desire that the inquiry be held or continued; or
 - (c) in a case where a complaint has been made to the Commission in relation to the act or practice:
 - (i) the complaint was made more than 12 months after the act was done or after the last occasion when an act was done pursuant to the practice;
 - (ii) the Commission is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance;
 - (iii) where some other remedy has been sought in relation to the subject matter of the complaint—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with;
 - (iv) the Commission is of the opinion that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the complainant;
 - (v) where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with; or
 - (vi) the Commission is of the opinion that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.

32 Performance of functions relating to equal opportunity	
[40]	<p>(1) Subject to subsections (2) and (3), the Commission shall perform the functions referred to in paragraph 31(b) 31(1)(b) when:</p> <ul style="list-style-type: none"> (a) the Commission is requested to do so by the Minister; (b) a complaint is made in writing to the Commission alleging that an act or practice constitutes discrimination; or (c) it appears to the Commission to be desirable to do so.
	<p>(2) The Commission shall not inquire into an act or practice, or, if the Commission has commenced to inquire into an act or practice, shall not continue to inquire into the act or practice, if the Commission is satisfied that the subject matter of the complaint is dealt with under a prescribed enactment or a prescribed State enactment.</p>
	<p>(3) The Commission may decide not to inquire into an act or practice, or, if the Commission has commenced to inquire into an act or practice, may decide not to continue to inquire into the act or practice, if:</p> <ul style="list-style-type: none"> (a) the Commission is satisfied that the act or practice does not constitute discrimination; (b) the Commission is satisfied that the person aggrieved by the act or practice does not desire that the inquiry be held or continued; or (c) in a case where a complaint has been made to the Commission in relation to the act or practice: <ul style="list-style-type: none"> (i) the complaint was made more than 12 months after the act was done or after the last occasion when an act was done pursuant to the practice; (ii) the Commission is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance; (iii) where some other remedy has been sought in relation to the subject matter of the complaint—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with; (iv) the Commission is of the opinion that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the complainant; (v) where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with; or (vi) the Commission is of the opinion that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.

33 Application of certain provisions of Division 3

Subsections 20(3), (4) and (5) and sections 21, 22, 23, 24, 26 and 27 apply in relation to the functions of the Commission set out in section 31, and in relation to the performance of those functions, as if:

- (a) references in those provisions to acts or practices were references to acts or practices within the meaning of this Division;
- (b) the words “is inconsistent with or contrary to any human right” were omitted from subsection 20(5) and the words “constitutes discrimination” were substituted;
- (c) references in section 21 to a matter under examination or inquiry under Division 3 were references to a matter under examination or inquiry under this Division, not being an act mentioned in paragraph (a), (b), (c) or (d) of the definition of *act* in subsection 30(1) or a practice mentioned in paragraph (a), (b), (c) or (d) of the definition of *practice* in that subsection;
- (d) the words “is inconsistent with or contrary to any human right” were omitted from sections 26 and 27 and the words “constitutes discrimination” were substituted; and
- (e) a reference in any of those provisions to another of those provisions were a reference to that other provision as applied by this section.

34 Nature of settlements

The Commission shall, in endeavouring to effect a settlement of a matter that gave rise to an inquiry, have regard to the need to ensure that any settlement of the matter reflects a recognition of the right of every person to equality of opportunity and treatment in respect of employment and occupation and the need to protect that right.

35 Reports to contain recommendations

- (1) Where, after an examination of an enactment or proposed enactment, the Commission finds that the enactment has, or the proposed enactment would have, the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, the Commission shall include in its report to the Minister relating to the results of the examination any recommendations by the Commission for amendment of the enactment or proposed enactment to ensure that the enactment does not have, or the proposed enactment would not have, the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.
- (2) Where, after an inquiry into an act done or practice engaged in by a person, the Commission finds that the act or practice constitutes discrimination, the Commission:
 - (a) shall serve notice in writing on the person setting out its findings and the reasons for those findings;
 - (b) may include in the notice any recommendations by the Commission for preventing a repetition of the act or a continuation of the practice;

	<h3>33 Application of certain provisions of Division 3</h3> <p>Subsections 20(3), (4) and (5) and sections 21, 22, 23, 24, 26 and 27 apply in relation to the functions of the Commission set out in section 31 subsection 31(1), and in relation to the performance of those functions, as if:</p> <ul style="list-style-type: none"> (a) references in those provisions to acts or practices were references to acts or practices within the meaning of this Division; (b) the words “is inconsistent with or contrary to any human right” were omitted from subsection 20(5) and the words “constitutes discrimination” were substituted; (c) references in section 21 to a matter under examination or inquiry under Division 3 were references to a matter under examination or inquiry under this Division, not being an act mentioned in paragraph (a), (b), (c) or (d) of the definition of <i>act</i> in subsection 30(1) or a practice mentioned in paragraph (a), (b), (c) or (d) of the definition of <i>practice</i> in that subsection; (d) the words “is inconsistent with or contrary to any human right” were omitted from sections 26 and 27 and the words “constitutes discrimination” were substituted; and (e) a reference in any of those provisions to another of those provisions were a reference to that other provision as applied by this section.
[41]	
	<h3>34 Nature of settlements</h3> <p>The Commission shall, in endeavouring to effect a settlement of a matter that gave rise to an inquiry, have regard to the need to ensure that any settlement of the matter reflects a recognition of the right of every person to equality of opportunity and treatment in respect of employment and occupation and the need to protect that right.</p>
	<h3>35 Reports to contain recommendations</h3> <ul style="list-style-type: none"> (1) Where, after an examination of an enactment or proposed enactment, the Commission finds that the enactment has, or the proposed enactment would have, the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, the Commission shall include in its report to the Minister relating to the results of the examination any recommendations by the Commission for amendment of the enactment or proposed enactment to ensure that the enactment does not have, or the proposed enactment would not have, the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. (2) Where, after an inquiry into an act done or practice engaged in by a person, the Commission finds that the act or practice constitutes discrimination, the Commission: <ul style="list-style-type: none"> (a) shall serve notice in writing on the person setting out its findings and the reasons for those findings; (b) may include in the notice any recommendations by the Commission for preventing a repetition of the act or a continuation of the practice;

- (c) may include in the notice any recommendation by the Commission for either or both of the following:
- (i) the payment of compensation to, or in respect of, a person who has suffered loss or damage as a result of the act or practice;
 - (ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice;
- (d) shall include in any report to the Minister relating to the results of the inquiry particulars of any recommendations that it has made pursuant to paragraph (b) or (c);
- (e) shall state in that report whether, to the knowledge of the Commission, the person has taken or is taking any action as a result of the findings, and recommendations (if any), of the Commission and, if the person has taken or is taking any such action, the nature of that action; and
- (f) shall serve a copy of that report on the person and, if a complaint was made to the Commission in relation to the act or practice:
- (i) where the complaint was made by a person affected by the act or practice—shall serve a copy of that report on the complainant; or
 - (ii) if the complaint was made by another person—may serve a copy of that report on the complainant.
- (3) Where:
- (a) a complaint is made to the Commission in relation to an act or practice; and
 - (b) after an inquiry into the act or practice, the Commission finds that:
 - (i) the existence of the act or practice has not been established; or
 - (ii) the act or practice does not constitute discrimination;
- the Commission shall give a copy of a report setting out its findings, and the reasons for those findings, to the complainant and:
- (c) in a case to which subparagraph (b)(i) applies—to the person alleged to have done the act or engaged in the practice; or
 - (d) in a case to which subparagraph (b)(ii) applies—to the person who did the act or engaged in the practice.
- (4) In setting out findings and reasons in a notice to be served or a report to be given under this section the Commission may exclude any matter if the Commission considers it desirable to do so having regard to any of the matters mentioned in subsection 14(5) and to the obligations of the Commission under subsection 14(6).
- (5) Where, under subsection (4), the Commission excludes any matter from a report, the Commission shall prepare a report setting out the excluded matter and its reasons for excluding the matter and shall furnish the report to the Minister.

