Australian Human Rights Commission Act 1986

No. 125, 1986

Compilation No. 54

Compilation date:	21 September 2023
Includes amendments up to:	Act No. 73, 2023
Registered:	6 October 2023

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2023C00276 registered 06/10/2023

About this compilation

This compilation

This is a compilation of the *Australian Human Rights Commission Act 1986* that shows the text of the law as amended and in force on 21 September 2023 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part I—Preliminary 1

1 Short title ... 1
2 Commencement ... 1
3 Interpretation ... 1
4 Operation of State and Territory laws ... 11
5 Extension to external Territories ... 12
6 Extent to which Act binds the Crown ... 12
6A Application of the *Criminal Code* ... 12

Part II—Australian Human Rights Commission 13

Division 1—Establishment and Constitution of Commission 13

7 Australian Human Rights Commission ... 13
8 Constitution of Commission ... 13
8A The President ... 14
8B The Human Rights Commissioner ... 15
9 Arrangement for appointment of the holder of a judicial office of a State ... 16
10 Appointment of Judge as member not to affect tenure etc. ... 16

Division 2—Duties, functions and powers of Commission 17

10A Duties of Commission ... 17
11 Functions of Commission ... 17
13 Powers of Commission ... 20
14 Form of examinations or inquiries to be at discretion of Commission etc. ... 20
15 Commission may engage in consultations ... 23
16 Inter-governmental arrangements ... 23
18 Declarations by Minister ... 24
19 Delegation ... 24

Division 3—Functions relating to human rights 26

19A Division applies to victimisation offences ... 26
20 Performance of functions relating to human rights ... 26
20A Reports to the Minister ... 31
21 Power to obtain information and documents ... 31
22 Power to examine witnesses ... 33
23 Failure to comply with requirement ... 33
24 Disclosure of information or contents of documents ... 34

Authorised Version C2023C00276 registered 06/10/2023

26 Offences relating to administration of Act 36
27 Commission to give opportunity for making of submissions 38
28 Nature of settlements 38
29 Reports to contain recommendations 38

Division 4—Functions relating to equal opportunity in employment 41

30 Interpretation etc 41
31 Functions of Commission relating to equal opportunity 41
32 Performance of functions relating to equal opportunity 43
32A Reports to the Minister 45
33 Application of certain provisions of Division 3 45
34 Nature of settlements 46
35 Reports to contain recommendations 46

Division 4A—Functions relating to positive duty in relation to sex discrimination 49

35A Functions of Commission relating to positive duty in relation to sex discrimination 49
35AA Performance of functions relating to positive duty in relation to sex discrimination 49

Division 4B—Functions relating to systemic discrimination 50

35L Functions of Commission relating to systemic discrimination 50
35M Performance of functions relating to systemic discrimination 50
35N Application of certain provisions of Division 3 50
35P Commission to give opportunity for making of submissions 51
35Q Reports 51

Division 5—Administrative provisions 52

36 Acting President and Human Rights Commissioner 52
37 Terms and conditions of appointment 53
38 Remuneration and allowances 53
39 Leave of absence 54
40 Resignation 54
41 Termination of appointment 54
43 Staff 55
43A Commission may make administrative services available to the Information Commissioner 55
44 Meetings of the Commission 56
44A Money payable to the Commission 56
44B Application of money by the Commission 57

Authorised Version C2023C00276 registered 06/10/2023

44C Taxation 57
45 Annual report 57
46 Reports to be tabled in Parliament 58
Division 6—Corporate plan 59
46AA Corporate plan 59
Part IIA—Aboriginal and Torres Strait Islander Social Justice Commissioner 60
Division 1—Establishment and functions 60
46A Interpretation 60
46B Aboriginal and Torres Strait Islander Social Justice Commissioner 60
46C Functions of the Commission that are to be performed by the Commissioner etc. 61
Division 2—Administrative provisions 63
46D Terms and conditions of appointment 63
46E Remuneration 63
46F Leave of absence 63
46G Outside employment 64
46H Resignation 64
46I Termination of appointment 64
46J Acting Commissioner 65
Division 3—Miscellaneous 66
46K Commissioner may obtain information from government agencies 66
46L Commissioner must give information to the Commission 67
46M Minister must table etc. report of Commissioner 67
Part IIAA—National Children's Commissioner 68
Division 1—Establishment and functions 68
46MA National Children's Commissioner 68
46MB Functions of Commission that are to be performed by the National Children's Commissioner etc. 68
Division 2—Appointment 71
46MC Appointment of National Children's Commissioner 71
46MD Period of appointment 71
46ME Acting appointment 72

Authorised Version C2023C00276 registered 06/10/2023

Division 3—Terms and conditions 73
46MF Remuneration and allowances ... 73
46MG Leave of absence ... 73
46MH Outside employment ... 73
46MI Resignation ... 73
46MJ Termination of appointment ... 74
46MK Other terms and conditions ... 74
Division 4—Miscellaneous 75
46ML National Children's Commissioner may obtain information from Commonwealth government agencies ... 75
46MM National Children's Commissioner must give information to the Commission ... 76
46MN Minister must table reports of National Children's Commissioner ... 76
Part IIB—Redress for unlawful discrimination 77
Division 1—Conciliation by the President 77
46P Lodging a complaint ... 77
46PA Amendment of complaint ... 78
46PB Conditions for lodging a representative complaint ... 78
46PC Additional rules applying to representative complaints ... 79
46PD Referral of complaint to President ... 79
46PE Complaints against the President, Commission or a Commissioner ... 79
46PF Inquiry by President ... 80
46PG Withdrawal of complaint ... 83
46PH Termination of complaint ... 83
46PI President's power to obtain information ... 85
46PJ President may hold conferences ... 86
46PK Proceedings at conferences ... 88
46PKA Things said in conciliation are not admissible in evidence in certain proceedings ... 88
46PM Failure to give information or produce documents ... 89
46PN False or misleading information ... 89
Division 2—Proceedings in the Federal Court and the Federal Circuit and Family Court of Australia (Division 2) 90
46PO Application to court if complaint is terminated ... 90
46POA Conditions for making a representative application ... 92
46POB Additional rules applying to representative applications ... 93

Authorised Version C2023C00276 registered 06/10/2023

46PP Interim injunction to maintain status quo etc. 94
46PQ Right of representation 94
46PR Court not bound by technicalities 95
46PS Report by President to court 95
46PSA Costs—court may have regard to an offer to settle 95
46PT Assistance by Commission 96
46PU Assistance in proceedings before the court 96
46PV Amicus curiae function of Commission members 97

Part IIC—Referral of discriminatory awards and determinations to other bodies 98

46PW Referral of discriminatory industrial instruments to the Fair Work Commission 98
46PX Referral of discriminatory determinations to the Remuneration Tribunal 99
46PY Referral of discriminatory determinations to the Defence Force Remuneration Tribunal 101

Part III—Miscellaneous 103

46PZ Transfer of complaints from the Inspector-General of Intelligence and Security 103
47 Declaration of international instruments 103
48 Protection from civil actions 104
49 Non-disclosure of private information 104
49A Information stored otherwise than in written form 107
49B Jurisdiction of Federal Court and Federal Circuit and Family Court of Australia (Division 2) 107
49C Compensation for acquisition of property 107
50 Regulations 108

Authorised Version C2023C00276 registered 06/10/2023

Schedule 1—Convention concerning Discrimination in respect of Employment and Occupation 109

Schedule 2—International Covenant on Civil and Political Rights 114

Schedule 3—Declaration of the Rights of the Child 136

Schedule 4—Declaration on the Rights of Mentally Retarded Persons 139

Schedule 5—Declaration on the Rights of Disabled Persons 141

Endnotes 144

Endnote 1—About the endnotes 144

Endnote 2—Abbreviation key 146

Endnote 3—Legislation history 147

Endnote 4—Amendment history 157

Authorised Version C2023C00276 registered 06/10/2023

An Act to establish the Australian Human Rights 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 *Australian Human Rights 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.

ACIC means the agency known as the Australian Criminal Intelligence Commission established by the *Australian Crime Commission Act 2002*.

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.

Authorised Version C2023C00276 registered 06/10/2023

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

Age Discrimination Commissioner means the Age Discrimination Commissioner appointed under the *Age Discrimination Act 2004*.

alleged acts, omissions or practices, in relation to a complaint, means the acts, omissions or practices that are alleged in the complaint.

Note: See also paragraph 23(b) of the *Acts Interpretation Act 1901*.

appointed member means the President or the Human Rights Commissioner.

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:

Authorised Version C2023C00276 registered 06/10/2023

(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.

children means people under the age of 18.

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 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

Authorised Version C2023C00276 registered 06/10/2023

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.

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

Authorised Version C2023C00276 registered 06/10/2023

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.

examiner of ACIC means an examiner within the meaning of the *Australian Crime Commission Act 2002*.

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.

IGIS official means:

Authorised Version C2023C00276 registered 06/10/2023

(a) the Inspector-General of Intelligence and Security; or
(b) any other person covered by subsection 32(1) of the *Inspector-General of Intelligence and Security Act 1986*.

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.

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

Authorised Version C2023C00276 registered 06/10/2023

(b) in relation to the Australian Capital Territory or the Northern Territory—a Minister of that Territory.

National Children's Commissioner means the National Children's Commissioner referred to in section 46MA.

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.

positive duty in relation to sex discrimination means section 47C of the *Sex Discrimination Act 1984*.

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.

President means President of the Commission.

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.

Authorised Version C2023C00276 registered 06/10/2023

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 application means an application under subsection 46PO(1) that is made on behalf of at least one person other than the person making the application, but does not include an application that commences a representative proceeding in accordance with Part IVA of the *Federal Court of Australia Act 1976*.

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.

systemic unlawful discrimination: see subsection 35L(2).

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

Authorised Version C2023C00276 registered 06/10/2023

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 association of employees that is registered as an organisation, or recognised, under the *Fair Work (Registered Organisations) Act 2009*; 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:

(aa) Part 4 of the *Age Discrimination Act 2004*; or

(a) Division 1, 2, 2A, 3 or 6 of 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:

(ca) Division 2 of Part 5 of the *Age Discrimination Act 2004* (other than section 51 or 52); or

(d) Division 4 of Part 2 of the *Disability Discrimination Act 1992* (other than section 42).

