



Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Act 1986

No. 126 of 1986

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SCHEDULE

**AMENDMENTS OF CERTAIN PROVISIONS OF THE RACIAL
DISCRIMINATION ACT 1975**



Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Act 1986

No. 126 of 1986

**An Act to repeal the *Human Rights Commission Act 1981*
and to enact certain transitional provisions and make
certain amendments in consequence of the enactment of the
*Human Rights and Equal Opportunity Commission Act 1986***

[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 (Transitional Provisions and Consequential Amendments) Act 1986*.

Commencement

2. This Act shall come into operation on the day fixed under section 2 of the *Human Rights and Equal Opportunity Commission Act 1986*.

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Interpretation

3. In this Act, unless the contrary intention appears—
- “commencement time” means the commencement of this Act;
 - “Commission” means the Human Rights and Equal Opportunity Commission established by the Commission Act;
 - “Commission Act” means the *Human Rights and Equal Opportunity Commission Act 1986*;
 - “former Commission” means the Human Rights Commission established by the repealed Act;
 - “former Commissioner” means the Commissioner for Community Relations who held office under the *Racial Discrimination Act 1975* immediately before the commencement time;
 - “repealed Act” means the *Human Rights Commission Act 1981*.

PART II—REPEAL OF THE HUMAN RIGHTS COMMISSION ACT 1981

Repeal

4. The *Human Rights Commission Act 1981* is repealed.

Operation of Commission Act, &c.

5. (1) A reference in the Commission Act to a complaint to the Commission shall be read as including a reference to a complaint made, before the commencement time, to the former Commission, being a complaint that had not been finally dealt with before the commencement time.

(2) Subject to sub-section (3), a reference in the Commission Act, or in any other enactment, to an act or thing done by or to, or an instrument made by or given to, the Commission, a member of the Commission, or a Minister, under a provision of the Commission Act shall be read as including a reference to an act or thing done by or to, or an instrument made by or given to, the former Commission, a member of the former Commission, or a Minister, as the case may be, before the commencement time, under the corresponding provision of the repealed Act.

- (3) Sub-section (2) does not apply in relation to a reference to—
- (a) a declaration made by the Minister under section 18 of the Commission Act; or
 - (b) a declaration made by the Minister under section 47 of the Commission Act.

(4) Where, before the commencement time, the former Commission had commenced to perform, in relation to a particular matter, a function conferred on the former Commission by the repealed Act, but had not completed the performance of that function—

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- (a) the Commission may continue and complete the performance of that function in relation to that matter as if the Commission Act had been in force at the time when the former Commission commenced to perform the function; and
- (b) for the purposes of the performance of that function under paragraph (a), references in the Commission Act to a matter under examination or inquiry shall be read as including references to a matter under examination or inquiry by the Commission pursuant to that paragraph.

(5) Where, before the commencement time, a person had commenced to inquire into an act or practice, or to investigate a particular aspect of an act or practice, pursuant to a resolution by the former Commission under sub-section 13 (1) of the repealed Act but had not completed the inquiry or investigation, the person may, after the commencement time, continue and complete the inquiry or investigation as if the power to inquire into that act or practice, or investigate that act or practice, had been delegated to the person under section 19 of the Commission Act.

Inter-governmental arrangements

6. An arrangement in force immediately before the commencement time, being an arrangement made under section 11 of the repealed Act, has effect, after the commencement time, for or in connection with the performance of functions or the exercise of powers pursuant to sub-section 5 (4) or (5) of this Act as if—

- (a) a reference in the arrangement to the Human Rights Commission were (except in relation to matters that occurred before the commencement time) a reference to the Human Rights and Equal Opportunity Commission; and
- (b) a reference in the arrangement to the *Human Rights Commission Act 1981*, or to a provision of that Act, were a reference to the *Human Rights and Equal Opportunity Commission Act 1986*, or to the corresponding provision of that last-mentioned Act, as the case may be.

References in agreements, &c., to former Commission

7. An agreement or instrument in force immediately before the commencement time, being an agreement or instrument to which the former Commission was a party, has effect, after the commencement time, as if—

- (a) the Commission were substituted for the former Commission as a party to the agreement or instrument; and
- (b) any reference in the agreement or instrument to the Human Rights Commission were (except in relation to matters that occurred before the commencement time) a reference to the Human Rights and Equal Opportunity Commission.

Obligation of secrecy

8. Notwithstanding the repeal effected by section 4, the provisions of section 34 of the repealed Act continue to operate in relation to a person who, immediately before the commencement time, was a person to whom that section applied.

Transfer of funds

9. Where an Act appropriates money for the purposes of, or in connection with the activities of, the Human Rights Commission, references in that Act to the Human Rights Commission shall, after the commencement time, be read as references to the Human Rights and Equal Opportunity Commission.

PART III—AMENDMENTS OF THE RACIAL DISCRIMINATION ACT 1975

Principal Act

10. The *Racial Discrimination Act 1975*¹ is in this Part referred to as the Principal Act.

Commencement

11. Section 2 of the Principal Act is amended by omitting sub-section (3).

Interpretation

12. Section 3 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “Commissioner” and substituting the following definitions:

“‘Commission’ means the Human Rights and Equal Opportunity Commission established by the *Human Rights and Equal Opportunity Commission Act 1986*;

‘Commissioner’ means the Race Discrimination Commissioner appointed under section 29;”;

(b) by omitting from sub-section (1) the definition of “Human Rights Commission” and substituting the following definition:

“‘Federal Court’ means the Federal Court of Australia;”;

(c) by inserting after the definition of “member” in sub-section (1) the following definition:

“‘registered organisation’ means an organisation registered pursuant to the *Conciliation and Arbitration Act 1904*;”.

