



Human Rights and Equal Opportunity Commission Act 1986

No. 125 of 1986

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Human Rights and Equal Opportunity Commission Act 1986

No. 125 of 1986

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

[Assented to 6 December 1986]

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

PART I—PRELIMINARY

Short title

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

Commencement

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

Interpretation

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

“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;

“appoint” includes re-appoint;

“appointed member” means the President or the Human Rights Commissioner;

“Australia” includes the external Territories;

“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 sub-paragraph (c) (iii));
- (iv) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the Commonwealth for the purposes of this Act;

(b) in relation to a State—

- (i) a body (whether incorporated or unincorporated) established for a purpose of the State by or under a law of the State;
- (ii) an incorporated company over which the State is in a position to exercise control;
- (iii) a person holding or performing the duties of an office or appointment established or made under a law, or by the Governor or a Minister, of the State;
- (iv) a local government body in the State; or
- (v) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the State for the purposes of this Act; or

(c) in relation to a Territory—

- (i) a body (whether incorporated or unincorporated) established for a purpose of the Territory by or under a Commonwealth enactment or a law of the Territory;
- (ii) an incorporated company over which the Administration of the Territory is in a position to exercise control;
- (iii) a person holding or performing the duties of an office or appointment established or made under a law of the Territory or by the Administrator of a Territory; or
- (iv) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the Territory for the purposes of this Act;

“Commission” means the Human Rights and Equal Opportunity Commission established by this Act;

“Commonwealth enactment” means an Act or an instrument (other than a Territory enactment 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;

“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;

“discrimination” 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;

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

“instrument” includes a rule, regulation or by-law;

“instrumentality”, in relation to a State, includes—

(a) a person holding or performing the duties of an office established by or under a law of that State;

(b) a person employed in the public service of that State; and

(c) a person employed by a body established for a purpose of that State by or under a law of that State;

“international instrument” includes a declaration made by an international organisation;

“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;

“Territory Act” means an Act passed by a legislature of a Territory and duly assented to;

“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.

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

(3) In this Act—

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

(4) In the definition of “human rights” in sub-section (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 sub-paragraph (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—

“law of the Commonwealth” means a Commonwealth enactment or any other law in force throughout Australia;

“member” means a member of the Commission, and includes the President;

“Minister” means—

(a) in relation to a State—a Minister of the Crown of that State; and

(b) in relation to the Northern Territory—a Minister of that Territory;

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

“practice” means a practice engaged in—

(a) by or behalf of the Commonwealth or an authority of the Commonwealth;

(b) under an enactment;

(c) wholly within a Territory; or

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

“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;

“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;

“Sex Discrimination Commissioner” means the Sex Discrimination Commissioner appointed under the *Sex Discrimination Act 1984*;

“State” includes the Northern Territory;

“State enactment” means a State Act or an instrument made under a State Act and includes a Northern Territory enactment;

“Territory” does not include the Northern Territory;

- (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.

Operation of State and Territory laws

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

Extension to external Territories

5. This Act extends to every external Territory.

Extent to which Act binds the Crown

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

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

PART II—HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

Division 1—Establishment and Constitution of Commission

Human Rights and Equal Opportunity Commission

7. (1) There is established by this Act a Commission by the name of the Human Rights and Equal Opportunity Commission.

(2) The Commission—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and

(d) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that the document was duly sealed.

Constitution of Commission

8. (1) The Commission shall consist of—

- (a) a President;
- (b) a Human Rights Commissioner;
- (c) the Race Discrimination Commissioner; and
- (d) the Sex Discrimination Commissioner.

(2) The President and the Human Rights Commissioner shall be appointed by the Governor-General.

(3) The President shall be appointed as a part-time member.

(4) The Human Rights Commissioner shall be a legally qualified person appointed as a full-time member.

(5) The affairs of the Commission shall, in accordance with the decisions and subject to the directions of the Commission, be administered by the Human Rights Commissioner.

(6) The functions of the Commission under paragraphs 11 (1) (f) and 31 (b) and the functions of the Commission under paragraphs 11 (1) (p) and 31 (k), to the extent that they relate to the performance of the first-mentioned functions, shall be performed by the Human Rights Commissioner, 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 Human Rights Commissioner.

(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 or Sex Discrimination Commissioner.