(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

Authorised Version C2023C00276 registered 06/10/2023

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.

(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:

Authorised Version C2023C00276 registered 06/10/2023

(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.

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.

Authorised Version C2023C00276 registered 06/10/2023

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 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 or of a State 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.

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

Authorised Version C2023C00276 registered 06/10/2023

Part II—Australian Human Rights Commission

Division 1—Establishment and Constitution of Commission

7 Australian Human Rights Commission

(1) There is established by this Act a Commission by the name of the Australian Human Rights 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.

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
  (e) the Age Discrimination Commissioner; and
  (f) the Disability Discrimination Commissioner; and
  (g) the National Children's Commissioner.

Authorised Version C2023C00276 registered 06/10/2023

(2) The members must co-operate with each other to achieve common objectives, where practicable.

(3) Subsection (2) does not affect the operation of section 44 (which deals with meetings of the Commission).

(6) The functions of the Commission under paragraphs 11(1)(aa), 11(1)(ab), 11(1)(f), 31(b) and 35L(1)(a) and the functions of the Commission under paragraphs 11(1)(p), 31(k) and 35L(1)(b), 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.

(6A) The powers of the Commission under sections 20A, 32A and 35Q must be exercised by the President, and a reference in this Act to the Commission or to a member of the Commission must, in relation to the exercise of any of those powers, 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, Age Discrimination Commissioner, Disability Discrimination Commissioner or National Children's 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.

(1A) A person must not be appointed under subsection (1) as the President unless the Minister is satisfied that:

(a) the person has appropriate qualifications, knowledge or experience; and

Authorised Version C2023C00276 registered 06/10/2023

(b) the selection of the person for the appointment is the result of a process that:
(i) was merit-based; and
(ii) included public advertising of the position.

(1B) Paragraph (1A)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the President under a previous appointment under subsection (1).

(2) The President is the senior member of the Commission.

(3) The President is responsible for managing the administrative affairs of the Commission.

(4) For the purposes of the *Public Governance, Performance and Accountability Act 2013*, the President is the accountable authority of the Commission.

(5) The President has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

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 must not be appointed under subsection (1) as the Human Rights Commissioner unless the Minister is satisfied that:
(a) the person has appropriate qualifications, knowledge or experience; and
(b) the selection of the person for the appointment is the result of a process that:
(i) was merit-based; and
(ii) included public advertising of the position.

(3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of

Authorised Version C2023C00276 registered 06/10/2023

reappointment, holds office as the Human Rights Commissioner under a previous appointment under subsection (1).

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.

Authorised Version C2023C00276 registered 06/10/2023

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 *Age Discrimination Act 2004*, the *Disability Discrimination Act 1992*, the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* or any other enactment; and

(aa) to inquire into, and attempt to conciliate, complaints of unlawful discrimination; and

(ab) to deal with complaints lodged under Part IIC; and

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

(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; and

(d) the functions conferred on the Commission by section 31; and

(da) the functions conferred on the Commission by section 35A; and

Authorised Version C2023C00276 registered 06/10/2023

(db) the functions conferred on the Commission by section 35L; and

(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; and

(f) to:

(i) inquire into any act or practice that may be inconsistent with or contrary to any human right; and

(ii) if the Commission considers it appropriate to do so—endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and

(g) to promote an understanding and acceptance, and the public discussion, of human rights in Australia; and

(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; and

(j) 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; and

(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; and

(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; and

Authorised Version C2023C00276 registered 06/10/2023

(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); and

(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)(e) 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*, the *Disability Discrimination Act 1992*, or the *Age Discrimination Act 2004*, the Commission shall refer the complaint to the Inspector-General of Intelligence and Security.

Note: Both the Commission and the Inspector-General of Intelligence and Security have functions in relation to ACIC and the Australian Federal Police. The Commission and the Inspector-General can transfer

Authorised Version C2023C00276 registered 06/10/2023

matters between each other and share information in relation to actions taken by any of those agencies (see subsection 20(4C), section 46PZ and subsection 49(4C) of this Act, and Part IIIA of the *Inspector-General of Intelligence and Security Act 1986*).

(3C) Notwithstanding paragraph (1)(db), the functions of the Commission do not include inquiring into a matter that may relate to systemic unlawful discrimination or suspected systemic unlawful discrimination of an intelligence agency.

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

13 Powers of Commission

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.

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; or

Authorised Version C2023C00276 registered 06/10/2023

(ii) has produced or proposes to produce a document; or

(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 for or 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.

(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;

Authorised Version C2023C00276 registered 06/10/2023

(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;

(j) 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: 10 penalty units.

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

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

(8) In subsection (1), ***function*** does not include a function conferred on the Commission by the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992*, or the *Age Discrimination Act 2004*.

Authorised Version C2023C00276 registered 06/10/2023

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.

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*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004*, 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*.

Authorised Version C2023C00276 registered 06/10/2023

18 Declarations by Minister

Where the 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.

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.

(2BA) Subsection (2) does not allow the President to delegate a power that can be exercised by the President because of subsection 8(6A).

Authorised Version C2023C00276 registered 06/10/2023

(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*, the *Disability Discrimination Act 1992*, or the *Age Discrimination Act 2004*.

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

Authorised Version C2023C00276 registered 06/10/2023

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; or

(b) a complaint is made in writing to the Commission, by or on behalf of one or more persons aggrieved by an act or practice, alleging that the 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.

Note: A complaint is taken to have been made to the Commission if all or part of a complaint is transferred to the Commission under section 32AG of the *Inspector-General of Intelligence and Security Act 1986* (see section 46PZ of this Act).

(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; or

(b) the Commission is satisfied that the person aggrieved by the act or practice does not want the Commission to inquire, or to continue to inquire, into the act or practice; or

(ba) the Commission is satisfied, having regard to all the circumstances, that an inquiry, or the continuation of an inquiry, into the act or practice is not warranted; or

Authorised Version C2023C00276 registered 06/10/2023

(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; or

(ii) the Commission is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance; or

(iib) the Commission is satisfied that there is no reasonable prospect of the matter being settled by conciliation; or

(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; or

(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; or

(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; or

(vii) the Commission is satisfied that the complaint has been settled or resolved.

(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

Authorised Version C2023C00276 registered 06/10/2023

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 Information Commissioner under the *Privacy Act 1988* as an interference with the privacy of an individual under subsection 13(1) or (4) of that Act, 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 Information Commissioner;

(d) forthwith give notice in writing to the complainant stating that the complaint has been so transferred; and

(e) give to the Information 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 Information Commissioner under Part V of the *Privacy Act 1988*.

(4C) If:

(a) a complaint has been made to the Commission in relation to:

(i) an act or practice of ACIC (except an act or practice of an examiner of ACIC performing functions and exercising powers as an examiner); or

(ii) an act or practice of the Australian Federal Police; 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 Inspector-General of Intelligence and Security under the *Inspector-General of*

Authorised Version C2023C00276 registered 06/10/2023

Intelligence and Security Act 1986, the Commission decides not to inquire, or not to continue to inquire, into that act or practice;

the Commission must:

(c) consult the Inspector-General in relation to transferring the complaint or part of the complaint; and

(d) if the Inspector-General agrees to the transfer of the complaint or part of the complaint—transfer the complaint or part to the Inspector-General as soon as is reasonably practicable; and

(e) as soon as is reasonably practicable, take reasonable steps to give notice in writing to the complainant stating that the complaint or part has been so transferred; and

(f) give to the Inspector-General any information or documents that relate to the complaint or part and are in the possession, or under the control, of the Commission.

(4D) Without limiting subsection (4C), the Commission may consult with, and obtain an agreement from, the Inspector-General of Intelligence and Security by entering into an arrangement with the Inspector-General relating to the transfer of complaints (or parts) generally.

(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.

(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

Authorised Version C2023C00276 registered 06/10/2023

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.

(9) The Commission must act fairly in the performance of the functions referred to in paragraph 11(1)(f).

(10) If a complaint is made under paragraph (1)(b), the Commission:

(a) must act expeditiously in dealing with the complaint; and

Authorised Version C2023C00276 registered 06/10/2023

(b) must use the Commission's best endeavours to finish dealing with the complaint within 12 months after the complaint was made.

(11) Subsections (9) and (10) do not impose a duty on the Commission that is enforceable in court.

(12) Subsection (11) does not affect a legally enforceable obligation to observe the rules of natural justice.

20A Reports to the Minister

If:

(a) the Commission has inquired into an act or practice that may be inconsistent with or contrary to any human right; and

(b) the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right;

the Commission may report to the Minister in relation to the inquiry.

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

Authorised Version C2023C00276 registered 06/10/2023

(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 Australian Signals Directorate, the Office of National Intelligence, or the Australian Geospatial-Intelligence Organisation or the Defence Intelligence Organisation of the Defence Department.

(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.

Authorised Version C2023C00276 registered 06/10/2023

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: 10 penalty units.

(2) A person commits an offence if:
  (a) the person has been served with a notice under subsection 21(5); and
  (b) the person:
    (i) refuses or fails to comply with the notice; or
    (ii) 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.

Penalty: 10 penalty units.

(2A) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

(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

Authorised Version C2023C00276 registered 06/10/2023

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.

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 for or 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 for or 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; or

(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; or

(c) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or

(d) by reason that it would involve the disclosure of deliberations or advice of the Executive Council; or

(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; or

(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; or

(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

Authorised Version C2023C00276 registered 06/10/2023

(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.

(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 for or 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 for or 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 Australian Crime Commission;

neither the Commission nor a person acting for or 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.

Authorised Version C2023C00276 registered 06/10/2023

(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).

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 for or on behalf of the Commission, while that person is holding an inquiry or carrying out an investigation under this Act.

Penalty: 10 penalty units.

(2) A person who:

Authorised Version C2023C00276 registered 06/10/2023

(a) refuses to employ another person; or

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

(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; or

(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; or

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

commits an offence punishable upon conviction:

(j) in the case of a natural person—by a fine not exceeding 25 penalty units 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 100 penalty units.

(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.

Note: Sections 136.1, 137.1 and 137.2 of the *Criminal Code* deal with making false or misleading statements, giving false or misleading information and producing false or misleading documents.

Authorised Version C2023C00276 registered 06/10/2023

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

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 human rights and the need to protect those rights.

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:

Authorised Version C2023C00276 registered 06/10/2023

(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:

Authorised Version C2023C00276 registered 06/10/2023

(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.