[42]	<p>(c) may include in the notice any recommendation by the Commission for either or both of the following:</p> <ul style="list-style-type: none"> (i) the payment of compensation to, or in respect of, a person who has suffered loss or damage as a result of the act or practice; (ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice; <p>(c) may include in the notice any recommendation by the Commission that action (other than the payment of compensation or damages to any person) be taken to remedy or reduce loss or damage suffered by a person as a result of the act or practice;</p>
	<p>(d) shall include in any report to the Minister relating to the results of the inquiry particulars of any recommendations that it has made pursuant to paragraph (b) or (c);</p> <p>(e) shall state in that report whether, to the knowledge of the Commission, the person has taken or is taking any action as a result of the findings, and recommendations (if any), of the Commission and, if the person has taken or is taking any such action, the nature of that action; and</p> <p>(f) shall serve a copy of that report on the person and, if a complaint was made to the Commission in relation to the act or practice:</p> <ul style="list-style-type: none"> (i) where the complaint was made by a person affected by the act or practice—shall serve a copy of that report on the complainant; or (ii) if the complaint was made by another person—may serve a copy of that report on the complainant.
	<p>(3) Where:</p> <ul style="list-style-type: none"> (a) a complaint is made to the Commission in relation to an act or practice; and (b) after an inquiry into the act or practice, the Commission finds that: <ul style="list-style-type: none"> (i) the existence of the act or practice has not been established; or (ii) the act or practice does not constitute discrimination; <p>the Commission shall give a copy of a report setting out its findings, and the reasons for those findings, to the complainant and:</p> <ul style="list-style-type: none"> (c) in a case to which subparagraph (b)(i) applies—to the person alleged to have done the act or engaged in the practice; or (d) in a case to which subparagraph (b)(ii) applies—to the person who did the act or engaged in the practice.
	<p>(4) In setting out findings and reasons in a notice to be served or a report to be given under this section the Commission may exclude any matter if the Commission considers it desirable to do so having regard to any of the matters mentioned in subsection 14(5) and to the obligations of the Commission under subsection 14(6).</p>
	<p>(5) Where, under subsection (4), the Commission excludes any matter from a report, the Commission shall prepare a report setting out the excluded matter and its reasons for excluding the matter and shall furnish the report to the Minister.</p>

Division 5—Administrative provisions

36 Acting President and Human Rights Commissioner

- (2) The Minister may appoint a person to act as President:
 - (a) during a vacancy in the office of President, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the President is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office of President.
- (3) The Minister may appoint a person to act as Human Rights Commissioner:
 - (a) during a vacancy in the office of Human Rights Commissioner, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Human Rights Commissioner is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office of Human Rights Commissioner.
- (9) At any time when a person who is not a member of the Commission is acting as President or Human Rights Commissioner, the person shall be deemed to be a member of the Commission for the purposes of sections 21, 22, 23, 24 and 26 (including those sections as applied by section 33) and sections 42, 48 and 49.
- (10) The validity of anything done by or in relation to a person purporting to act under subsection (1) shall not be called in question on the ground that:
 - (a) the occasion for the person's appointment had not arisen;
 - (b) there is a defect or irregularity in connection with the person's appointment;
 - (c) the person's appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

37 Terms and conditions of appointment

- (1) Subject to subsection (2), an appointed member holds office for such period, not exceeding 7 years, as is specified in the instrument of the member's appointment, but is eligible for re-appointment.
- (4) An appointed member, other than a member who is a Judge, 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.

	Division 5—Administrative provisions
	36 Acting President and Human Rights Commissioner Commissioners
	(2) The Minister may appoint a person to act as President: <ul style="list-style-type: none"> (a) during a vacancy in the office of President, whether or not an appointment has previously been made to the office; or (b) during any period, or during all periods, when the President is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office of President.
[43], [44]	(3) The Minister may appoint a person to act as a Human Rights Commissioner: <ul style="list-style-type: none"> (a) during a vacancy in the office of a Human Rights Commissioner, whether or not an appointment has previously been made to the office; or (b) during any period, or during all periods, when the when a Human Rights Commissioner is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office of a Human Rights Commissioner.
[45]	(9) At any time when a person who is not a member of the Commission is acting as President or a Human Rights Commissioner, the person shall be deemed to be a member of the Commission for the purposes of sections 21, 22, 23, 24 and 26 (including those sections as applied by section 33) and sections 42, 48 and 49.
	(10) The validity of anything done by or in relation to a person purporting to act under subsection (1) shall not be called in question on the ground that: <ul style="list-style-type: none"> (a) the occasion for the person's appointment had not arisen; (b) there is a defect or irregularity in connection with the person's appointment; (c) the person's appointment had ceased to have effect; or (d) the occasion for the person to act had not arisen or had ceased.
	37 Terms and conditions of appointment
[46]	(1) Subject to subsection (2), an appointed A member holds office for such period, not exceeding 7 years, as is specified in the instrument of the member's appointment, but is eligible for re-appointment.
	(4) An appointed A member, other than a member who is a Judge, 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.

38 Remuneration and allowances

- (1) Subject to this section, an appointed member shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, an appointed member shall be paid such remuneration as is prescribed.
- (2) An appointed member shall be paid such allowances as are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.
- (4) If a person who is a Judge is appointed as a member, the person is not, while receiving salary or annual allowance as a Judge, entitled to remuneration under this Act.

39 Leave of absence

- (1) A person appointed as a full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (1A) The Minister may grant a person appointed as a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.
- (2) The Minister may grant to a person appointed as a part-time member leave of absence from a meeting of the Commission.

40 Resignation

An appointed member may resign from the office of member by writing signed by the member and delivered to the Governor-General.

	38 Remuneration and allowances
[48]	(1) Subject to this section, an appointed a member shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, an appointed a member shall be paid such remuneration as is prescribed.
[49]	(2) An appointed A member shall be paid such allowances as are prescribed.
	(3) Subsections (1) and (2) have effect subject to the <i>Remuneration Tribunal Act 1973</i> .
	(4) If a person who is a Judge is appointed as a member, the person is not, while receiving salary or annual allowance as a Judge, entitled to remuneration under this Act.
	39 Leave of absence
	(1) A person appointed as a full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.
	(1A) The Minister may grant a person appointed as a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.
	(2) The Minister may grant to a person appointed as a part-time member leave of absence from a meeting of the Commission.
[50]	40 Resignation An appointed A member may resign from the office of member by writing signed by the member and delivered to the Governor-General.

41 Termination of appointment

- (1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.
- (2) If:
 - (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
 - (b) a full-time member engages, except with the approval of the Minister, in paid employment outside the duties of the office of member;
 - (c) a full-time member is absent from duty, except on leave of absence, for 14 consecutive days, or for 28 days in any period of 12 months;
 - (d) a part-time member is absent, except on leave granted by the Minister in accordance with subsection 39(2), from 3 consecutive meetings of the Commission; or
 - (e) a member fails, without reasonable excuse, to comply with section 42;
 the Governor-General shall terminate the appointment of that member.
- (3) In subsections (1) and (2), **member** means an appointed member but does not include a member who is a Judge.
- (4) If an appointed member who is a Judge ceases to be a Judge, the Governor-General may terminate the appointment of the member.

42 Disclosure of interests

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Commission.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Commission and the member shall not:
 - (a) be present during any deliberation of the Commission with respect to that matter;
 - or
 - (b) take part in any decision of the Commission with respect to that matter.

	41 Termination of appointment
	(1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.
	(2) If: <ul style="list-style-type: none"> (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; (b) a full-time member engages, except with the approval of the Minister, in paid employment outside the duties of the office of member; (c) a full-time member is absent from duty, except on leave of absence, for 14 consecutive days, or for 28 days in any period of 12 months; (d) a part-time member is absent, except on leave granted by the Minister in accordance with subsection 39(2), from 3 consecutive meetings of the Commission; or (e) a member fails, without reasonable excuse, to comply with section 42; the Governor-General shall terminate the appointment of that member.
[51]	(3) In subsections (1) and (2), member means an appointed member but does not include a member who is a Judge.
[52]	(4) If an appointed a member who is a Judge ceases to be a Judge, the Governor-General may terminate the appointment of the member.
	42 Disclosure of interests
	(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Commission.
	(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Commission and the member shall not: <ul style="list-style-type: none"> (a) be present during any deliberation of the Commission with respect to that matter; or (b) take part in any decision of the Commission with respect to that matter.

not in existing Act

42A Complaints Commissioners

(1) The Attorney-General may appoint a legally qualified person or persons as a Complaints Commissioner or as Complaints Commissioners.