(8) In this section, “legally qualified person” means a person who—

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

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

9. (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 sub-section (1) may provide for the Commonwealth to reimburse a State with respect to the services of the person to whom the arrangement relates.

Appointment of Judge as member not to affect tenure, &c.

10. (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.

Division 2—Functions of Commission

Functions of Commission

11. (1) The functions of the Commission are—

- (a) such functions as are conferred on the Commission by the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984* or any other enactment;
- (b) such functions as are to be performed by the Commission pursuant to an arrangement in force under section 16;
- (c) such functions as are expressed to be conferred on the Commission by any State enactment, being functions in relation to which the Minister has made a declaration under section 18;
- (d) the functions conferred on the Commission by section 31;
- (e) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments, as the case may be, are, or would be, inconsistent with or contrary to any human right, and to report to the Minister the results of any such examination;
- (f) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and—
 - (i) where the Commission considers it appropriate to do so—to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and
 - (ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect

such a settlement—to report to the Minister in relation to the inquiry;

- (g) to promote an understanding and acceptance, and the public discussion, of human rights in Australia;
 - (h) to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting human rights, and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;
 - (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;
 - (k) on its own initiative or when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or of any relevant international instrument;
 - (m) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;
 - (n) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of acts or practices of a kind in respect of which the Commission has a function under paragraph (f);
 - (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 sub-section.

Commission to have regard to certain matters

12. In the performance of its functions the Commission shall have regard to the principle that every person is free and equal in dignity and rights.

Powers and duties of Commission

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

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

Form of examinations or inquiries to be at discretion of Commission, &c.

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

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

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

(b) who—

(i) has furnished or proposes to furnish information;

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

(iii) has given or proposes to give evidence; or

(iv) has made or proposes to make a submission,

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

(3) The Commission may direct that—

(a) any evidence given before the Commission or any information given to the Commission; or

(b) the contents of any document produced to the Commission, shall not be published, or shall not be published except in such manner, and to such persons, as the Commission specifies.

(4) Where the Commission has given a direction under sub-section (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 sub-section (3), the Commission shall have regard to the need to prevent such of the following as are relevant to the circumstances:

- (a) prejudice to the security, defence or international relations of Australia;
- (b) prejudice to relations between the Commonwealth Government and the Government of a State or between the Government of a State and the Government of another State;
- (c) the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet, of the Commonwealth or of a State;
- (d) the disclosure of deliberations or advice of the Federal Executive Council or the Executive Council of a State;
- (e) the disclosure, or the ascertaining by a person, of the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;
- (f) the endangering of the life or physical safety of any person;
- (g) prejudice to the proper enforcement of the law or the protection of public safety;
- (h) the disclosure of information the disclosure of which is prohibited, absolutely or subject to qualifications, by or under another enactment;
- (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 sub-section (2) or (3) that is applicable to the person.

Penalty:

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

(8) In sub-section (1), "function" does not include a function conferred on the Commission by the *Sex Discrimination Act 1984*.

Commission may engage in consultations

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

Inter-governmental arrangements

16. (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.

(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*.

Advisory committees

17. (1) The Minister shall establish at least one advisory committee, and may, if the Minister considers it desirable, establish 2 or more advisory committees, to perform such of the following functions as the Minister directs:

- (a) to advise the Commission in relation to the performance of the Commission's functions;
- (b) when requested by the Minister, to report to the Minister as to the action (if any) that needs to be taken by Australia in order to comply with the provisions of the Convention and, in particular, to advise the Minister in respect of national policies relating to equality of opportunity and treatment in employment and occupation.

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

Declarations by Minister

18. 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.

Delegation

19. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, 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, other than this power of delegation.

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

- (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, other than this power of delegation.

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

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

(5) Subject to any provision in the instrument of delegation, a person to whom a power of the Commission has been delegated under sub-section (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 sub-section (1), “power” does not include a power conferred on the Commission by the *Racial Discrimination Act 1975* or the *Sex Discrimination Act 1984*.