Authorised Version C2023C00276 registered 06/10/2023

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.

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

Authorised Version C2023C00276 registered 06/10/2023

in employment or occupation, and to report to the Minister the results of any such examination;

(b) to:

(i) inquire into any act or practice (including any systemic practice) that may constitute discrimination; and

(ii) if the Commission considers it appropriate to do so—endeavour, by conciliation, to effect a settlement of the matters that gave rise 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;

(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);

Authorised Version C2023C00276 registered 06/10/2023

(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.

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; or

(b) a complaint is made in writing to the Commission, by or on behalf of one or more persons aggrieved by an act or practice, alleging that the 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; or

(b) the Commission is satisfied that the person aggrieved by the act or practice does not want the Commission to inquire, or to continue to inquire, into the act or practice; or

(ba) the Commission is satisfied, having regard to all the circumstances, that an inquiry, or the continuation of an inquiry, into the act or practice is not warranted; or

Authorised Version C2023C00276 registered 06/10/2023

(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; or

(ii) the Commission is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance; or

(iib) the Commission is satisfied that there is no reasonable prospect of the matter being settled by conciliation; or

(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; or

(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; or

(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; or

(vii) the Commission is satisfied that the complaint has been settled or resolved.

(4) The Commission must act fairly in the performance of the functions referred to in paragraph 31(b).

(5) If a complaint is made under paragraph (1)(b), the Commission:

(a) must act expeditiously in dealing with the complaint; and

Authorised Version C2023C00276 registered 06/10/2023

(b) must use the Commission's best endeavours to finish dealing with the complaint within 12 months after the complaint was made.

(6) Subsections (4) and (5) do not impose a duty on the Commission that is enforceable in court.

(7) Subsection (6) does not affect a legally enforceable obligation to observe the rules of natural justice.

32A Reports to the Minister

If:

(a) the Commission has inquired into an act or practice (whether a systemic practice or otherwise) that may constitute discrimination; and

(b) the Commission is of the opinion that the act or practice constitutes discrimination;

the Commission may report to the Minister in relation to the inquiry.

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

Authorised Version C2023C00276 registered 06/10/2023

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;

Authorised Version C2023C00276 registered 06/10/2023

(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

Authorised Version C2023C00276 registered 06/10/2023

(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.

Authorised Version C2023C00276 registered 06/10/2023

Division 4A—Functions relating to positive duty in relation to sex discrimination

35A Functions of Commission relating to positive duty in relation to sex discrimination

The following functions are conferred on the Commission:

(a) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for complying with the positive duty in relation to sex discrimination;

(b) to promote an understanding and acceptance, and the public discussion, of the positive duty in relation to sex discrimination;

(c) to undertake research and educational programs in relation to the positive duty in relation to sex discrimination;

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

Note: The positive duty in relation to sex discrimination is section 47C of the *Sex Discrimination Act 1984*.

35AA Performance of functions relating to positive duty in relation to sex discrimination

In performing its functions under section 35A, the Commission must have regard to:

(a) the need for guidelines and other materials to be available in multiple languages; and

(b) the cultural diversity of Australian workplaces.

Authorised Version C2023C00276 registered 06/10/2023

Division 4B—Functions relating to systemic discrimination

35L Functions of Commission relating to systemic discrimination

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

(a) to inquire into any matter that may relate to systemic unlawful discrimination or suspected systemic unlawful discrimination;

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

(2) In this Act:

systemic unlawful discrimination means unlawful discrimination that:

(a) affects a class or group of persons; and

(b) is continuous, repetitive or forms a pattern.

35M Performance of functions relating to systemic discrimination

The Commission may perform the functions referred to in paragraph 35L(1)(a) when:

(a) the Commission is requested to do so by the Minister; or

(b) it appears to the Commission to be desirable to do so.

35N Application of certain provisions of Division 3

Sections 21, 22, 23 and 24 and subsection 26(1) apply in relation to the functions of the Commission set out in section 35L, and in relation to the performance of those functions, as if:

(a) references in section 21 to a matter under examination or inquiry under Division 3 were references to a matter under inquiry under this Division; and

(b) a reference in any of those provisions to another of those provisions were a reference to that other provision as applied by this section.

Authorised Version C2023C00276 registered 06/10/2023

35P Commission to give opportunity for making of submissions

In an inquiry into a matter under this Division, the Commission must not make an adverse finding about a person unless it has given a reasonable opportunity to the person, 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 matter;

(b) to make written submissions to the Commission in relation to the matter.

35Q Reports

(1) If the Commission has undertaken an inquiry into a matter under this Division, the Commission may do either or both of the following:

(a) report to the Minister in relation to the inquiry;

(b) publish a report in relation to the inquiry.

(2) The Commission may include in its report any recommendations by the Commission for addressing the matter.

Authorised Version C2023C00276 registered 06/10/2023

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.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(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.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

(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 or 35N) and sections 48 and 49.

Authorised Version C2023C00276 registered 06/10/2023

37 Terms and conditions of appointment

(1) Subject to subsection (2) or (3), an appointed member holds office for such period as is specified in the instrument of the member's appointment, but is eligible for re-appointment.

(2) A person must not be appointed as the President under section 8A for a period if the sum of the following exceeds 7 years:
   (a) that period;
   (b) any periods of previous appointment of the person as the President under that section.

(3) A person must not be appointed as the Human Rights Commissioner under section 8B for a period if the sum of the following exceeds 7 years:
   (a) that period;
   (b) any periods of previous appointment of the person as the Human Rights Commissioner under that section.

(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.

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*.

Authorised Version C2023C00276 registered 06/10/2023

(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.

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;

Authorised Version C2023C00276 registered 06/10/2023

(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 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section;

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.

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 Information Commissioner

The Commission may make administrative services available to the Information Commissioner for the purpose of assisting the Information Commissioner in the performance of his or her functions under the *Australian Information Commissioner Act 2010* or any other Act.

Authorised Version C2023C00276 registered 06/10/2023

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.

(8) 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.

44A Money payable to the Commission

(1) There is payable to the Commission such money as is appropriated by the Parliament for the purposes of the Commission.

(2) The Finance Minister may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to the Commission.

Authorised Version C2023C00276 registered 06/10/2023

(3) If a direction under subsection (2) is given in writing, the direction is not a legislative instrument.

(4) In this section:

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

44B Application of money by the Commission

(1) The money of the Commission is to be applied only:

(a) in payment or discharge of the costs, expenses and other obligations incurred by the Commission in the performance of its functions and the exercise of its powers; and

(b) in payment of any remuneration or allowances payable under this Act.

(2) Subsection (1) does not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the Commission.

44C Taxation

The Commission is not subject to taxation under a law of the Commonwealth or of a State or Territory.

Note: However, the Commission may be subject to taxation under certain laws (see, for example, section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999* and section 66 of the *Fringe Benefits Tax Assessment Act 1986*).

45 Annual report

The annual report prepared by the President and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must cover the Commission's operations during the period under:

(a) this Act or any other enactment; or

(b) any State enactment.

Authorised Version C2023C00276 registered 06/10/2023

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 section 20A, subsection 29(5), section 32A or subsection 35Q(1)) to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

Authorised Version C2023C00276 registered 06/10/2023

Division 6—Corporate plan

46AA Corporate plan

In performing its duties and functions, the Commission must take account of the corporate plan prepared by the President under section 35 of the *Public Governance, Performance and Accountability Act 2013* that is in force.

Authorised Version C2023C00276 registered 06/10/2023

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.

(2) A person must not be appointed under subsection (1) as the Aboriginal and Torres Strait Islander Social Justice Commissioner unless the Minister is satisfied that:

(a) the person has significant experience in community life of Aboriginal persons or Torres Strait Islanders; and

(b) the selection of the person for the appointment is the result of a process that:

Authorised Version C2023C00276 registered 06/10/2023

(i) was merit-based; and
(ii) included public advertising of the position.

(3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Aboriginal and Torres Strait Islander Social Justice Commissioner under a previous appointment under subsection (1).

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

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

Note: Functions are also conferred on the Commission under section 209 of the *Native Title Act 1993*.

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

(2A) The Commissioner may submit reports to the Minister regarding the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders.

(2B) The Commissioner may submit reports to the Minister regarding:
(a) the operation of the *Native Title Act 1993*; and

Authorised Version C2023C00276 registered 06/10/2023

(b) the effect of that Act on the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders.

(2C) A report under subsection (2A) or (2B) may include recommendations as to the action that should be taken to ensure the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders.

(3) In the performance of functions, or the exercise of powers, under this section, the Commissioner 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, or the exercise of powers, 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.

Authorised Version C2023C00276 registered 06/10/2023

Division 2—Administrative provisions

46D Terms and conditions of appointment

(1) Subject to this Division, the Commissioner holds office for such period as is specified in the instrument of appointment, but is eligible for re-appointment.

(1A) A person must not be appointed as the Aboriginal and Torres Strait Islander Social Justice Commissioner under section 46B for a period if the sum of the following exceeds 7 years:

(a) that period;

(b) any periods of previous appointment of the person as the Aboriginal and Torres Strait Islander Social Justice Commissioner under that section.

(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.

Authorised Version C2023C00276 registered 06/10/2023

(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.

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.

Authorised Version C2023C00276 registered 06/10/2023

46J Acting Commissioner

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.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Authorised Version C2023C00276 registered 06/10/2023

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

Authorised Version C2023C00276 registered 06/10/2023

(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

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 subsection 46C(2A) or (2B):

(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).

Authorised Version C2023C00276 registered 06/10/2023

Part IIAA—National Children's Commissioner

Division 1—Establishment and functions

46MA National Children's Commissioner

There is to be a National Children's Commissioner.

46MB Functions of Commission that are to be performed by the National Children's Commissioner etc.

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

(b) to promote discussion and awareness of matters relating to the human rights of children in Australia;

(c) to undertake research, or educational or other programs, for the purpose of promoting respect for the human rights of children in Australia, and promoting the enjoyment and exercise of human rights by children in Australia;

(d) to examine existing and proposed Commonwealth enactments for the purpose of ascertaining whether they recognise and protect the human rights of children in Australia, and to report to the Minister the results of any such examination.

(2) The functions of the Commission under this section are to be performed by the National Children's Commissioner on behalf of the Commission.