(2) A person appointed under subsection (1):

- (a) holds office on a part-time basis; and
- (b) holds office for the period specified in the person's instrument of appointment, not being a period of more than 5 years; and
- (c) is eligible for re-appointment; and
- (d) may resign the appointment by writing signed by the person and given to the Attorney-General.

(3) The Attorney-General may:

- (a) determine the terms and conditions of appointment, including remuneration, of a person appointed under subsection (1); and
- (b) at any time terminate the appointment.

(4) The Attorney-General may, for the purpose of appointing under subsection (1) a person who is a judicial officer of a State, enter into an arrangement with the appropriate Minister of the State as is necessary to secure the person's services.

[53] (5) An arrangement under subsection (4) may provide for the Commonwealth to reimburse a State for the services of the person to whom the arrangement relates.

(6) The appointment under subsection (1) of the holder of a Commonwealth office, or service by the holder of a Commonwealth office under an appointment, does not affect:

- (a) the person's tenure of the Commonwealth office; or
 - (b) the person's rank, title, status, precedence, salary, annual leave or other allowances or other rights or privileges as the holder of that office;
- and, for all purposes, the person's service under the appointment is taken to be service as the holder of the office.

(7) In this section:

Commonwealth office means:

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

legally qualified person means a person who:

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

43 Staff

- (1) The staff necessary to assist the Commission shall be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the President and the APS employees assisting the President together constitute a Statutory Agency; and
 - (b) the President is the Head of that Statutory Agency.

43A Commission may make administrative services available to the Privacy Commissioner

Commission may make administrative services available to the Privacy Commissioner for the purpose of assisting the Privacy Commissioner in the performance of his or her functions under the *Privacy Act 1988* or any other Act.

44 Meetings of the Commission

- (1) The Minister or the President may, at any time, convene a meeting of the Commission.
- (2) The President shall convene such meetings of the Commission as, in the President's opinion, are necessary for the efficient performance of its functions.
- (3) At a meeting of the Commission a quorum is constituted by a number of members that is not less than one-half of the number of members for the time being holding office under section 8.
- (4) The President shall preside at all meetings of the Commission at which the President is present.
- (5) If the President is not present at a meeting of the Commission, the members present are to elect one of their number to preside at the meeting.
- (6) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the members present and voting.
- (7) The person presiding at a meeting of the Commission has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

The Commission may regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.

unchanged

45 Annual report

(1) The Commission shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of its operations during the year that ended on that 30 June, being operations under this Act and operations under any other enactment or any State enactment.

The first report of the Commission shall include a report of the operations of the Human Rights Commission under the *Human Rights Commission Act 1981* for the period that commenced immediately after the end of the year to which the last report furnished by the Human Rights Commission under that Act related and ended immediately before the commencement of this Act.

46 Reports to be tabled in Parliament

The Minister shall cause a copy of every report furnished to the Minister by the Commission under this Part other than subsection 29(5) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

Division 6—Corporate plan

46AA Corporate plan

- (1) The Commission must prepare corporate plans.
- (2) The first corporate plan:
 - (a) is to be for a period of 3 years; and
 - (b) must be given to the Minister within 12 months after the commencement of this section.
- (3) Each subsequent corporate plan is to be for a period of 3 years beginning immediately after the period of the previous corporate plan.
- (4) The Commission may review and revise a corporate plan at any time.

In performing its duties and functions, the Commission must take account of the corporate plan then in force.

46AB Matters to be included in corporate plan

Each corporate plan must:

- (a) set out the general policies and strategies that the Commission intends to adopt in order to perform its duties and functions; and
- (b) include such performance indicators and targets as the Commission considers appropriate.

46AC Corporate plans to be given to Minister

As soon as practicable after the Commission prepares or revises a corporate plan, it must give a copy of the plan to the Minister.

unchanged

Part IIA—Aboriginal and Torres Strait Islander Social Justice Commissioner

Division 1—Establishment and functions

46A Interpretation

In this Part:

Commissioner means the Aboriginal and Torres Strait Islander Social Justice Commissioner.

human rights means:

- (a) the rights and freedoms recognised by the International Convention on the Elimination of All Forms of Racial Discrimination, a copy of which is set out in the Schedule to the *Racial Discrimination Act 1975*; and
- (b) the rights and freedoms recognised by the Covenant; and
- (c) the rights and freedoms declared by the Declarations or recognised or declared by any relevant international instrument.

46B Aboriginal and Torres Strait Islander Social Justice Commissioner

(1) There is to be an Aboriginal and Torres Strait Islander Social Justice Commissioner, who is to be appointed by the Governor-General.

A person is not qualified to be appointed unless the Governor-General is satisfied that the person has significant experience in community life of Aboriginal persons or Torres Strait Islanders.

[54]	<p>Part IIA—Aboriginal and Torres Strait Islander Social Justice Commissioner Part IIA—Functions relating to Aboriginal persons and Torres Strait Islanders</p>
[55]	<p>Division 1—Establishment and functions 46A Interpretation</p>
	<p>In this Part:</p>
[56]	<p>Commissioner means the Aboriginal and Torres Strait Islander Social Justice Commissioner.</p>
	<p>human rights means:</p> <ul style="list-style-type: none"> (a) the rights and freedoms recognised by the International Convention on the Elimination of All Forms of Racial Discrimination, a copy of which is set out in the Schedule to the <i>Racial Discrimination Act 1975</i>; and (b) the rights and freedoms recognised by the Covenant; and (c) the rights and freedoms declared by the Declarations or recognised or declared by any relevant international instrument.
[57]	<p>46B Aboriginal and Torres Strait Islander Social Justice Commissioner (1) There is to be an Aboriginal and Torres Strait Islander Social Justice Commissioner, who is to be appointed by the Governor-General. A person is not qualified to be appointed unless the Governor-General is satisfied that the person has significant experience in community life of Aboriginal persons or Torres Strait Islanders.</p>

46C Functions of the Commission that are to be performed by the Commissioner

- (1) The following functions are conferred on the Commission:
- (a) to submit a report to the Minister, as soon as practicable after 30 June in each year, regarding the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders, and including recommendations as to the action that should be taken to ensure the enjoyment and exercise of human rights by those persons;
 - (b) to promote discussion and awareness of human rights in relation to Aboriginal persons and Torres Strait Islanders;
 - (c) to undertake research and educational programs, and other programs, for the purpose of promoting respect for the human rights of Aboriginal persons and Torres Strait Islanders and promoting the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders;
 - (d) to examine enactments, and proposed enactments, for the purpose of ascertaining whether they recognise and protect the human rights of Aboriginal persons and Torres Strait Islanders, and to report to the Minister the results of any such examination.

(2) The functions of the Commission under subsection (1) are to be performed by the Commissioner on behalf of the Commission.

(3) In the performance of functions under this section, the Commissioner must, as appropriate, consult the Aboriginal and Torres Strait Islander Commission and may consult any of the following:

- (a) organisations established by Aboriginal or Torres Strait Islander communities;
- (b) organisations of indigenous peoples in other countries;
- (c) international organisations and agencies;

(d) such other organisations, agencies or persons as the Commissioner considers appropriate.

(4) In the performance of functions under this section, the Commissioner must, as appropriate, have regard to:

- (a) the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Rights of the Child*; and
- (b) such other instruments relating to human rights as the Commissioner considers relevant; and
- (c) the object of the *Council for Aboriginal Reconciliation Act 1991*.