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

Division 3—Functions relating to Human Rights

Performance of functions relating to human rights

20. (1) Subject to sub-section (2), the Commission shall perform the functions referred to in paragraph 11 (1) (f) when—

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

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

- (a) the Commission is satisfied that the act or practice is not inconsistent with or contrary to any human right;
- (b) the Commission is satisfied that the person aggrieved by the act or practice does not desire that the inquiry be held or continued; or
- (c) in a case where a complaint has been made to the Commission in relation to the act or practice—

- (i) the complaint was made more than 12 months after the act was done or after the last occasion when an act was done pursuant to the practice;
- (ii) the Commission is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance;
- (iii) where some other remedy has been sought in relation to the subject matter of the complaint—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with;
- (iv) the Commission is of the opinion that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the person aggrieved by the act or practice;
- (v) where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with; or
- (vi) the Commission is of the opinion that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.

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

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

(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 sub-section and sub-section (7) referred to as the “detainee”) is entitled—

- (a) upon making a request to the person (in this sub-section and sub-section (7) referred to as the “custodian”) in whose custody the detainee is detained, or to any other person (in this sub-section and sub-section (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 sub-sections (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.

Power to obtain information and documents

21.(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 sub-section(1) to give information or produce a document to the Commission; and
- (b) the information or document originated with, or has been received from, an intelligence agency,

the person shall forthwith notify that agency of the making of the requirement.

(3) A reference in sub-section (2) to an intelligence agency is a reference to the Australian Secret Intelligence Service, the Australian Security

Intelligence Organisation, the Office of National Assessments, or the Defence Signals Directorate or the Joint Intelligence Organisation of the Department of Defence.

(4) Where documents are produced to the Commission in accordance with a requirement under sub-section (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 sub-section (1) or (5) is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at that place.

Power to examine witnesses

22. (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.

Failure to comply with requirement

23. (1) A person shall not refuse or fail, without reasonable excuse—

- (a) to be sworn or make an affirmation; or
- (b) to give information or produce a document,

when so required under this Act.

Penalty:

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

(2) A person who, after having been served with a notice under sub-section 21 (5), without reasonable excuse—

- (a) refuses or fails to comply with the notice; or

- (b) when attending before a member in compliance with the notice, refuses or fails to answer a question that is required by the member to be answered,

is guilty of an offence punishable on conviction by a fine not exceeding—

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

(3) Without limiting the generality of the expression “reasonable excuse” in this section, it is hereby declared for the avoidance of doubt that it is a reasonable excuse for a person to refuse or fail to furnish information, produce a document or answer a question when required to do so under this Act, that the information, the production of the document or the answer to a question might tend to incriminate that person.

Disclosure of information or contents of documents

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

- (a) by reason that it would prejudice the security, defence or international relations of Australia;
- (b) by reason that it would involve the disclosure of communications between a Minister of the Commonwealth and a Minister of a State, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State;
- (c) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;
- (d) by reason that it would involve the disclosure of deliberations or advice of the Executive Council;
- (e) by reason that it would prejudice the conduct of an investigation or inquiry into crime or criminal activity that is currently being pursued or would prejudice the fair trial of any person;
- (f) by reason that it would disclose, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement of the criminal law;
- (g) by reason that it would prejudice the effectiveness of the operational methods or investigative practices or techniques of agencies responsible for the enforcement of the criminal law; or
- (h) by reason that it would endanger the life or physical safety of any person,

neither the Commission nor any other person is entitled to require a person to give any information concerning the matter or to produce the document.

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

- (a) by reason that it would prejudice the security, defence or international relations of Australia; or
- (b) by reason that it would prejudice the proper performance of the functions of the National Crime Authority,

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

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

- (a) from giving any information, or producing a document, when required to do so pursuant to this Act; or
- (b) from answering a question that the person is required to answer by a member before whom the person is attending in compliance with a notice served on the person under sub-section 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 sub-section 21 (5).

False or misleading information

25. A person shall not give information or make a statement to the Commission, or to a person acting on behalf of the Commission, knowing that the information or statement is false or misleading in a material particular.