(3) The National Children's Commissioner may submit reports to the Minister that deal with such matters, relating to the enjoyment and exercise of human rights by children in Australia, as the National Children's Commissioner considers appropriate.

(3A) A report under subsection (3) may include recommendations that the National Children's Commissioner considers appropriate as to the action that should be taken to ensure the enjoyment and exercise of human rights by children in Australia.

Authorised Version C2023C00276 registered 06/10/2023

(4) In performing functions, or exercising powers, under this section, the National Children's Commissioner may give particular attention to children who are at risk or vulnerable.

(5) In performing functions, or exercising powers, under this section, the National Children's Commissioner may consult any of the following:
  (a) children;
  (b) Departments and authorities of the Commonwealth, and of the States and Territories;
  (c) non-governmental organisations;
  (d) international organisations and agencies;
  (e) such other organisations, agencies or persons as the Commissioner considers appropriate.

(6) In performing functions, or exercising powers, under this section, the National Children's Commissioner must, as appropriate, have regard to:
  (a) the Universal Declaration of Human Rights (United Nations General Assembly Resolution A/RES/217(III) A (1948); and
  (b) the following, as amended and in force for Australia from time to time:
    (i) the International Convention on the Elimination of all Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40);
    (ii) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5);
    (iii) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);
    (iv) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9);
    (v) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4);

Authorised Version C2023C00276 registered 06/10/2023

(vi) the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12); and

(c) such other instruments relating to human rights as the Commissioner considers relevant.

Note 1: In 2012, the text of the Universal Declaration of Human Rights was accessible through the United Nations website (www.un.org).

Note 2: In 2012, the text of an international agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Authorised Version C2023C00276 registered 06/10/2023

Division 2—Appointment

46MC Appointment of National Children's Commissioner

(1) The National Children's Commissioner is to be appointed by the Governor-General by written instrument, on a full-time basis.

(2) A person must not be appointed under subsection (1) as the National Children's Commissioner unless the Minister is satisfied that:

(a) the person has appropriate qualifications, knowledge or experience; and

(b) the selection of the person for the appointment is the result of a process that:

(i) was merit-based; and

(ii) included public advertising of the position.

(3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the National Children's Commissioner under a previous appointment under subsection (1).

46MD Period of appointment

(1) The National Children's Commissioner holds office for the period specified in the instrument of appointment.

Note: For re-appointment, see section 33AA of the *Acts Interpretation Act 1901*.

(2) A person must not be appointed as the National Children's Commissioner under section 46MC for a period if the sum of the following exceeds 7 years:

(a) that period;

(b) any periods of previous appointment of the person as the National Children's Commissioner under that section.

Authorised Version C2023C00276 registered 06/10/2023

46ME Acting appointment

The Minister may, by written instrument, appoint a person to act as the National Children's Commissioner:

(a) during a vacancy in the office of the 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:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: See also sections 20, 33AB and 33A of the *Acts Interpretation Act 1901*.

Authorised Version C2023C00276 registered 06/10/2023

Division 3—Terms and conditions

46MF Remuneration and allowances

(1) The National Children's Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.

(2) The National Children's Commissioner is to be paid the allowances that are prescribed by the regulations.

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

46MG Leave of absence

(1) The National Children's Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the National Children's Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

46MH Outside employment

The National Children's Commissioner must not engage in paid employment outside the duties of his or her office without the approval of the Minister.

46MI Resignation

(1) The National Children's Commissioner may resign his or her appointment by giving the Governor-General a written resignation.

Authorised Version C2023C00276 registered 06/10/2023

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

46MJ Termination of appointment

The Governor-General may terminate the appointment of the National Children's Commissioner:

(a) for misbehaviour; or

(b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity; or

(c) if the Commissioner:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of remuneration for the benefit of his or her creditors; or

(d) if the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(e) if the Commissioner engages in paid employment contrary to section 46MH.

46MK Other terms and conditions

The National Children's Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

Authorised Version C2023C00276 registered 06/10/2023

Division 4—Miscellaneous

46ML National Children's Commissioner may obtain information from Commonwealth government agencies

(1) If the National Children's Commissioner has reason to believe that a Commonwealth 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; and

(b) the time at which, or period within which, the information or document is to be given or produced.

(3) The time or period stated under paragraph (2)(b) must be reasonable.

(4) A Commonwealth 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.

(5) If:

(a) subsection (4) would prevent a Commonwealth government agency from complying with a requirement under this section to produce a document; and

Authorised Version C2023C00276 registered 06/10/2023

(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.

(6) In this section:

Commonwealth government agency means:

(a) a Department or authority of the Commonwealth; or

(b) a person who performs the functions of, or performs functions within, a Department or authority of the Commonwealth.

46MM National Children's Commissioner must give information to the Commission

The National Children's 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.

46MN Minister must table reports of National Children's Commissioner

The Minister must cause a copy of each report received by the Minister under this Part to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

Authorised Version C2023C00276 registered 06/10/2023

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:

(a) alleging:

(i) that one or more acts have been done; or

(ii) that one or more omissions or practices have occurred; and

(b) alleging that those acts, omissions or practices are unlawful discrimination.

Note 1: ***Unlawful discrimination*** is defined in subsection 3(1).

Note 2: Under section 46PZ, a complaint may be taken to be lodged with the Commission if all or part of a complaint is transferred from the Inspector-General of Intelligence and Security under section 32AG of the *Inspector-General of Intelligence and Security Act 1986*.

(1A) It must be reasonably arguable that the alleged acts, omissions or practices are unlawful discrimination.

(1B) The complaint must set out, as fully as practicable, the details of the alleged acts, omissions or practices.

(2) The complaint may be lodged:

(a) by a person aggrieved by the alleged acts, omissions or practices:

(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 acts, omissions or practices; or

(b) by 2 or more persons aggrieved by the alleged acts, omissions or practices:

(i) on their own behalf; or

Authorised Version C2023C00276 registered 06/10/2023

(ii) on behalf of themselves and one or more other persons who are also aggrieved by the alleged acts, omissions or practices; or

(c) by a person or trade union on behalf of one or more other persons aggrieved by the alleged acts, omissions or practices.

(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.

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:

Authorised Version C2023C00276 registered 06/10/2023

(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 paragraph 46PF(1)(b) or 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.

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:
(a) the President; or
(b) the Commission; or
(c) a Commissioner.

Authorised Version C2023C00276 registered 06/10/2023

(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), (2A) 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) Subject to subsections (1A) and (5), if a complaint is referred to the President under section 46PD, the President must:
  (a) consider whether to inquire into the complaint, having regard to the matters referred to in section 46PH; and
  (b) if the President is of the opinion that the complaint should be terminated—terminate the complaint without inquiry; and
  (c) unless the President terminates the complaint under paragraph (b) or section 46PH—inquire into the complaint and attempt to conciliate the complaint.

(1A) For the purposes of paragraph (1)(a), the President may inform himself or herself of such facts and circumstances as are necessary to form the opinion referred to in paragraph (1)(b).

(1B) If the President terminates the complaint under paragraph (1)(b), the President must comply with the notification requirements of subsections 46PH(2), (2A) and (3).

(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.

Authorised Version C2023C00276 registered 06/10/2023

(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 acts, omissions or practices.

Note: In some cases, a person is regarded as having done acts or omissions by being treated as responsible for the acts and omissions of another person. See sections 56 and 57 of the *Age Discrimination Act 2004*, 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 paragraph (1)(b) or section 46PH.

(5) The President may decide not to inquire into the complaint, or, if the President has started inquiring into the complaint, may decide not to continue to inquire into the complaint, if:

(a) the President is satisfied that the person aggrieved by the alleged acts, omissions or practices does not want the President to inquire, or to continue to inquire, into the complaint; or

(b) the President is satisfied that the complaint has been settled or resolved.

(6) The President must act fairly to:

(a) the complainant or complainants; and

(b) the respondent;

in dealing with the complaint in accordance with this section.

(7) If the President has decided to inquire into a complaint, the President:

(a) must notify the complaint to the respondent, unless the President is satisfied that notification would be likely to prejudice the safety of a person; and

(b) if the complaint is amended under subsection (3) by adding a respondent—must notify the complaint to that respondent, unless the President is satisfied that notification would be likely to prejudice the safety of a person; and

(c) if any person (other than the respondent) is the subject of an adverse allegation arising from the complaint—must notify

Authorised Version C2023C00276 registered 06/10/2023

the person of the adverse allegation, unless the President is satisfied:

(i) that notification would be likely to prejudice the safety of a person; or

(ii) that it is not practicable to do so; and

(d) may notify the complaint to any person who, in the opinion of the President, is likely to be able to provide information relevant to the complaint.

(8) For the purposes of paragraphs (7)(a), (b) and (c), the President must notify the respondent or the other person, as the case may be:

(a) under paragraph (7)(a)—as soon as the President has decided to inquire into the complaint; or

(b) under paragraph (7)(b)—as soon as the complaint has been amended; or

(c) under paragraph (7)(c)—as soon as the President forms the opinion that the person is the subject of an adverse allegation arising from the complaint.

(9) For the purposes of subsections (7) and (8), ***adverse allegation*** means an allegation:

(a) that:

(i) one or more acts have been done; or

(ii) one or more omissions or practices have occurred; and

(b) that those acts, omissions or practices are unlawful discrimination.

Note: ***Unlawful discrimination*** is defined in subsection 3(1).

(10) The President:

(a) must, having regard to:

(i) the nature of the complaint; and

(ii) the needs of the complainant or complainants; and

(iii) the needs of the respondent;

act expeditiously in dealing with the complaint in accordance with this section; and

Authorised Version C2023C00276 registered 06/10/2023

(b) must use the President's best endeavours to finish dealing with the complaint within 12 months after the complaint was referred to the President under section 46PD.

(11) Subsections (6) and (10) do not impose a duty on the President that is enforceable in court.

(12) Subsection (11) does not affect a legally enforceable obligation to observe the rules of natural justice.

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

Discretionary termination of complaint

(1) The President may terminate a complaint on any of the following grounds:

(a) the President is satisfied that the alleged acts, omissions or practices are not unlawful discrimination;

(b) the complaint was lodged more than 24 months after the alleged acts, omissions or practices took place;

(c) the President is satisfied, having regard to all the circumstances, that an inquiry, or the continuation of an inquiry, into the complaint is not warranted;

(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;

Authorised Version C2023C00276 registered 06/10/2023

(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 Circuit and Family Court of Australia (Division 2).