[59]	46C Functions of the Commission that are to be performed by the Commissioner Functions relating to Aboriginal persons and Torres Strait Islanders
[58]	<p>(1) The following functions are conferred on the Commission:</p> <ul style="list-style-type: none"> (a) to submit a report to the Minister, as soon as practicable after 30 June in each year, regarding the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders, and including recommendations as to the action that should be taken to ensure the enjoyment and exercise of human rights by those persons; (b) to promote discussion and awareness of human rights in relation to Aboriginal persons and Torres Strait Islanders; (c) to undertake research and educational programs, and other programs, for the purpose of promoting respect for the human rights of Aboriginal persons and Torres Strait Islanders and promoting the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders; (d) to examine enactments, and proposed enactments, for the purpose of ascertaining whether they recognise and protect the human rights of Aboriginal persons and Torres Strait Islanders, and to report to the Minister the results of any such examination. <p>Note: Functions are also conferred on the Commission under section 209 of the <i>Native Title Act 1993</i>.</p>
[59]	(2) The functions of the Commission under subsection (1) are to be performed by the Commissioner on behalf of the Commission.
[60], [61]	<p>(3) In the performance of functions under this section, the Commissioner Commission must, as appropriate, consult the Aboriginal and Torres Strait Islander Commission and may consult any of the following:</p> <ul style="list-style-type: none"> (a) organisations established by Aboriginal or Torres Strait Islander communities; (b) organisations of indigenous peoples in other countries; (c) international organisations and agencies; (d) such other organisations, agencies or persons as the Commissioner first-mentioned Commission considers appropriate.
[62]	<p>(4) In the performance of functions under this section, the Commissioner Commission must, as appropriate, have regard to:</p> <ul style="list-style-type: none"> (a) the <i>Universal Declaration of Human Rights</i>, the <i>International Covenant on Civil and Political Rights</i>, the <i>International Covenant on Economic, Social and Cultural Rights</i>, the <i>Convention on the Elimination of All Forms of Racial Discrimination</i> and the <i>Convention on the Rights of the Child</i>; and (b) such other instruments relating to human rights as the Commissioner Commission considers relevant; and (c) the object of the <i>Council for Aboriginal Reconciliation Act 1991</i>.

Division 2—Administrative provisions

46D Terms and conditions of appointment

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

46E Remuneration

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

46F Leave of absence

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

46G Outside employment

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

46H Resignation

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

Division 2—Administrative provisions

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[63]

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46H Resignation

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

46I Termination of appointment

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

46J Acting Commissioner

- (1) The Minister may appoint a person to act as Commissioner:
- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office of Commissioner.
- (2) The validity of anything done by a person purporting to act under an appointment made under subsection (1) is not to be called in question on the ground that:
- (a) the occasion for the person's appointment had not arisen; or
 - (b) there is a defect or irregularity in or in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

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[63]

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

Division 3—Miscellaneous

46K Commissioner may obtain information from government agencies

(1) If the Commissioner has reason to believe that a government agency has information or a document relevant to the performance by the Commissioner of functions under this Part, the Commissioner may give a written notice to the agency requiring the agency:

- (a) to give the information to the Commissioner in writing signed by or on behalf of the agency; or
- (b) to produce the document to the Commissioner.

(2) The notice must state:

- (a) the place at which the information or document is to be given or produced to the Commissioner; and
- (b) the time at which, or period within which, the information or document is to be given or produced.

(3) A government agency must not, in response to a requirement under this section:

- (a) give information in a manner that would reveal the identity of a particular individual; or
- (b) produce a document that reveals the identity of a particular individual;

unless the individual has consented to the giving of the information or the production of the document.

(4) If

- (a) subsection (3) would prevent a government agency from complying with a requirement under this section to produce a document; and
- (b) the agency is able to provide a copy of the document that has had deleted from it the information that would reveal the identity of the individual concerned;

the agency must comply with the requirement by producing a copy with that information deleted.

(5) In this section:

government agency means:

- (a) an authority of the Commonwealth, or of a State or Territory; or
- (b) a person who performs the functions of, or performs functions within, an authority of the Commonwealth, or of a State or Territory.

46L Commissioner must give information to the Commission

tioner must give to the Commission such information as the Commission from time to time requires relating to the operations of the Commissioner under this Part.

[64]	Division 3—Miscellaneous
[65]	46K Commissioner Commission may obtain information from government agencies
[65]	(1) If the Commissioner Commission has reason to believe that a government agency has information or a document relevant to the performance by the Commissioner Commission of functions under this Part, the Commissioner Commission may give a written notice to the agency requiring the agency: <ul style="list-style-type: none"> (a) to give the information to the Commissioner Commission in writing signed by or on behalf of the agency; or (b) to produce the document to the Commissioner Commission.
[65]	(2) The notice must state: <ul style="list-style-type: none"> (a) the place at which the information or document is to be given or produced to the Commissioner Commission; and (b) the time at which, or period within which, the information or document is to be given or produced.
	(3) A government agency must not, in response to a requirement under this section: <ul style="list-style-type: none"> (a) give information in a manner that would reveal the identity of a particular individual; or (b) produce a document that reveals the identity of a particular individual; unless the individual has consented to the giving of the information or the production of the document.
	(4) If: <ul style="list-style-type: none"> (a) subsection (3) would prevent a government agency from complying with a requirement under this section to produce a document; and (b) the agency is able to provide a copy of the document that has had deleted from it the information that would reveal the identity of the individual concerned; the agency must comply with the requirement by producing a copy with that information deleted.
	(5) In this section: <p>government agency means:</p> <ul style="list-style-type: none"> (a) an authority of the Commonwealth, or of a State or Territory; or (b) a person who performs the functions of, or performs functions within, an authority of the Commonwealth, or of a State or Territory.
[66]	46L Commissioner must give information to the Commission The Commissioner must give to the Commission such information as the Commission from time to time requires relating to the operations of the Commissioner under this Part.

46M Minister must table etc. report of Commissioner

The Minister must cause a copy of each report received by the Minister under paragraph 46C(1)(a):

- (a) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister; and
- (b) to be sent to the Attorney-General of each State and Territory within 7 days after the report is first laid before either House of the Parliament under paragraph (a).

Part IIB—Redress for unlawful discrimination

Division 1—Conciliation by the President

46P Lodging a complaint

- (1) A written complaint may be lodged with the Commission, alleging unlawful discrimination.
- (2) The complaint may be lodged:
 - (a) by a person aggrieved by the alleged unlawful discrimination:
 - (i) on that person’s own behalf; or
 - (ii) on behalf of that person and one or more other persons who are also aggrieved by the alleged unlawful discrimination; or
 - (b) by 2 or more persons aggrieved by the alleged unlawful discrimination:
 - (i) on their own behalf; or
 - (ii) on behalf of themselves and one or more other persons who are also aggrieved by the alleged unlawful discrimination; or
 - (c) by a person or trade union on behalf of one or more other persons aggrieved by the alleged unlawful discrimination.
- (3) A person who is a class member for a representative complaint is not entitled to lodge a separate complaint in respect of the same subject matter.
- (4) If it appears to the Commission that:
 - (a) a person wishes to make a complaint under subsection (1); and
 - (b) the person requires assistance to formulate the complaint or to reduce it to writing;
 the Commission must take reasonable steps to provide appropriate assistance to the person.

[66]	<p>46M Minister must table etc. report of Commissioner Commission</p> <p>The Minister must cause a copy of each report received by the Minister under paragraph 46C(1)(a):</p> <ul style="list-style-type: none"> (a) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister; and (b) to be sent to the Attorney-General of each State and Territory within 7 days after the report is first laid before either House of the Parliament under paragraph (a).
	<p>Part IIB—Redress for unlawful discrimination</p>
	<p>Division 1—Conciliation by the President</p>
	<p>46P Lodging a complaint</p>
	<p>(1) A written complaint may be lodged with the Commission, alleging unlawful discrimination.</p>
	<p>(2) The complaint may be lodged:</p> <ul style="list-style-type: none"> (a) by a person aggrieved by the alleged unlawful discrimination: <ul style="list-style-type: none"> (i) on that person’s own behalf; or (ii) on behalf of that person and one or more other persons who are also aggrieved by the alleged unlawful discrimination; or (b) by 2 or more persons aggrieved by the alleged unlawful discrimination: <ul style="list-style-type: none"> (i) on their own behalf; or (ii) on behalf of themselves and one or more other persons who are also aggrieved by the alleged unlawful discrimination; or (c) by a person or trade union on behalf of one or more other persons aggrieved by the alleged unlawful discrimination.
	<p>(3) A person who is a class member for a representative complaint is not entitled to lodge a separate complaint in respect of the same subject matter.</p>
	<p>(4) If it appears to the Commission that:</p> <ul style="list-style-type: none"> (a) a person wishes to make a complaint under subsection (1); and (b) the person requires assistance to formulate the complaint or to reduce it to writing; the Commission must take reasonable steps to provide appropriate assistance to the person.