Penalty:

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

Offences relating to administration of Act

26. (1) A person shall not hinder, obstruct, molest or interfere with—

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

Penalty:

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

(2) A person who—

- (a) refuses to employ another person;
- (b) dismisses, or threatens to dismiss, another person from the other person's employment;
- (c) prejudices, or threatens to prejudice, another person in the other person's employment; or
- (d) intimidates or coerces, imposes any pecuniary or other penalty upon, or takes any other disciplinary action in relation to, another person,

by reason that the other person—

- (e) has made, or proposes to make, a complaint to the Commission;
- (f) has alleged, or proposes to allege, that a person has done an act or engaged in a practice that is inconsistent with or contrary to any human right;
- (g) has furnished, or proposes to furnish, any information or documents to the Commission or to a person acting on behalf of the Commission; or
- (h) has given or proposes to give evidence before the Commission or to a person acting on behalf of the Commission,

is guilty of an offence punishable upon conviction—

- (j) in the case of a natural person—by a fine not exceeding \$2,500 or imprisonment for a period not exceeding 3 months, or both; or
- (k) in the case of a body corporate—by a fine not exceeding \$10,000.

(3) It is a defence to a prosecution for an offence under sub-section (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.

Commission to give opportunity for making of submissions

27. 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.

Nature of settlements

28. 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.

Reports to contain recommendations

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

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

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

- (e) shall state in that report whether, to the knowledge of the Commission, the person has taken or is taking any action as a result of the findings, and recommendations (if any), of the Commission and, if the person has taken or is taking any such action, the nature of that action; and
- (f) shall serve a copy of that report on the person and, if a complaint was made to the Commission in relation to the act or practice—
 - (i) where the complaint was made by a person affected by the act or practice—shall serve a copy of that report on the complainant; or
 - (ii) if the complaint was made by another person—may serve a copy of that report on the complainant.

(3) Where—

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

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

- (c) in a case to which sub-paragraph (b) (i) applies—to the person alleged to have done the act or engaged in the practice; or
- (d) in a case to which sub-paragraph (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 sub-section 14 (5) and to the obligations of the Commission under sub-section 14 (6).

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

Division 4—Functions relating to Equal Opportunity in Employment

Interpretation, &c.

30. (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.

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

Functions of Commission relating to equal opportunity

31. The following functions are hereby conferred on the Commission:

- (a) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments, as the case may be, have, or would have, the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, and to report to the Minister the results of any such examination;
- (b) to inquire into any act or practice that may constitute discrimination and—
 - (i) where the Commission considers it appropriate to do so—to endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry; and
 - (ii) where the Commission is of the opinion that the act or practice constitutes discrimination, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect such a settlement—to report to the Minister in relation to the inquiry;
- (c) to promote an understanding and acceptance, and the public discussion, of equality of opportunity and treatment in employment and occupation in Australia;
- (d) to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting equality of opportunity and treatment in employment and occupation, and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;
- (e) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to equality of opportunity and treatment in employment and occupation;

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

Performance of functions relating to equal opportunity

32. (1) Subject to sub-sections (2) and (3), the Commission shall perform the functions referred to in paragraph 31 (b) when—

- (a) the Commission is requested to do so by the Minister;
- (b) a complaint is made in writing to the Commission alleging that an act or practice constitutes discrimination; or
- (c) it appears to the Commission to be desirable to do so.

(2) The Commission shall not inquire into an act or practice, or, if the Commission has commenced to inquire into an act or practice, shall not continue to inquire into the act or practice, if the Commission is satisfied that the subject matter of the complaint is dealt with under a prescribed enactment or a prescribed State enactment.

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

- (a) the Commission is satisfied that the act or practice does not constitute discrimination;
- (b) the Commission is satisfied that the person aggrieved by the act or practice does not desire that the inquiry be held or continued; or
- (c) in a case where a complaint has been made to the Commission in relation to the act or practice—
 - (i) the complaint was made more than 12 months after the act was done or after the last occasion when an act was done pursuant to the practice;

- (ii) the Commission is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance;
- (iii) where some other remedy has been sought in relation to the subject matter of the complaint—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with;
- (iv) the Commission is of the opinion that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the complainant;
- (v) where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the Commission is of the opinion that the subject matter of the complaint has been adequately dealt with; or
- (vi) the Commission is of the opinion that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.

Application of certain provisions of Division 3

33. Sub-sections 20 (3), (4) and (5) and sections 21, 22, 23, 24, 25, 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 sub-section 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 sub-section 30 (1) or a practice mentioned in paragraph (a), (b), (c) or (d) of the definition of “practice” in that sub-section;
- (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.

Nature of settlements

34. 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.