Note: An act, omission or practice may not be unlawful discrimination because an exemption applies (for example, section 18D of the *Racial Discrimination Act 1975*). Accordingly, consideration by the President of the question of whether an act, omission or practice is not unlawful discrimination will involve consideration of whether an exemption applies.

(1A) A complaint may be terminated under subsection (1) at any time, even if an inquiry into the complaint has begun.

Mandatory termination of complaint

(1B) The President must terminate a complaint if the President is satisfied that:

(a) the complaint is trivial, vexatious, misconceived or lacking in substance; or

(b) there is no reasonable prospect of the matter being settled by conciliation.

(1C) The President must terminate a complaint if the President is satisfied that there would be no reasonable prospect that the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) would be satisfied that the alleged acts, omissions or practices are unlawful discrimination.

Authorised Version C2023C00276 registered 06/10/2023

(1D) A complaint may be terminated under subsection (1B) or (1C) at any time, even if an inquiry into the complaint has begun.

Notification

(2) If the President terminates a complaint, the President must notify the complainants in writing of the termination and of the reasons for the termination.

(2A) A notice under subsection (2) must include a statement explaining that the Federal Court and the Federal Circuit and Family Court of Australia (Division 2) can award costs in proceedings under section 46PO.

(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).

Revocation

(4) The President may revoke the termination of a complaint, but not after an application is made to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) under section 46PO in relation to the complaint.

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;

Authorised Version C2023C00276 registered 06/10/2023

(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 President may hold conferences

President may decide to hold a conference

(1) For the purpose of attempting to conciliate a complaint in accordance with section 46PF, the President may decide to hold a conference, to be presided over by:
(a) the President; or
(b) a suitable person (other than a Commission member) determined by the President.

President may invite people to attend

(2) The President may:
(a) invite any or all of the complainants or respondents to attend the conference; and
(b) invite any other person to attend the conference, if:

Authorised Version C2023C00276 registered 06/10/2023

(i) the President reasonably believes that the person is capable of giving information that is relevant to the conciliation of the complaint; or

(ii) the President considers that the person's presence at the conference is likely to be conducive to the conciliation of the complaint.

President may require people to attend

(3) The President may, by written notice given to a person referred to in subsection (2), require the person to attend the conference (whether or not the person has already been invited to attend the conference).

Note: Failure to comply with a notice is an offence—see subsection (5).

(4) A notice under subsection (3):

(a) must specify the place and time of the conference, not being a time that is less than 14 days after the notice is given; and

(b) must set out the effect of subsection (5).

(5) A person commits an offence if:

(a) the person has been given a notice under subsection (3) requiring the person to attend a conference; and

(b) the person refuses or fails to comply with the requirement.

Penalty: 10 penalty units.

(6) Subsection (5) is an offence of strict liability.

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

Expenses for attendance

(7) A person who is required to attend the conference is entitled to be paid, by the Commonwealth, a reasonable sum for the person's expenses of attendance.

Authorised Version C2023C00276 registered 06/10/2023

46PK Proceedings at conferences

(1) Subject to this section, a conference mentioned in subsection 46PJ(1) is to be conducted in such manner as the person presiding at the conference considers appropriate.

(2) The conference is to be conducted in private.

(3) The person presiding at the conference must take all reasonable steps to ensure that the conduct of the conference does not disadvantage any complainant or respondent.

(4) Unless the person presiding at the conference consents:

(a) an individual is not entitled to be represented at the conference by another person; and

(b) a body (whether or not incorporated) is not entitled to be represented at the conference otherwise than by a person who is an officer or employee of the body.

(5) Despite paragraph (4)(a), an individual who is unable to attend the conference because the individual has a disability is entitled to nominate another person to attend instead on his or her behalf.

(6) If the person presiding at the conference considers that 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.

(7) For the purposes of this section, ***disability*** has the same meaning as in the *Disability Discrimination Act 1992*.

46PKA Things said in conciliation are not admissible in evidence in certain proceedings

(1) Evidence of anything said or done by a person in the course of the conciliation of a complaint in accordance with section 46PF is not admissible in any proceedings relating to the alleged acts, omissions or practices.

Authorised Version C2023C00276 registered 06/10/2023

(2) Subsection (1) does not apply for the purposes of the application of section 46PSA.

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.

Penalty: 10 penalty units.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

(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 this section 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.

Authorised Version C2023C00276 registered 06/10/2023

Division 2—Proceedings in the Federal Court and the Federal Circuit and Family Court of Australia (Division 2)

46PO Application to court if complaint is terminated

Making an application

(1) If:

(a) a complaint has been terminated by the President under section 46PE, paragraph 46PF(1)(b) or section 46PH; and

(b) the President has given a notice to any person under subsection 46PH(2) in relation to the termination;

an application may be made to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2), alleging unlawful discrimination by one or more of the respondents to the terminated complaint.

(2) The application must be made within 60 days after the date of issue of the notice under subsection 46PH(2), or within such further time as the court concerned allows.

(2A) The application may be made:

(a) by an affected person in relation to the terminated complaint:

(i) on that person's own behalf; or

(ii) on behalf of that person and one or more other affected persons in relation to the terminated complaint; or

(b) by 2 or more affected persons in relation to the terminated complaint:

(i) on their own behalf; or

(ii) on behalf of themselves and one or more other affected persons in relation to the terminated complaint; or

(c) by a person or trade union who lodged the terminated complaint, on behalf of one or more affected persons in relation to the terminated complaint.

Authorised Version C2023C00276 registered 06/10/2023

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

(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.

(3A) The application must not be made unless:

(a) the court concerned grants leave to make the application; or

(b) the complaint was terminated under paragraph 46PH(1)(h); or

(c) the complaint was terminated under paragraph 46PH(1B)(b).

Court orders

(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;

Authorised Version C2023C00276 registered 06/10/2023

(f) an order declaring that it would be inappropriate for any further action to be taken in the matter.

Note 1: The Federal Court, or a judge of that court, may award costs in proceedings under this section—see section 43 of the *Federal Court of Australia Act 1976*.

Note 2: The Federal Circuit and Family Court of Australia (Division 2), or a Judge of that Court, may award costs in proceedings under this section—see section 214 of the *Federal Circuit and Family Court of Australia Act 2021*.

(4A) In the case of a representative application, subsection (4) applies as if a reference to an applicant included a reference to a person on whose behalf the application is made, other than one who has opted out under subsection 46POB(3).

(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.

46POA Conditions for making a representative application

(1) A representative application may not be made without the written consent of each person on whose behalf the application is made (other than the person making the application).

(2) A representative application must:

(a) describe or otherwise identify the persons on whose behalf the application is made; and

Authorised Version C2023C00276 registered 06/10/2023

(b) include a statement by the person making the application certifying that each person on whose behalf the application is made has consented, in writing, to the making of the application on the person's behalf; and

(c) specify the nature of the relief sought.

46POB Additional rules applying to representative applications

Separate applications may not be made

(1) A person on whose behalf a representative application is made is not entitled to make a separate application under subsection 46PO(1) in respect of the same subject matter unless the person opts out under subsection (3) of this section.

Right to opt out

(2) If a representative application is made, the court concerned must fix a date before which a person may opt out of the proceeding commenced by the application.

(3) A person on whose behalf the application is made (other than the person who made the application) may opt out of the proceeding by written notice to the court concerned:

(a) before the date so fixed; and

(b) in accordance with the rules of court of the court concerned (if any).

(4) The court concerned, on the application of the person who made the application, a respondent or a person on whose behalf the application is made, may fix another date so as to extend the period during which a person may opt out of the proceeding.

(5) Except with the leave of the court concerned, the hearing of the proceeding must not commence earlier than the date before which a person may opt out of the proceeding.

Authorised Version C2023C00276 registered 06/10/2023

Settlement and discontinuance

(6) A proceeding commenced by a representative application may not be settled or discontinued without the approval of the court concerned.

(7) If the court concerned gives such an approval, it may make such orders as are just with respect to the distribution of any money paid under a settlement or paid into the court.

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 Circuit and Family Court of Australia (Division 2) 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, paragraph 46PF(1)(b) or section 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

Authorised Version C2023C00276 registered 06/10/2023

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 Circuit and Family Court of Australia (Division 2) are not bound by technicalities or legal forms. This section has effect subject to Chapter III of the Constitution.

46PS Report by President to court

(1) The President may provide the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) with a written report on a complaint that has been terminated under paragraph 46PF(1)(b) or 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.

46PSA Costs—court may have regard to an offer to settle

If:

(a) proceedings have been instituted under section 46PO against a respondent to a terminated complaint; and

(b) an applicant or respondent has made, or makes, an offer to settle the matter the subject of the complaint; and

(c) the offer was or is rejected;

the court, or a judge of the court, in deciding whether to award costs in the proceedings, may have regard to the offer.

Authorised Version C2023C00276 registered 06/10/2023

Note 1: The Federal Court, or a judge of that court, may award costs in proceedings under section 46PO—see section 43 of the *Federal Court of Australia Act 1976*.

Note 2: The Federal Circuit and Family Court of Australia (Division 2), or a Judge of that Court, may award costs in proceedings under section 46PO—see section 214 of the *Federal Circuit and Family Court of Australia Act 2021*.

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 Circuit and Family Court of Australia (Division 2) under this Division; or

(b) is a respondent in proceedings in the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) 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.

Authorised Version C2023C00276 registered 06/10/2023

46PV Amicus curiae function of Commission members

(1) A special-purpose Commissioner has the function of assisting the Federal Court and the Federal Circuit and Family Court of Australia (Division 2), 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; and

(f) the Age Discrimination Commissioner; and

(g) the National Children's Commissioner.

Authorised Version C2023C00276 registered 06/10/2023

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

46PW Referral of discriminatory industrial instruments to the Fair Work Commission

(1) A complaint in writing alleging that a person has done a discriminatory act under an industrial instrument 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 industrial instrument to the Fair Work Commission. However, the President need not refer the industrial instrument 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 industrial instrument, 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.

Authorised Version C2023C00276 registered 06/10/2023

(5) If the President refers the industrial instrument to the Fair Work 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.