46PA Amendment of complaint

- (1) Any complainant may at any time amend the complaint, with the leave of the President.
- (2) Subsection (1) does not, by implication, limit any other power to amend the complaint.

46PB Conditions for lodging a representative complaint

- (1) A representative complaint may be lodged under section 46P only if:
 - (a) the class members have complaints against the same person; and
 - (b) all the complaints are in respect of, or arise out of, the same, similar or related circumstances; and
 - (c) all the complaints give rise to a substantial common issue of law or fact.
- (2) A representative complaint under section 46P must:
 - (a) describe or otherwise identify the class members; and
 - (b) specify the nature of the complaints made on behalf of the class members; and
 - (c) specify the nature of the relief sought.
- (3) In describing or otherwise identifying the class members, it is not necessary to name them or specify how many there are.
- (4) A representative complaint may be lodged without the consent of class members.

46PC Additional rules applying to representative complaints

- (1) A class member may, by notice in writing to the Commission, withdraw from a representative complaint at any time before the President terminates the complaint under section 46PH.
- (2) The President may, on application in writing by any affected person, replace any complainant with another person as complainant.
- (3) The President may at any stage direct that notice of any matter be given to a class member or class members.

46PD Referral of complaint to President

If a complaint is made to the Commission under section 46P, the Commission must refer the complaint to the President.

unchanged

46PE Complaints against the President, Commission or a Commissioner

- (1) This section applies to a complaint if any of the respondents to the complaint is:
- the President; or
 - the Commission; or
 - a Commissioner.
- (2) If any complainant makes a written request to the President for termination of the complaint, the President must terminate the complaint, if the President is satisfied that all the affected persons agree to the termination.
- (3) If the President terminates the complaint under subsection (2), the President must comply with the notification requirements of subsections 46PH(2) and (3).
- (4) The President cannot delegate any of his or her powers in relation to the complaint except under paragraph 19(2)(b).

46PF Inquiry by President

- (1) If a complaint is referred to the President under section 46PD, the President must inquire into the complaint and attempt to conciliate the complaint.
- (2) If the President thinks that 2 or more complaints arise out of the same or substantially the same circumstances or subject, the President may hold a single inquiry, or conduct a single conciliation, in relation to those complaints.
- (3) With the leave of the President, any complainant or respondent may amend the complaint to add, as a respondent, a person who is alleged to have done the alleged unlawful discrimination.
- Note: In some cases, a person is regarded as having done unlawful discrimination by being treated as responsible for the acts and omissions of another person. See sections 122 and 123 of the *Disability Discrimination Act 1992*, sections 18A and 18E of the *Racial Discrimination Act 1975* and sections 105, 106 and 107 of the *Sex Discrimination Act 1984*.
- (4) A complaint cannot be amended after it is terminated by the President under section 46PH.

[67]	46PE Complaints against the President, Commission or a Human Rights Commissioner
[67]	(1) This section applies to a complaint if any of the respondents to the complaint is: <ol style="list-style-type: none"> the President; or the Commission; or a Human Rights Commissioner.
	(2) If any complainant makes a written request to the President for termination of the complaint, the President must terminate the complaint, if the President is satisfied that all the affected persons agree to the termination.
	(3) If the President terminates the complaint under subsection (2), the President must comply with the notification requirements of subsections 46PH(2) and (3).
	(4) The President cannot delegate any of his or her powers in relation to the complaint except under paragraph 19(2)(b).
	46PF Inquiry by President
	(1) If a complaint is referred to the President under section 46PD, the President must inquire into the complaint and attempt to conciliate the complaint.
[68]	Note: The President may request a Complaints Commissioner to inquire into a complaint—see section 46PNA.
	(2) If the President thinks that 2 or more complaints arise out of the same or substantially the same circumstances or subject, the President may hold a single inquiry, or conduct a single conciliation, in relation to those complaints.
	(3) With the leave of the President, any complainant or respondent may amend the complaint to add, as a respondent, a person who is alleged to have done the alleged unlawful discrimination.
	Note: In some cases, a person is regarded as having done unlawful discrimination by being treated as responsible for the acts and omissions of another person. See sections 122 and 123 of the <i>Disability Discrimination Act 1992</i> , sections 18A and 18E of the <i>Racial Discrimination Act 1975</i> and sections 105, 106 and 107 of the <i>Sex Discrimination Act 1984</i> .
	(4) A complaint cannot be amended after it is terminated by the President under section 46PH.

46PG Withdrawal of complaint

- (1) Any complainant to a complaint may withdraw the complaint, with the leave of the President.
- (2) The President must grant leave if the President is satisfied that all the affected persons agree to withdrawal of the complaint. The President cannot grant leave unless the President is satisfied that they all agree.

46PH Termination of complaint

- (1) The President may terminate a complaint on any of the following grounds:
 - (a) the President is satisfied that the alleged unlawful discrimination is not unlawful discrimination;
 - (b) the complaint was lodged more than 12 months after the alleged unlawful discrimination took place;
 - (c) the President is satisfied that the complaint was trivial, vexatious, misconceived or lacking in substance;
 - (d) in a case where some other remedy has been sought in relation to the subject matter of the complaint—the President is satisfied that the subject matter of the complaint has been adequately dealt with;
 - (e) the President is satisfied that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to each affected person;
 - (f) in a case where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the President is satisfied that the subject matter of the complaint has been adequately dealt with;
 - (g) the President is satisfied that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority;
 - (h) the President is satisfied that the subject matter of the complaint involves an issue of public importance that should be considered by the Federal Court or the Federal Magistrates Court;
 - (i) the President is satisfied that there is no reasonable prospect of the matter being settled by conciliation.
- (2) If the President decides to terminate a complaint, the President must notify the complainants in writing of that decision and of the reasons for that decision.
- (3) On request by an affected person who is not a complainant, the President must give the affected person a copy of the notice that was given to the complainants under subsection (2).
- (4) The President may revoke the termination of a complaint, but not after an application is made to the Federal Court or the Federal Magistrates Court under section 46PO in relation to the complaint.

unchanged

46PI President's power to obtain information

- (1) This section applies if the President has reason to believe that a person is capable of providing information (*relevant information*) or producing documents (*relevant documents*) relevant to an inquiry under this Division.
- (2) The President may serve a written notice on the person, requiring the person to do either or both of the following within a reasonable period specified in the notice, or on a reasonable date and at a reasonable time specified in the notice:
 - (a) give the President a signed document containing relevant information required by the notice;
 - (b) produce to the President such relevant documents as are specified in the notice.
- (3) If the notice is served on a body corporate, the document referred to in paragraph (2)(a) must be signed by an officer of the body corporate.
- (4) If a document is produced to the President in accordance with a requirement under this section, the President:
 - (a) may take possession of the document; and
 - (b) may make copies of the document or take extracts from the document; and
 - (c) may retain possession of the document for as long as is necessary for the purposes of the inquiry to which the document relates.
- (5) While the President retains any document under this section, the President must allow the document to be inspected, at all reasonable times, by any person who would be entitled to inspect the document if it were not in the possession of the President.