Reports to contain recommendations

35. (1) Where, after an examination of an enactment or proposed enactment, the Commission finds that the enactment has, or the proposed enactment would have, the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, the Commission shall include in its report to the Minister relating to the results of the examination any recommendations by the Commission for amendment of the enactment or proposed enactment to ensure that the enactment does not have, or the proposed enactment would not have, the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

(2) Where, after an inquiry into an act done or practice engaged in by a person, the Commission finds that the act or practice constitutes discrimination, the Commission—

- (a) shall serve notice in writing on the person setting out its findings and the reasons for those findings;
- (b) may include in the notice any recommendations by the Commission for preventing a repetition of the act or a continuation of the practice;
- (c) may include in the notice any recommendation by the Commission for either or both of the following:
 - (i) the payment of compensation to, or in respect of, a person who has suffered loss or damage as a result of the act or practice;
 - (ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice;
- (d) shall include in any report to the Minister relating to the results of the inquiry particulars of any recommendations that it has made pursuant to paragraph (b) or (c);
- (e) shall state in that report whether, to the knowledge of the Commission, the person has taken or is taking any action as a result of the findings, and recommendations (if any), of the Commission and, if the person has taken or is taking any such action, the nature of that action; and
- (f) shall serve a copy of that report on the person and, if a complaint was made to the Commission in relation to the act or practice—
 - (i) where the complaint was made by a person affected by the act or practice—shall serve a copy of that report on the complainant; or
 - (ii) if the complaint was made by another person—may serve a copy of that report on the complainant.

(3) Where—

- (a) a complaint is made to the Commission in relation to an act or practice; and

- (b) after an inquiry into the act or practice, the Commission finds that—
 - (i) the existence of the act or practice has not been established; or
 - (ii) the act or practice does not constitute discrimination,the Commission shall give a copy of a report setting out its findings, and the reasons for those findings, to the complainant and—
 - (c) in a case to which sub-paragraph (b) (i) applies—to the person alleged to have done the act or engaged in the practice; or
 - (d) in a case to which sub-paragraph (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 sub-section 14 (5) and to the obligations of the Commission under sub-section 14 (6).
- (5) Where, under sub-section (4), the Commission excludes any matter from a report, the Commission shall prepare a report setting out the excluded matter and its reasons for excluding the matter and shall furnish the report to the Minister.

Division 5—Administrative Provisions

Acting President and Human Rights Commissioner

36. (1) If the Human Rights Commissioner is available, the Human Rights Commissioner shall 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 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.

(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,

but—

- (c) a person so appointed shall not act as President during any period while the Human Rights Commissioner is available so to act; and
- (d) a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(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,

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

(4) An appointment of a person under sub-section (2) or (3) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(5) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as President or Human Rights Commissioner pursuant to an appointment under sub-section (2) or (3); and
- (b) terminate such an appointment at any time.

(6) Where a person is acting as President or Human Rights Commissioner in circumstances referred to in paragraph (2) (b) or (3) (b) and the office of President or Human Rights Commissioner, as the case may be, becomes vacant while that person is so acting, then, subject to sub-sections (1) and (4), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the day on which the vacancy occurred expires, whichever first happens.

(7) The appointment of a person to act as President or Human Rights Commissioner under sub-section (2) or (3) ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.

(8) While a person is acting as President or Human Rights Commissioner, the person may exercise all the powers, and shall perform all the functions, of the President or Human Rights Commissioner, as the case may be.

(9) At any time when a person who is not a member of the Commission is acting as President or Human Rights Commissioner, the person shall be deemed to be a member of the Commission for the purposes of sections 21, 22, 23, 24 and 26 (including those sections as applied by section 33) and sections 42, 48 and 49.

(10) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that—

- (a) the occasion for the person's appointment had not arisen;
- (b) there is a defect or irregularity in connection with the person's appointment;

- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Terms and conditions of appointment

37. (1) Subject to sub-section (2), an appointed member holds office for such period, not exceeding 7 years, as is specified in the instrument of the member's appointment, but is eligible for re-appointment.

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

(3) In relation to the appointment as a member of a Judge, other than a Judge the age for whose retirement is 65 years, sub-section (2) has effect as if a reference to the age of 70 years were substituted in that sub-section for each reference to the age of 65 years.

(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.