(7) In this section:

discriminatory act under an industrial instrument means an act that would be unlawful under:

(a) Part 4 of the *Age Discrimination Act 2004*; or

(b) Part 2 of the *Disability Discrimination Act 1992*; or

(c) Part II of the *Sex Discrimination Act 1984*;

but for the fact that the act was done in direct compliance with an industrial instrument.

industrial instrument means:

(a) a fair work instrument (within the meaning of the *Fair Work Act 2009*); or

(b) a transitional instrument, or a Division 2B State instrument, (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*).

(8) For the purposes of the definition of ***discriminatory act under an industrial instrument*** in subsection (7), the fact that an act is done in direct compliance with the industrial instrument 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:

Authorised Version C2023C00276 registered 06/10/2023

(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.

(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.

Authorised Version C2023C00276 registered 06/10/2023

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.

Authorised Version C2023C00276 registered 06/10/2023

(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.

Authorised Version C2023C00276 registered 06/10/2023

Part III—Miscellaneous

46PZ Transfer of complaints from the Inspector-General of Intelligence and Security

(1) If the Inspector-General of Intelligence and Security transfers all or part of a complaint to the Commission under section 32AG of the *Inspector-General of Intelligence and Security Act 1986*, in respect of an act or practice of ACIC or the Australian Federal Police, the Commission may determine, in writing, that a complaint is taken to have been:

(a) made as referred to in paragraph 20(1)(b) of this Act; or

(b) lodged under section 46P of this Act.

Note: The Commission may also transfer a complaint or part of a complaint to the Inspector-General of Intelligence and Security under subsection 20(4C).

(2) The determination has effect accordingly.

(3) The determination is not a legislative instrument.

47 Declaration of international instruments

(1) The Minister may, after consulting the appropriate Minister of each State, by legislative instrument, 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) The declaration must include:

(a) a copy of the international instrument; and

(b) a copy of whichever of the following is applicable:

(i) Australia's instrument of ratification of, or accession to, the international instrument;

Authorised Version C2023C00276 registered 06/10/2023

(ii) the terms of any explanation given by Australia of its vote in respect of the international instrument.

(3) Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the declaration.

48 Protection from civil actions

(1) Subsection (2) applies in relation to any of the following persons:

(a) the Commission;

(b) a member of the Commission;

(c) a person acting for or on behalf of:

(i) the Commission; or

(ii) a member of the Commission.

(2) The person 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 the member.

(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.

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:

Authorised Version C2023C00276 registered 06/10/2023

(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, for or on behalf of the Commission; or

(b) make use of any such information as is mentioned in paragraph (a); or

(c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: 50 penalty units 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:

(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.

(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;

Authorised Version C2023C00276 registered 06/10/2023

(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.

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

(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 for or on behalf of the Commission, from giving information or documents in accordance with paragraph 20(4A)(e) or (4C)(f).

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

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

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

(b) in the course of acting for or on behalf of the Commission.

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

(4C) Subsection (1) does not prevent the Commission, or a person acting for or on behalf of the Commission, from giving information or documents to an IGIS official for the purpose of the IGIS

Authorised Version C2023C00276 registered 06/10/2023

official exercising a power, or performing a function or duty, as an IGIS official.

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

(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 Circuit and Family Court of Australia (Division 2)

The Federal Court and the Federal Circuit and Family Court of Australia (Division 2) 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 Circuit and Family Court of Australia (Division 2) have concurrent jurisdiction with respect to matters arising under subsection (1) and that jurisdiction is

Authorised Version C2023C00276 registered 06/10/2023

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.

Authorised Version C2023C00276 registered 06/10/2023

Schedule 1—Convention concerning Discrimination in respect of Employment and Occupation

Section 3

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term "discrimination" includes—

(*a*) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

Authorised Version C2023C00276 registered 06/10/2023

(*b*) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employer's and worker's organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice—

(*a*) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

(*b*) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(*c*) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(*d*) to pursue the policy in respect of employment under the direct control of a national authority;

(*e*) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

Authorised Version C2023C00276 registered 06/10/2023

(*f*) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

Authorised Version C2023C00276 registered 06/10/2023

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration.

Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Authorised Version C2023C00276 registered 06/10/2023

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(*a*) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(*b*) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

Authorised Version C2023C00276 registered 06/10/2023

Schedule 2—International Covenant on Civil and Political Rights

Section 3

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of

Authorised Version C2023C00276 registered 06/10/2023

international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(*a*) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(*b*) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(*c*) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

Authorised Version C2023C00276 registered 06/10/2023

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Authorised Version C2023C00276 registered 06/10/2023

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

Authorised Version C2023C00276 registered 06/10/2023

3. (*a*) No one shall be required to perform forced or compulsory labour;

(*b*) Paragraph 3(*a*) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(*c*) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in sub-paragraph (*b*), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide

Authorised Version C2023C00276 registered 06/10/2023

without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (*a*) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(*b*) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Authorised Version C2023C00276 registered 06/10/2023

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality;

(*a*) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(*b*) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(*c*) To be tried without undue delay;

(*d*) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

Authorised Version C2023C00276 registered 06/10/2023

(*e*) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(*f*) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(*g*) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Authorised Version C2023C00276 registered 06/10/2023

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to

Authorised Version C2023C00276 registered 06/10/2023

certain restrictions, but these shall only be such as are provided by law and are necessary:

(*a*) For respect of the rights or reputations of others;

(*b*) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

Authorised Version C2023C00276 registered 06/10/2023

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(*a*) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(*b*) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(*c*) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective

Authorised Version C2023C00276 registered 06/10/2023

protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

Authorised Version C2023C00276 registered 06/10/2023

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

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

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

Authorised Version C2023C00276 registered 06/10/2023

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

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

Article 36

Authorised Version C2023C00276 registered 06/10/2023

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

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(*a*) Twelve members shall constitute a quorum;

(*b*) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(*a*) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(*b*) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports

Authorised Version C2023C00276 registered 06/10/2023

shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communications shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(*a*) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(*b*) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

Authorised Version C2023C00276 registered 06/10/2023

(*c*) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(*d*) The Committee shall hold closed meetings when examining communications under this article.

(*e*) Subject to the provisions of sub-paragraph (*c*), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(*f*) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (*b*), to supply any relevant information.

(*g*) The States Parties concerned, referred to in sub-paragraph (*b*), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(*h*) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (*b*), submit a report:

(i) If a solution within the terms of sub-paragraph (*e*) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of sub-paragraph (*e*) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article.

Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall

Authorised Version C2023C00276 registered 06/10/2023

be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (*a*) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(*b*) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it

Authorised Version C2023C00276 registered 06/10/2023

shall submit to the Chairman of the Committee a report for communication to the States Parties concerned.

(*a*) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(*b*) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached.

(*c*) If a solution within the terms of sub-paragraph (*b*) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned.

(*d*) If the Commission's report is submitted under sub-paragraph (*c*), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

Authorised Version C2023C00276 registered 06/10/2023

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Authorised Version C2023C00276 registered 06/10/2023

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds

Authorised Version C2023C00276 registered 06/10/2023

majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(*a*) Signatures, ratifications and accessions under article 48;

(*b*) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Covenant, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.

Authorised Version C2023C00276 registered 06/10/2023

Schedule 3—Declaration of the Rights of the Child

Section 3

Whereas the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Whereas mankind owes to the child the best it has to give,

Now therefore,

The General Assembly

Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Authorised Version C2023C00276 registered 06/10/2023

Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 3

The child shall be entitled from his birth to a name and a nationality.

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of

Authorised Version C2023C00276 registered 06/10/2023

State and other assistance towards the maintenance of children of large families is desirable.

Principle 7

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

Principle 8

The child shall in all circumstances be among the first to receive protection and relief.

Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

Authorised Version C2023C00276 registered 06/10/2023

Schedule 4—Declaration on the Rights of Mentally Retarded Persons

Section 3

The General Assembly,

Mindful of the pledge of the States Members of the United Nations under the Charter to take joint and separate action in co-operation with the Organization to promote higher standards of living, full employment and conditions of economic and social progress and development,

Reaffirming faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter,

Recalling the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child and the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and other organizations concerned,

Emphasizing that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

Bearing in mind the necessity of assisting mentally retarded persons to develop their abilities in various fields of activities and of promoting their integration as far as possible in normal life,

Aware that certain countries, at their present stage of development, can devote only limited efforts to this end,

Proclaims this Declaration on the Rights of Mentally Retarded Persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights:

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.

Authorised Version C2023C00276 registered 06/10/2023

2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.

3. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.

4. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.

5. The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interests.

6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.

7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

Authorised Version C2023C00276 registered 06/10/2023

Schedule 5—Declaration on the Rights of Disabled Persons

Section 3

The General Assembly,

Mindful of the pledge made by Member States, under the Charter of the United Nations; to take joint and separate action in co-operation with the Organization to promote higher standards of living, full employment and conditions of economic and social progress and development,

Reaffirming its faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter,

Recalling the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child and the Declaration on the Rights of Mentally Retarded Persons, as well as the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and other organizations concerned,

Recalling also Economic and Social Council resolution 1921 (LVIII) of 6 May 1975 on the prevention of disability and the rehabilitation of disabled persons,

Emphasizing that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

Bearing in mind the necessity of preventing physical and mental disabilities and of assisting disabled persons to develop their abilities in the most varied fields of activities and of promoting their integration as far as possible in normal life,

Aware that certain countries, at their present stage of development, can devote only limited efforts to this end,

Authorised Version C2023C00276 registered 06/10/2023

Proclaims this Declaration on the Rights of Disabled Persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights:

1. The term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities.

2. Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.

3. Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.

4. Disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any possible limitation or suppression of those rights for mentally disabled persons.

5. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.

6. Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthetic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.

7. Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

Authorised Version C2023C00276 registered 06/10/2023

8. Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.

9. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age.

10. Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

11. Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.

12. Organizations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons.

13. Disabled persons, their families and communities shall be fully informed, by all appropriate means, of the rights contained in this Declaration.