46PJ Directions to attend compulsory conference

- (1) For the purpose of dealing with a complaint in accordance with section 46PF, the President may decide to hold a conference, to be presided over by the President or by a suitable person (other than a member) appointed by the President.
- (2) The conference must be at a reasonable time and at a reasonable place.
- (3) If the President decides to hold a conference, the President must, by notice in writing, direct each complainant and each respondent to attend the conference.
- (4) The President may also, by notice in writing, direct any of the following persons to attend the conference:
 - (a) any person who, in the opinion of the President, is likely to be able to provide information relevant to the inquiry;
 - (b) any person whose presence at the conference is, in the opinion of the President, likely to be conducive to the settlement of the matter to which the alleged unlawful discrimination relates.

unchanged

(5) A person who is directed under this section to attend a conference is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at the conference.

(6) In a notice to a person under this section, the President may require the person to produce such documents at the conference as are specified in the notice.

46PK Proceedings at compulsory conference

(1) The person presiding at a compulsory conference may require a person attending the conference to produce a document.

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

(3) The person presiding at the conference must ensure that the conduct of the conference does not disadvantage either the complainant or the respondent.

(4) Subject to subsection (5), a body of persons, whether corporate or unincorporate, that is directed under section 46P] to attend a conference is taken to attend if an officer or employee of that body attends on behalf of that body.

(5) Unless the person presiding at a compulsory conference consents:

(a) an individual 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.

(6) Despite paragraph (5)(a), an individual who is unable to attend a compulsory conference because the individual has a disability is entitled to nominate another person to attend instead on his or her behalf.

(7) If, in the opinion of the person presiding at the conference, an individual is unable to participate fully in the conference because the individual has a disability, the individual is entitled to nominate another person to assist him or her at the conference.

(8) If a person attends a compulsory conference on behalf of a body of persons, whether corporate or unincorporate, any conduct by the person in attending or appearing is taken, for the purposes of this Act, to be conduct of the body.

(9) In this section, *disability* has the same meaning as in the *Disability Discrimination Act 1992*.

unchanged

46PL Failure to attend compulsory conference

- (1) A person who has been given a direction under section 46PJ to attend a conference must not:
- (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.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.
- (3) Subsection (1) is an offence of strict liability.

46PM Failure to give information or produce documents

- (1) A person must not refuse or fail:
- (a) to give information; or
 - (b) to produce a document;

when so required under section 46PI, 46PJ or 46PK.

Penalty: 10 penalty units.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.
- (2) Subsection 4K(2) of the *Crimes Act 1914* does not apply to this section.
- (3) It is a reasonable excuse for the purposes of subsection (1) for an individual to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might tend to incriminate the individual or to expose the individual to a penalty. This subsection does not limit what is a reasonable excuse for the purposes of this section.

46PN False or misleading information

A person must not give information or make a statement to the Commission, to the President 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: Imprisonment for 6 months.

	<p>46PL Failure to attend compulsory conference</p> <p>(1) A person who has been given a direction under section 46PJ to attend a conference must not:</p> <ul style="list-style-type: none"> (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. <p>Penalty: 10 penalty units.</p> <p>(2) Subsection (1) does not apply if the person has a reasonable excuse.</p> <p>(3) Subsection (1) is an offence of strict liability.</p>
	<p>46PM Failure to give information or produce documents</p> <p>(1) A person must not refuse or fail:</p> <ul style="list-style-type: none"> (a) to give information; or (b) to produce a document; <p>when so required under section 46PI, 46PJ or 46PK.</p> <p>Penalty: 10 penalty units.</p> <p>(1A) Subsection (1) does not apply if the person has a reasonable excuse.</p> <p>(2) Subsection 4K(2) of the <i>Crimes Act 1914</i> does not apply to this section.</p> <p>(3) It is a reasonable excuse for the purposes of subsection (1) for an individual to refuse or fail to answer a question or produce a document on the ground that the answer or the production of the document might tend to incriminate the individual or to expose the individual to a penalty. This subsection does not limit what is a reasonable excuse for the purposes of this section.</p>
	<p>46PN False or misleading information</p> <p>A person must not give information or make a statement to the Commission, to the President 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.</p> <p>Penalty: Imprisonment for 6 months.</p>
[69]	<p>46PNA Role of Complaints Commissioner</p> <p>A Complaints Commissioner must, at the request of the President:</p> <ul style="list-style-type: none"> (a) inquire into a complaint that is referred to the President under section 46PD; and (b) attempt to conciliate the complaint; <p>and, for that purpose, this Part operates as if the Commissioner were the President.</p>

unchanged

Division 2—Proceedings in the Federal Court and the Federal Magistrates Court

46PO Application to court if complaint is terminated

- (1) If
- (a) a complaint has been terminated by the President under section 46PE or 46PH; and
 - (b) the President has given a notice to any person under subsection 46PH(2) in relation to the termination;

any person who was an affected person in relation to the complaint may make an application to the Federal Court or the Federal Magistrates Court, alleging unlawful discrimination by one or more of the respondents to the terminated complaint.

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

- (2) The application must be made within 28 days after the date of issue of the notice under subsection 46PH(2), or within such further time as the court concerned allows.
- (3) The unlawful discrimination alleged in the application:
- (a) must be the same as (or the same in substance as) the unlawful discrimination that was the subject of the terminated complaint; or
 - (b) must arise out of the same (or substantially the same) acts, omissions or practices that were the subject of the terminated complaint.
- (4) If the court concerned is satisfied that there has been unlawful discrimination by any respondent, the court may make such orders (including a declaration of right) as it thinks fit, including any of the following orders or any order to a similar effect:
- (a) an order declaring that the respondent has committed unlawful discrimination and directing the respondent not to repeat or continue such unlawful discrimination;
 - (b) an order requiring a respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by an applicant;
 - (c) an order requiring a respondent to employ or re-employ an applicant;
 - (d) an order requiring a respondent to pay to an applicant damages by way of compensation for any loss or damage suffered because of the conduct of the respondent;
 - (e) an order requiring a respondent to vary the termination of a contract or agreement to redress any loss or damage suffered by an applicant;
 - (f) an order declaring that it would be inappropriate for any further action to be taken in the matter.
- (5) In the case of a representative proceeding under Part IVA of the *Federal Court of Australia Act 1976*, subsection (4) of this section applies as if a reference to an applicant included a reference to each person who is a group member (within the meaning of Part IVA of the *Federal Court of Australia Act 1976*).

(6) The court concerned may, if it thinks fit, grant an interim injunction pending the determination of the proceedings.

(7) The court concerned may discharge or vary any order made under this section (including an injunction granted under subsection (6)).

(8) The court concerned cannot, as a condition of granting an interim injunction, require a person to give an undertaking as to damages.

46PP Interim injunction to maintain status quo etc.

(1) At any time after a complaint is lodged with the Commission, the Federal Court or the Federal Magistrates Court may grant an interim injunction to maintain:

- (a) the status quo, as it existed immediately before the complaint was lodged; or
- (b) the rights of any complainant, respondent or affected person.

(2) The application for the injunction may be made by the Commission, a complainant, a respondent or an affected person.

(3) The injunction cannot be granted after the complaint has been withdrawn under section 46PG or terminated under section 46PE or 46PH.

(4) The court concerned may discharge or vary an injunction granted under this section.

(5) The court concerned cannot, as a condition of granting the interim injunction, require a person to give an undertaking as to damages.

46PQ Right of representation

(1) A party in proceedings under this Division:

- (a) may appear in person; or
- (b) may be represented by a barrister or a solicitor; or
- (c) may be represented by another person who is not a barrister or solicitor, unless the court is of the opinion that it is inappropriate in the circumstances for the other person to appear.

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

46PR Court not bound by technicalities

In proceedings under this Division, the Federal Court and the Federal Magistrates Court are not bound by technicalities or legal forms. This section has effect subject to Chapter III of the Constitution.

unchanged

46PS Report by President to court

- (1) The President may provide the Federal Court or the Federal Magistrates Court with a written report on a complaint that has been terminated under section 46PH.
- (2) The report must not set out or describe anything said or done in the course of conciliation proceedings under this Part (including anything said or done at a conference held under this Part).
- (3) The President may give a copy of the report to the applicant and the respondent, and to any relevant member of the Commission.