Remuneration and allowances

38. (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) Sub-sections (1) and (2) have effect subject to the *Remuneration Tribunals Act 1973*.

(4) If a person who is a Judge is appointed as a member, the person is not, while receiving salary or annual allowance as a Judge, entitled to remuneration under this Act.

Leave of absence

39. (1) The Minister may grant to a person appointed as a full-time member leave of absence from duty 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.

Resignation

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

Termination of appointment

41. (1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.

(2) If—

- (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
- (b) a full-time member engages, except with the approval of the Minister, in paid employment outside the duties of the office of member;
- (c) a full-time member is absent from duty, except on leave granted by the Minister in accordance with sub-section 39 (1), 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 sub-section 39 (2), from 3 consecutive meetings of the Commission; or
- (e) a member fails, without reasonable excuse, to comply with section 42,

the Governor-General shall terminate the appointment of that member.

(3) In sub-sections (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.

Disclosure of interests

42. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a meeting of the Commission.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Commission and the member shall not—

- (a) be present during any deliberation of the Commission with respect to that matter; or
- (b) take part in any decision of the Commission with respect to that matter.

Staff

43. (1) The staff necessary to assist the Commission shall be persons appointed or employed under the *Public Service Act 1922*.

(2) The Human Rights Commissioner has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Australian Public Service.

Meetings of the Commission

44. (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—

- (a)** if the Human Rights Commissioner is present, the Human Rights Commissioner shall preside at the meeting; or
- (b)** in any other case, the members present shall elect one of their number to preside at that 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.

Annual report

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

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

Reports to be tabled in Parliament

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

PART III—MISCELLANEOUS

Declaration of international instruments

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

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

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

(2) Where the Minister makes a declaration under sub-section (1)—

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

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

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

Protection from civil actions

48. (1) The Commission, a member or a person acting on behalf of the Commission is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred on the Commission.

(2) In sub-section (1)—

“function” does not include a function conferred on the Commission by the *Sex Discrimination Act 1984*;

“power” does not include a power conferred on the Commission by the *Sex Discrimination Act 1984*.

(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.

Non-disclosure of private information

49. (1) A person who is, or has at any time been, a member of the Commission or a member of the staff referred to in section 43 or is acting, or has at any time acted, on behalf of the Commission shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act or in the course of acting on behalf of the Commission—

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

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

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

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

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

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

- (a) making a record of information that is, or is included in a class of information that is, required or permitted by an Act to be recorded, if the record is made for the purposes of or pursuant to that Act;

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

(4) Nothing in sub-section (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.

(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.

Regulations

50. 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.
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SCHEDULE 1

Section 3

**CONVENTION CONCERNING DISCRIMINATION IN RESPECT OF
EMPLOYMENT AND OCCUPATION**

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;
 - (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;

SCHEDULE 1—continued

- (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;
- (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.

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.

SCHEDULE 1—continued

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.

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.

SCHEDULE 2

Section 3

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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 and 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 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.

SCHEDULE 2—continued

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

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.

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

SCHEDULE 2—continued

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.

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

SCHEDULE 2—continued

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 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.

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

SCHEDULE 2—continued

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;

(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.

SCHEDULE 2—continued

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

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 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.

SCHEDULE 2—continued

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

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;

SCHEDULE 2—continued

(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 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.

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

SCHEDULE 2—continued

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

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.

SCHEDULE 2—continued

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

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 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

SCHEDULE 2—continued

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.

(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.

SCHEDULE 2—continued

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 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 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

SCHEDULE 2—continued

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

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.

SCHEDULE 2—continued

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.

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 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.

SCHEDULE 2—continued

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.

SCHEDULE 3

Section 3

DECLARATION OF THE RIGHTS OF THE CHILD

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:

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.

SCHEDULE 3—continued

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 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.

SCHEDULE 4

Section 3

DECLARATION ON THE RIGHTS OF MENTALLY RETARDED PERSONS

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.
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

SCHEDULE 4—continued

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.

SCHEDULE 5

Section 3

DECLARATION ON THE RIGHTS OF DISABLED PERSONS

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,

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.

SCHEDULE 5—continued

6. Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthotic 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.

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.

*[Minister's second reading speech made in—
House of Representatives on 9 October 1985
Senate on 2 December 1985]*