Authorised Version C2023C00276 registered 06/10/2023

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Authorised Version C2023C00276 registered 06/10/2023

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

Authorised Version C2023C00276 registered 06/10/2023

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2023C00276 registered 06/10/2023

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Human Rights and Equal Opportunity Commission Act 1986	125, 1986	6 Dec 1986	10 Dec 1986 (s 2 and gaz 1986, No S631)	
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	s 5(1): 18 Dec 1987 (s (1)) Sch 1: 1 Feb 1987 (s 2(17))	s 5(1)
Statute Law (Miscellaneous Provisions) Act 1988	38, 1988	3 June 1988	s 5(1) and Sch 1: 3 June 1988 (s 2(1))	s 5(1)
Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988	99, 1988	2 Dec 1988	Sch: 2 Dec 1988 (s 2)	—
Privacy Act 1988	119, 1988	14 Dec 1988	Sch 1: 1 Jan 1989 (s 2 and gaz 1988, No S399)	—
Defence Legislation Amendment Act 1990	75, 1990	22 Oct 1990	Sch 3: 22 Oct 1990 (s 2(1))	—
Law and Justice Legislation Amendment Act 1990	115, 1990	21 Dec 1990	Sch: 21 Dec 1990 (s 2(1))	—
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	s 31(2) and Sch: 10 Dec 1991 (s 2(3) and gaz 1991, No S332)	s 31(2)

Authorised Version C2023C00276 registered 06/10/2023

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Human Rights and Equal Opportunity Legislation Amendment Act 1992	132, 1992	30 Oct 1992	s 4–10: 26 Nov 1992 (s 2)	—
as amended by				
Human Rights Legislation Amendment Act 1995	59, 1995	28 June 1995	Sch (item 25): 30 Oct 1992 (s 2(2))	—
Sex Discrimination and other Legislation Amendment Act 1992	179, 1992	16 Dec 1992	s 4 and Sch: 13 Jan 1993 (s 2(1))	s 4
Human Rights and Equal Opportunity Legislation Amendment Act (No. 2) 1992	180, 1992	16 Dec 1992	Sch: 13 Jan 1993	—
Qantas Sale Act 1992	196, 1992	21 Dec 1992	Sch: never commenced (s 2(2), (5), (6))	—
as amended by				
Qantas Sale Amendment Act 1993	60, 1993	3 Nov 1993	s 4: 10 Mar 1993 (s 2)	—
Qantas Sale Amendment Act 1994	168, 1994	16 Dec 1994	Sch (item 17): 16 Dec 1994 (s 2(1))	—
Human Rights Legislation Amendment Act 1995	59, 1995	28 June 1995	s 4, 5 and Sch (items 9–23): 28 June 1995 (s 2(1))	s 4 and 5

Authorised Version C2023C00276 registered 06/10/2023

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Human Rights Legislation Amendment Act (No. 1) 1999	133, 1999	13 Oct 1999	s 4–16, 19, 20 and Sch 1 (items 37–52, 42–59, 61, 62): 13 Apr 2000 (s 2(3)) s 21: 13 Apr 2000 (s 2(1)) s 22 and Sch 1 (items 53, 60): 10 Dec 1999 (s 2(2) and gaz 1999, No S598)	s 4–16, 19–22
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 520–523): 5 Dec 1999 (s 2(1), (2))	—
Australian Security Intelligence Organisation Legislation Amendment Act 1999	161, 1999	10 Dec 1999	Sch 3 (items 1, 29): 10 Dec 1999 (s 2(1), (2), (4))	—
Federal Magistrates (Consequential Amendments) Act 1999	194, 1999	23 Dec 1999	Sch 16: 13 Apr 2000 (s 2(3))	—
Privacy Amendment (Office of the Privacy Commissioner) Act 2000	2, 2000	29 Feb 2000	Sch 2 (items 11–14): 1 July 2000 (s 2(1) and gaz 2000, No S229)	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 232–234, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 32: 24 May 2001 (s 2(1)(a))	s 4(1), (2)

Authorised Version C2023C00276 registered 06/10/2023

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Human Rights and Equal Opportunity Commission Amendment Act 2002	22, 2002	4 Apr 2002	13 Apr 2000 (s 2)	—
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 1 (item 21): 13 Apr 2000 (s 2(1) item 16)	—
Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002	105, 2002	14 Nov 2002	Sch 3 (item 50): 12 May 2003 (s 2 item 27)	—
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Sch 2 (item 77): 1 Jan 2003 (s 2(1) item 3)	—
Age Discrimination (Consequential Provisions) Act 2004	40, 2004	21 Apr 2004	Sch 1 (items 1–8): 23 June 2004 (s 2) Sch 2 (items 22–25): never commenced (s 2(1) items 6, 7)	—
Law and Justice Legislation Amendment Act 2004	62, 2004	26 May 2004	Sch 1 (item 38): 27 May 2004 (s 2(1) item 9)	—
Aboriginal and Torres Strait Islander Commission Amendment Act 2005	32, 2005	22 Mar 2005	Sch 4 (item 24): 24 Mar 2005 (s 2(1) item 4)	—
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 1 (item 26): 6 July 2005 (s 2(1) item 16)	—
Intelligence Services Legislation Amendment Act 2005	128, 2005	4 Nov 2005	Sch 8 (items 13, 14): 2 Dec 2005 (s 2(1) item 2)	—

Authorised Version C2023C00276 registered 06/10/2023

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 5 (items 32, 73–75): 1 July 2009 (s 2(1) items 13, 17)	—
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Sch 2 (items 91, 92) and Sch 3 (items 34–38, 119–166): 5 Aug 2009 (s 2(1) items 3, 7, 10)	Sch 3 (items 130, 148, 153, 155, 158)
Fair Work Amendment (State Referrals and Other Measures) Act 2009	124, 2009	9 Dec 2009	Sch 2 (item 123): 1 Jan 2010 (s 2(1) item 10)	—
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 5 (items 4–8) and Sch 7: 1 Nov 2010 (s 2(1) item 7)	Sch 7
Financial Framework Legislation Amendment Act 2010	148, 2010	17 Dec 2010	Sch 1: 18 Dec 2010 (s 2(1) item 2)	Sch 1 (items 2, 3)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 6 (items 7–9): 19 Apr 2011 (s 2(1) item 15)	—
Sex and Age Discrimination Legislation Amendment Act 2011	40, 2011	20 June 2011	Sch 2 (items 7–10, 14): 29 July 2011 (s 2(1) item 3)	Sch 2 (item 14)
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 163–167) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Australian Human Rights Commission Amendment (National Children's Commissioner) Act 2012	89, 2012	28 June 2012	Sch 1: 1 July 2012 (s 2(1) item 2) Remainder: 28 June 2012 (s 2(1) item 1)	Sch 1 (items 7, 8)

Authorised Version C2023C00276 registered 06/10/2023

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (items 15, 16): 22 Sept 2012 (s 2(1) item 1)	—
Fair Work Amendment Act 2012	174, 2012	4 Dec 2012	Sch 9 (items 1260, 1261): 1 Jan 2013 (s 2(1) item 5)	—
Privacy Amendment (Enhancing Privacy Protection) Act 2012	197, 2012	12 Dec 2012	Sch 5 (item 147) and Sch 6 (items 15–19): 12 Mar 2014 (s 2(1) items 3, 19) Sch 6 (item 1): 12 Dec 2012 (s 2(1) item 16)	Sch 6 (items 1, 15–19)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 48–50) and Sch 2 (item 1): 12 Apr 2013 (s 2(1) items 2, 3)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 5 (items 67–69), Sch 7 (items 257–262) and Sch 14: 1 July 2014 (s 2(1) items 5, 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				

Authorised Version C2023C00276 registered 06/10/2023

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
National Security Legislation Amendment Act (No 1) 2014	108, 2014	2 Oct 2014	Sch 7 (items 68-71, 144, 145): 3 Oct 2014 (s 2(1) items 3, 5)	Sch 7 (items 144, 145)
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 70, 71): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 49): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 24): 10 Mar 2016 (s 2(1) item 6)	—

Authorised Version C2023C00276 registered 06/10/2023

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Human Rights Legislation Amendment Act 2017	32, 2017	12 Apr 2017	Sch 2: 13 Apr 2017 (s 2(1) item 1)	Sch 2 (items 58, 59)
as amended by				
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 461): 1 Sept 2021 (s 2(1) item 5)	—
Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Act 2018	2, 2018	20 Feb 2018	Sch 3 (items 4, 5): 21 Feb 2018 (s 2(1) item 1)	—
Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018	25, 2018	11 Apr 2018	Sch 1 (items 45, 46, 100–108): 1 July 2018 (s 2(1) item 2)	Sch 1 (items 100–108)
Office of National Intelligence (Consequential and Transitional Provisions) Act 2018	156, 2018	10 Dec 2018	Sch 2 (items 20, 21) and Sch 4: 20 Dec 2018 (s 2(1) items 2, 4)	Sch 4
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (items 92–106): 1 Sept 2021 (s 2(1) item 5)	—

Authorised Version C2023C00276 registered 06/10/2023

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Surveillance Legislation Amendment (Identify and Disrupt) Act 2021	98, 2021	3 Sept 2021	Sch 2 (items 39–47): 4 Sept 2021 (s 2(1) item 3)	—
Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021	104, 2021	10 Sept 2021	Sch 1 (items 1–3, 89): 11 Sept 2021 (s 2(1) item 1)	Sch 1 (item 89)
Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Act 2022	48, 2022	9 Nov 2022	Sch 1 (items 5–16, 26): 10 Nov 2022 (s 2(1) item 1)	Sch 1 (item 26)
Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022	85, 2022	12 Dec 2022	Sch 2 (items 14-16), Sch 3, 4, Sch 7 (items 7-10, 18) and Sch 8 (item 1): 13 Dec 2022 (s 2(1) items 4, 6) Sch 2 (items 17–25): 12 Dec 2023 (s 2(1) item 5)	Sch 4 (item 9) and Sch 7 (item 18)
Inspector-General of Intelligence and Security and Other Legislation Amendment (Modernisation) Act 2023	73, 2023	20 Sept 2023	Sch 1 (items 166–168) and Sch 3 (item 2): 21 Sept 2023 (s 2(1) items 2, 5)	Sch 3 (item 2)

Authorised Version C2023C00276 registered 06/10/2023

Endnote 3—Legislation history

Name	FRLI registration	Commencement	Application, saving and transitional provisions
Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) (SLI No. 50, 2006)	17 Mar 2006 (F2006L00820)	Sch 37: 27 Mar 2006 (r 2(b))	—