46PT Assistance by Commission

The Commission may help a person to prepare the forms required for the person to make an application under this Division.

46PU Assistance in proceedings before the court

- (1) A person who:
 - (a) has commenced or proposes to commence proceedings in the Federal Court or the Federal Magistrates Court under this Division; or
 - (b) is a respondent in proceedings in the Federal Court or the Federal Magistrates Court under this Division;may apply to the Attorney-General for the provision of assistance under this section in respect of the proceedings.
- (2) If a person makes an application for assistance and the Attorney-General is satisfied that:
 - (a) it will involve hardship to that person to refuse the application; and
 - (b) in all the circumstances, it is reasonable to grant the application;the Attorney-General may authorise the provision by the Commonwealth to that person, on such conditions (if any) as the Attorney-General determines, of such legal or financial assistance in respect of the proceedings as the Attorney-General determines.

unchanged

46PV Amicus curiae function of Commission members

- (1) A special-purpose Commissioner has the function of assisting the Federal Court and the Federal Magistrates Court, as *amicus curiae*, in the following proceedings under this Division:
- (a) proceedings in which the special-purpose Commissioner thinks that the orders sought, or likely to be sought, may affect to a significant extent the human rights of persons who are not parties to the proceedings;
 - (b) proceedings that, in the opinion of the special-purpose Commissioner, have significant implications for the administration of the relevant Act or Acts;
 - (c) proceedings that involve special circumstances that satisfy the special-purpose Commissioner that it would be in the public interest for the special-purpose Commissioner to assist the court concerned as *amicus curiae*.
- (2) The function may only be exercised with the leave of the court concerned.
- (3) In this section, *special-purpose Commissioner* means:
- (a) the Aboriginal and Torres Strait Islander Social Justice Commissioner; and
 - (b) the Disability Discrimination Commissioner; and
 - (c) the Human Rights Commissioner; and
 - (d) the Race Discrimination Commissioner; and
 - (e) the Sex Discrimination Commissioner.

[70]	<p>46PV Amicus curiae function of Commission members Human Rights Commissioners</p>
[70], [71]	<p>(1) A special-purpose Commissioner Human Rights Commissioner has the function of assisting the Federal Court and the Federal Magistrates Court, as <i>amicus curiae</i>, in the following proceedings under this Division:</p> <ul style="list-style-type: none"> (a) proceedings in which the special-purpose Commissioner Human Rights Commissioner thinks that the orders sought, or likely to be sought, may affect to a significant extent the human rights of persons who are not parties to the proceedings; (b) — proceedings that, in the opinion of the special-purpose Commissioner, have significant implications for the administration of the relevant Act or Acts; (b) proceedings that, in the Human Rights Commissioner's opinion, have significant implications for the administration of any of the following Acts: <ul style="list-style-type: none"> (i) this Act; (ii) the <i>Disability Discrimination Act 1992</i>; (iii) the <i>Racial Discrimination Act 1975</i>; (iv) the <i>Sex Discrimination Act 1984</i>; (c) proceedings that involve special circumstances that satisfy the special-purpose Commissioner Human Rights Commissioner that it would be in the public interest for the special-purpose Commissioner Human Rights Commissioner to assist the court concerned as <i>amicus curiae</i>.
	<p>(2) The function may only be exercised with the leave of the court concerned.</p>
[72]	<p>(3) In this section, <i>special-purpose Commissioner</i> means:</p> <ul style="list-style-type: none"> (a) — the Aboriginal and Torres Strait Islander Social Justice Commissioner; and (b) — the Disability Discrimination Commissioner; and (c) — the Human Rights Commissioner; and (d) — the Race Discrimination Commissioner; and (e) — the Sex Discrimination Commissioner. <p>(3) Before exercising the function, the Human Rights Commissioner must consult with the other Human Rights Commissioners about the exercise of the function.</p>

Part IIC—Referral of discriminatory awards and determinations to other bodies

46PW Referral of discriminatory awards to the Australian Industrial Relations Commission

- (1) A complaint in writing alleging that a person has done a discriminatory act under an award may be lodged with the Commission by:
- (a) a person aggrieved by the act, on that person's own behalf or on behalf of that person and one or more other persons aggrieved by the act; or
 - (b) 2 or more persons aggrieved by the act, on their own behalf or on behalf of themselves and one or more other persons aggrieved by the act; or
 - (c) a person or persons who are in a class of persons aggrieved by the act, on behalf of all the persons in the class; or
 - (d) a trade union, on behalf of one or more of its members aggrieved by the act or on behalf of a class of its members aggrieved by the act.
- (2) If the Commission receives a complaint under this section, the Commission must notify the President accordingly.
- (3) If it appears to the President that the act is a discriminatory act, the President must refer the award to the Australian Industrial Relations Commission. However, the President need not refer the award if the President is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.
- (4) If the President decides not to refer the award, the President must give notice in writing of that decision to the complainant or each of the complainants, together with notice of the reasons for the decision.
- (5) If the President refers the award to the Australian Industrial Relations Commission, the President must give notice in writing of the outcome of the referral to the complainant or each of the complainants.
- (6) The President may obtain documents or information under section 46PI for the purposes of this section.

unchanged

(7) In this section:

award means:

- (a) an award made on or after 13 January 1993; or
- (b) a variation on or after 13 January 1993 of an award made before 13 January 1993.

For the purposes of this definition, **award** means an award within the meaning of the *Workplace Relations Act 1996*, and includes a certified agreement, and an enterprise flexibility agreement, within the meaning of that Act.

Note: The *Workplace Relations Act 1996* was originally enacted with the short title "*Industrial Relations Act 1988*". Under section 10 of the *Acts Interpretation Act 1901*, the reference to the *Workplace Relations Act 1996* includes a reference to that Act "as originally enacted and as amended from time to time".

discriminatory act under an award means an act that would be unlawful under Part II of the *Sex Discrimination Act 1984* except for the fact that the act was done in direct compliance with an award.

(8) For the purposes of the definition of **discriminatory act under an award** in subsection (7), the fact that an act is done in direct compliance with the award does not of itself mean that the act is reasonable.

46PX Referral of discriminatory determinations to the Remuneration Tribunal

- (1) A complaint in writing alleging that a person has done a discriminatory act under a determination may be lodged with the Commission by:
- (a) a person aggrieved by the act, on that person's own behalf or on behalf of that person and one or more other persons aggrieved by the act; or
 - (b) 2 or more persons aggrieved by the act, on their own behalf or on behalf of themselves and one or more other persons aggrieved by the act; or
 - (c) a person or persons who are in a class of persons aggrieved by the act, on behalf of all the persons in the class.
- (2) If the Commission receives a complaint under this section, the Commission must notify the President accordingly.
- (3) If it appears to the President that the act is a discriminatory act, the President must refer the determination to the Remuneration Tribunal. However, the President need not refer the determination if the President is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance.
- (4) If the President decides not to refer the determination, the President must give notice in writing of that decision to the complainant or each of the complainants, together with notice of the reasons for the decision.

unchanged

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

(6) The President may obtain documents or information under section 46PI for the purposes of this section.

(7) In this section:

determination means:

(a) a determination made on or after 19 January 1994 by the Remuneration Tribunal under the *Remuneration Tribunal Act 1973*; or

(b) a variation made on or after 19 January 1994 by that Tribunal to a determination made by it under that Act before 19 January 1994.

discriminatory act under a determination means an act that would be unlawful under Part II of the *Sex Discrimination Act 1984* except for the fact that the act was done in direct compliance with a determination.

(8) For the purposes of the definition of **discriminatory act under a determination** in subsection (7), the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable.

46PY Referral of discriminatory determinations to the Defence Force Remuneration Tribunal

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

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

(b) 2 or more persons aggrieved by the act, on their own behalf or on behalf of themselves and one or more other persons aggrieved by the act; or

(c) a person or persons who are in a class of persons aggrieved by the act, on behalf of all the persons in the class.

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

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

(4) If the President decides not to refer the determination, the President must give notice in writing of that decision to the complainant or each of the complainants, together with notice of the reasons for the decision.

unchanged

(5) If the President refers the determination to the Defence Force Remuneration Tribunal, the President must give notice in writing of the outcome of the referral to the complainant or each of the complainants.