Authorised Version C2023C00276 registered 06/10/2023

Endnote 4—Amendment history

Provision affected	How affected
Title	am No 70, 2009
Part I	
s 1	am No 70, 2009
s 3	am No 119, 1988; No 115, 1990; No 132, 1992; No 180, 1992; No 133, 1999; No 194, 1999; No 105, 2002; No 40, 2004; SLI 2006 No 50; No 54, 2009; No 70, 2009; No 51, 2010; No 5, 2011; No 40, 2011; No 89, 2012; No 13, 2013; No 32, 2017; No 13, 2021; No 98, 2021; No 104, 2021; No 85, 2022 (Sch 2 item 17)
s 4	rs No 133, 1999
s 6	am No 22, 2002; No 59, 2015
s 6A	ad No 24, 2001
Part II	
Part II heading	rs No 70, 2009
Division 1	
s 7	am No 70, 2009; No 148, 2010; No 62, 2014
s 8	am No 119, 1988; No 132, 1992; No 180, 1992; No 59, 1995; No 133, 1999; No 2, 2000; No 40, 2011; No 89, 2012; No 32, 2017; No 85, 2022 (Sch 2 items 18, 19)
s 8A	ad No 59, 1995
	am No 133, 1999; No 62, 2014; No 32, 2017; No 48, 2022
s 8B	ad No 59, 1995
	am No 70, 2009; No 48, 2022
Division 2	
Division 2 heading	rs No 59, 1995
s 10A	ad No 59, 1995
s 11	am No 141, 1987; No 75, 1990; No 132, 1992; No 133, 1999; No 161, 1999; No 40, 2004; No 128, 2005; No 70, 2009; No 5, 2011; No 108, 2014; No 32, 2017; No 25, 2018; No 156, 2018; No 98, 2021; No 85, 2022 (Sch 2 item 20)
s 12	rep No 59, 1995

Authorised Version C2023C00276 registered 06/10/2023

Endnote 4—Amendment history

Provision affected	How affected
s 13	am No 59, 1995; No 62, 2014
s 14	am No 132, 1992; No 24, 2001; No 40, 2004; No 70, 2009
s 16	am No 38, 1988; No 132, 1992; No 133, 1999; No 40, 2004
s 17	rep No 70, 2009
s 19	am No 132, 1992 (as am by No 59, 1995); No 180, 1992; No 59, 1995; No 133, 1999; No 40, 2004; No 32, 2017; No 85, 2022
Division 3	
s 19A	ad No 179, 1992
s 20	am No 119, 1988; No 70, 2009; No 51, 2010; No 197, 2012; No 32, 2017; No 98, 2021; No 73, 2023
s 20A	ad No 32, 2017
s 21	am No 75, 1990; No 128, 2005; No 5, 2011; No 108, 2014; No 25, 2018; No 156, 2018
s 23	am No 24, 2001; No 70, 2009
s 24	am No 180, 1992; No 125, 2002; No 70, 2009
s 25	rep No 137, 2000
s 26	am No 137, 2000; No 70, 2009; No 4, 2016
Division 4	
s 30	am No 179, 1992
s 31	am No 133, 1999; No 100, 2005; No 32, 2017
s 32	am No 70, 2009; No 32, 2017
s 32A	ad No 32, 2017
s 33	am No 137, 2000
Division 4A	
Division 4A	ad No 85, 2022
s 35A	ad No 85, 2022
	am No 85, 2022
s 35AA	ad No 85, 2022
s 35B	ad No 85, 2022
s 35C	ad No 85, 2022
s 35D	ad No 85, 2022

Authorised Version C2023C00276 registered 06/10/2023

Provision affected	How affected
s 35E	ad No 85, 2022
s 35F	ad No 85, 2022
s 35G	ad No 85, 2022
s 35H	ad No 85, 2022
s 35J	ad No 85, 2022
s 35K	ad No 85, 2022
Division 4B	
Division 4B	ad No 85, 2022
s 35L	ad No 85, 2022
s 35M	ad No 85, 2022
s 35N	ad No 85, 2022
s 35P	ad No 85, 2022
s 35Q	ad No 85, 2022
Division 5	
s 36	am No 132, 1992; No 59, 1995; No 62, 2004; No 46, 2011
	ed C45
	am No 85, 2022 (Sch 2 item 24)
s 37	am No 133, 1999; No 48, 2022
s 38	am No 59, 1995
s 39	am No 122, 1991; No 146, 1999
s 41	am No 122, 1991; No 62, 2014
s 42	rep No 62, 2014
s 43	am No 59, 1995; No 133, 1999; No 146, 1999
s 43A	ad No 59, 1995
	am No 2, 2000; No 51, 2010
s 44	am No 59, 1995
s 44A	ad No 62, 2014
s 44B	ad No 62, 2014
s 44C	ad No 62, 2014
s 45	rs No 62, 2014
s 46	am No 32, 2017; No 85, 2022

Authorised Version C2023C00276 registered 06/10/2023

Endnote 4—Amendment history

Provision affected	How affected
Division 6	
Division 6	ad No 59, 1995
	rs No 62, 2014
s 46AA	ad No 59, 1995
	rs No 62, 2014
s 46AB	ad No 59, 1995
	rep No 62, 2014
s 46AC	ad No 59, 1995
	rep No 62, 2014
Part IIA	
Part IIA	ad No 180, 1992
Division 1	
s 46A	ad No 180, 1992
s 46B	ad No 180, 1992
	am No 70, 2009; No 48, 2022
s 46C	ad No 180, 1992
	am No 32, 2005; No 70, 2009; No 32, 2017; No 2, 2018
Division 2	
s 46D	ad No 180, 1992
	am No 48, 2022
s 46E	ad No 180, 1992
s 46F	ad No 180, 1992
	am No 146, 1999
s 46G	ad No 180, 1992
s 46H	ad No 180, 1992
s 46I	ad No 180, 1992
s 46J	ad No 180, 1992
	am No 46, 2011
Division 3	
s 46K	ad No 180, 1992
s 46L	ad No 180, 1992

Authorised Version C2023C00276 registered 06/10/2023

Provision affected	How affected
s 46M	ad No 180, 1992
	am No 32, 2017
Part IIAA	
Part IIAA	ad No 89, 2012
Division 1	
s 46MA	ad No 89, 2012
s 46MB	ad No 89, 2012
	am No 32, 2017
Division 2	
Division 2 heading	ed C45
s 46MC	ad No 89, 2012
	am No 48, 2022
s 46MD	ad No 89, 2012
	am No 48, 2022
s 46ME	ad No 89, 2012
Division 3	
s 46MF	ad No 89, 2012
s 46MG	ad No 89, 2012
s 46MH	ad No 89, 2012
s 46MI	ad No 89, 2012
s 46MJ	ad No 89, 2012
s 46MK	ad No 89, 2012
Division 4	
s 46ML	ad No 89, 2012
s 46MM	ad No 89, 2012
s 46MN	ad No 89, 2012
Part IIB	
Part IIB	ad No 133, 1999
Division 1	
s 46P	ad No 133, 1999
	am No 32, 2017; No 98, 2021; No 73, 2023

Authorised Version C2023C00276 registered 06/10/2023

Endnote 4—Amendment history

Provision affected	How affected
s 46PA	ad No 133, 1999
s 46PB	ad No 133, 1999
s 46PC	ad No 133, 1999
	am No 32, 2017
s 46PD	ad No 133, 1999
s 46PE	ad No 133, 1999
	am No 32, 2017
s 46PF	ad No 133, 1999
	am No 40, 2004; No 70, 2009; No 32, 2017
s 46PG	ad No 133, 1999
s 46PH	ad No 133, 1999
	am No 194, 1999; No 13, 2013; No 32, 2017; No 13, 2021; No 104, 2021; No 85, 2022
s 46PI	ad No 133, 1999
s 46PJ	ad No 133, 1999
	rs No 32, 2017
s 46PK	ad No 133, 1999
	rs No 32, 2017
s 46PKA	ad No 32, 2017
s 46PL	ad No 133, 1999
	am No 24, 2001
	rep No 32, 2017
s 46PM	ad No 133, 1999
	am No 24, 2001; No 32, 2017
s 46PN	ad No 133, 1999
Division 2	
Division 2 heading	rs No 194, 1999; No 13, 2013
	am No 13, 2021
s 46PO	ad No 133, 1999
	am No 194, 1999; No 70, 2009; No 13, 2013; No 32, 2017; No 13, 2021; No 85, 2022

Authorised Version C2023C00276 registered 06/10/2023

Provision affected	How affected
s 46POA	ad No 85, 2022
s 46POB	ad No 85, 2022
s 46PP	ad No 133, 1999
	am No 194, 1999; No 13, 2013; No 32, 2017; No 13, 2021
s 46PQ	ad No 133, 1999
	am No 194, 1999
s 46PR	ad No 133, 1999
	am No 194, 1999; No 63, 2002; No 13, 2013; No 13, 2021
s 46PS	ad No 133, 1999
	am No 194, 1999; No 13, 2013; No 32, 2017; No 13, 2021
s 46PSA	ad No 32, 2017
	am No 13, 2021
s 46PT	ad No 133, 1999
s 46PU	ad No 133, 1999
	am No 194, 1999; No 13, 2013; No 13, 2021
s 46PV	ad No 133, 1999
	am No 194, 1999; No 40, 2011; No 89, 2012; No 13, 2013
	ed C45
	am No 13, 2021
Part IIC	
Part IIC	ad No 133, 1999
s 46PW	ad No 133, 1999
	rs SLI 2006 No 50
	am No 54, 2009; No 124, 2009; No 136, 2012; No 174, 2012
s 46PX	ad No 133, 1999
s 46PY	ad No 133, 1999
Part III	
s 46PZ	ad No 98, 2021
	am No 73, 2023
s 47	am No 99, 1988; No 70, 2009; No 126, 2015
s 48	am No 38, 1988; No 70, 2009

Authorised Version C2023C00276 registered 06/10/2023

Endnote 4—Amendment history

Provision affected	How affected
s 49	am No 119, 1988; No 24, 2001; No 70, 2009; No 98, 2021
s 49A	ad No 133, 1999
s 49B	ad No 133, 1999
	am No 194, 1999; No 13, 2013; No 13, 2021; No 85, 2022
s 49C	ad No 133, 1999
	am No 194, 1999; No 13, 2013; No 13, 2021
Schedule 2	
Schedule 2	ed C48

Authorised Version C2023C00276 registered 06/10/2023