(6) The President may obtain documents or information under section 46PI for the purposes of this section.

(7) In this section:

determination means:

- (a) a determination made on or after 15 January 1996 by the Defence Force Remuneration Tribunal under section 58H of the *Defence Act 1903*; or
- (b) a variation made on or after 15 January 1996 by that Tribunal to a determination made by it under that section before 15 January 1996.

discriminatory act under a determination means an act that would be unlawful under Part II of the *Sex Discrimination Act 1984* except for the fact that the act was done in direct compliance with a determination.

(8) For the purposes of the definition of **discriminatory act under a determination** in subsection (7), the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable.

Part III—Miscellaneous

47 Declaration of international instruments

(1) The Minister may, after consulting the appropriate Minister of each State, by writing, declare an international instrument, being:

- (a) an instrument ratified or acceded to by Australia; or
- (b) a declaration that has been adopted by Australia;

to be an international instrument relating to human rights and freedoms for the purposes of this Act.

(2) Where the Minister makes a declaration under subsection (1):

- (a) there shall be published in the *Gazette*:
 - (i) a copy of the international instrument;
 - (ii) a copy of Australia's instrument of ratification of or accession to the international instrument or of the terms of any explanation given by Australia of its vote in respect of the international instrument; and
 - (iii) a copy of the instrument of declaration under subsection (1); and
- (b) subject to subsection (3), the declaration under subsection (1) has effect on and from the date on which the copies referred to in paragraph (a) were published in the *Gazette* or, if those copies were published in the *Gazette* on different dates, on the later or latest of those dates.

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(3) The provisions of section 48 (except paragraphs (1)(a) and (b) and subsection (2)) and sections 48A, 48B and 49 of the *Acts Interpretation Act 1901* apply, by force of this section, to a declaration made under subsection (1) of this section in like manner as those provisions apply to regulations.

(4) Nothing in the provisions applied by subsection (3) affects the operation of a declaration made under subsection (1) at any time before it becomes void, or is disallowed, in accordance with those provisions.

48 Protection from civil actions

(1) The Commission, a member or a person acting on behalf of the Commission 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 performance or purported performance of any function, or in exercise or purported exercise of any power, conferred on the Commission.

(3) Where:

- (a) a complaint has been made to the Commission; or
- (b) a submission has been made, a document or information has been furnished, or evidence has been given, to the Commission or to a person acting on behalf of the Commission;

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

	(3) The provisions of section 48 (except paragraphs (1)(a) and (b) and subsection (2)) and sections 48A, 48B and 49 of the <i>Acts Interpretation Act 1901</i> apply, by force of this section, to a declaration made under subsection (1) of this section in like manner as those provisions apply to regulations.
	(4) Nothing in the provisions applied by subsection (3) affects the operation of a declaration made under subsection (1) at any time before it becomes void, or is disallowed, in accordance with those provisions.
	48 Protection from civil actions
[73], [74]	(1) The Commission, a member or a person acting on behalf of the Commission for or on behalf of the Commission or a member 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 performance or purported performance of any function, or in exercise or purported exercise of any power, conferred on the Commission or a member .
[75]	(3) Where: <ul style="list-style-type: none"> (a) a complaint has been made to the Commission; or (b) a submission has been made, a document or information has been furnished, or evidence has been given, to the Commission or to a person acting for or on behalf of the Commission; 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 complaint or submission was made, the document or information was furnished or the evidence was given.

49 Non-disclosure of private information

(1) A person who is, or has at any time been, a member of the Commission or a member of the staff referred to in section 43 or is acting, or has at any time acted, on behalf of the Commission shall not, either directly or indirectly:

- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person acting, or having acted, on behalf of the Commission;
- (b) make use of any such information as is mentioned in paragraph (a); or
- (c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

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

(2) A person who is, or has at any time been, a member of the Commission or a member of the staff referred to in section 43 or is acting, or has at any time acted, on behalf of the Commission shall not be required:

- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person acting, or having acted, on behalf of the Commission; or
- (b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, by reason of that person's office or employment under or for the purposes of this Act or by reason of that person acting, or having acted, on behalf of the Commission;

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

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

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

49 Non-disclosure of private information

(1) A person who is, or has at any time been, a member of the Commission or a member of the staff referred to in section 43 or is acting, or has at any time acted, ~~for or~~ on behalf of the Commission shall not, either directly or indirectly:

[76],
[77],
[78]

- (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 any other law that confers a power on the Commission)~~ or by reason of that person acting, or having acted, ~~for or~~ on behalf of the Commission;
- (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 ~~(or any other law that confers a power on the Commission)~~.

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

(2) A person who is, or has at any time been, a member of the Commission or a member of the staff referred to in section 43 or is acting, or has at any time acted, ~~for or~~ on behalf of the Commission shall not be required:

[76],
[79]

- (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 acting, or having acted, ~~for or~~ on behalf of the Commission; or
- (b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, by reason of that person's office or employment under or for the purposes of this Act or by reason of that person acting, or having acted, ~~for or~~ on behalf of the Commission;

except where it is necessary to do so for the purposes of this Act ~~(or any other law that confers a power on the Commission)~~.

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

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

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

(4A) Subsection (1) does not prevent the Commission, or a person acting on behalf of the Commission, from giving information or documents in accordance with paragraph 20(4A)(e).

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

- (a) in the performance of a duty under or in connection with this Act; or
- (b) in the course of acting for or on behalf of the Commission.

(5) 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.

49A Information stored otherwise than in written form

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

49B Jurisdiction of Federal Court and Federal Magistrates Court

The Federal Court and the Federal Magistrates Court have concurrent jurisdiction with respect to civil matters arising under Part IIB or IIC.

49C Compensation for acquisition of property

(1) If the application of any of the provisions of this Act would result in an acquisition of property from any person having been made otherwise than on just terms, the person is entitled to such compensation from the Commonwealth as is necessary to ensure that the acquisition is made on just terms.

(2) The Federal Court and the Federal Magistrates Court have concurrent jurisdiction with respect to matters arising under subsection (1) and that jurisdiction is exclusive of the jurisdiction of all other courts, other than jurisdiction of the High Court under section 75 of the Constitution.

	(4) Nothing in subsection (2) prevents a person being required, for the purposes of or pursuant to an Act, to divulge or communicate information, or to produce a document, that is, or is included in a class of information that is or class of documents that are, required or permitted by that Act to be divulged, communicated or produced.
[76]	(4A) Subsection (1) does not prevent the Commission, or a person acting for or on behalf of the Commission, from giving information or documents in accordance with paragraph 20(4A)(e).
	(4B) Subsection (1) does not prevent a person from making a record of, divulging, communicating or making use of information, or producing a document, of the person does so: <ul style="list-style-type: none"> (a) in the performance of a duty under or in connection with this Act; or (b) in the course of acting for or on behalf of the Commission.
	(5) In this section: <p><i>court</i> includes any tribunal, authority or person having power to require the production of documents or the answering of questions.</p> <p><i>produce</i> includes permit access to.</p>
	49A Information stored otherwise than in written form
	If information is recorded or stored by means of a mechanical, electronic or other device, any duty imposed by this Act to produce the document recording that information is to be construed as a duty to provide a document containing a clear reproduction in writing of the information.
	49B Jurisdiction of Federal Court and Federal Magistrates Court
	The Federal Court and the Federal Magistrates Court have concurrent jurisdiction with respect to civil matters arising under Part IIB or IIC.
	49C Compensation for acquisition of property
	(1) If the application of any of the provisions of this Act would result in an acquisition of property from any person having been made otherwise than on just terms, the person is entitled to such compensation from the Commonwealth as is necessary to ensure that the acquisition is made on just terms.
	(2) The Federal Court and the Federal Magistrates Court have concurrent jurisdiction with respect to matters arising under subsection (1) and that jurisdiction is exclusive of the jurisdiction of all other courts, other than jurisdiction of the High Court under section 75 of the Constitution.

50 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

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

unchanged