13. Section 6 of the Principal Act is repealed and the following section is substituted:

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Act binds the Crown

“6. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island, but nothing in this Act renders the Crown liable to be prosecuted for an offence.”.

Land, housing and other accommodation

14. Section 12 of the Principal Act is amended by adding at the end the following sub-section:

“(3) Nothing in this section renders unlawful an act in relation to accommodation in a dwelling-house or flat, being accommodation shared or to be shared, in whole or in part, with the person who did the act or a person on whose behalf the act was done or with a relative of either of those persons.”.

Employment

15. Section 15 of the Principal Act is amended by adding at the end the following sub-section:

“(5) Nothing in this section renders unlawful an act in relation to employment, or an application for employment, in a dwelling-house or flat occupied by the person who did the act or a person on whose behalf the act was done or by a relative of either of those persons.”.

Advertisements

16. Section 16 of the Principal Act is amended by adding at the end “or an act that would, but for sub-section 12 (3) or 15 (5), be unlawful by reason of section 12 or 15, as the case may be”.

17. Part III of the Principal Act is repealed and the following Part is substituted:

“PART III—INQUIRIES AND CIVIL PROCEEDINGS

“Division 1—Preliminary

Race Discrimination Commissioner

“19. For the purposes of this Act there shall be a Race Discrimination Commissioner.

Functions of Commission

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

- (a) to inquire into alleged infringements of Part II, and endeavour by conciliation to effect settlements of the matters alleged to constitute those infringements;

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- (b) to promote an understanding and acceptance of, and compliance with, this Act;
- (c) to develop, conduct and foster research and educational programs and other programs for the purpose of—
 - (i) combating racial discrimination and prejudices that lead to racial discrimination;
 - (ii) promoting understanding, tolerance and friendship among racial and ethnic groups; and
 - (iii) propagating the purposes and principles of the Convention;
- (d) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of infringements of Part II;
- (e) 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 racial discrimination issues;
- (f) to inquire into, and make determinations on, matters referred to it by the Minister or the Commissioner.

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

Function of Commissioner

“21. The function of the Commission under paragraph 20 (1) (a) shall be performed by the Commissioner on behalf of the Commission.

Complaints

“22. (1) A complaint in writing alleging that a person has done an act that is unlawful by virtue of a provision of Part II may be lodged with the Commission by—

- (a) a person aggrieved by the act, on that person’s own behalf or on behalf of that person and another person or other persons aggrieved by the act;
- (b) 2 or more persons aggrieved by the act, on their own behalf or on behalf of themselves and another person or other persons aggrieved by the act;
- (c) a person or persons included in a class of persons aggrieved by the act, on behalf of the persons included in that class of persons; or
- (d) a trade union of which a person or persons, or persons included in a class of persons, aggrieved by the act is a member or are members, on behalf of that person, those persons or persons included in that class of persons, as the case may be.

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“(2) In this section, ‘trade union’ means—

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

Commissioner deemed to be a complainant

“23. Where—

- (a) the Commissioner has referred to the Commission a matter that came before the Commissioner otherwise than as the result of the making of a complaint to the Commission; or
- (b) the Minister has referred a matter to the Commission under section 25,

then, for the purposes of any inquiry into the matter by the Commission, this Act has effect as if—

- (c) the matter had been the subject of a complaint;
- (d) the reference to the complainant in section 25F were a reference to the Commissioner; and
- (e) a reference to the respondent were a reference to the person who is, or each of the persons who are, alleged to have done the act to which the matter relates.

“Division 2—Inquiries by Commissioner

Inquiries by Commissioner

“24. (1) Where—

- (a) a complaint relating to an alleged unlawful act is made to the Commission under section 22; or
- (b) it appears to the Commission that a person has done an act that is unlawful by virtue of a provision of Part II,

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

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

- (a) the Commissioner is satisfied that the act is not unlawful by reason of a provision of Part II;
- (b) the Commissioner is of the opinion that the person aggrieved by the act does not desire, or none of the persons aggrieved by the act desires, that the inquiry be made or continued;
- (c) in a case where a complaint has been made to the Commission in relation to the act, a period of more than 12 months has elapsed since the act was done; or

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- (d) in a case where a complaint has been made to the Commission in relation to the act, the Commissioner is of the opinion that the complaint was frivolous, vexatious, misconceived or lacking in substance.

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

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

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

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

Application for interim determination under section 25Y

“24A. (1) The Commissioner, at any time after a complaint is lodged and before the Commissioner declines to entertain the complaint, resolves the complaint by conciliation or refers the matter to which the complaint relates to the Commission under sub-section 24E (1), may apply to the Commission for the making of an interim determination under section 25Y or for the variation or revocation of any such determination.

“(2) In relation to a matter arising under paragraph 24 (1) (b), the Commissioner may apply to the Commission for the making of an interim determination under section 25Y, or for the variation or revocation of any such determination, at any time.

Power to obtain information and documents

“24B. (1) Where the Commissioner has reason to believe that a person is capable of furnishing information (in this sub-section referred to as ‘relevant information’) or producing documents (in this sub-section referred to as ‘relevant documents’) relevant to an inquiry under this Division, the Commissioner may, by notice in writing served on the person, require the person, at such place, and within such period or on such date and at such time, as are specified in the notice—

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

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- (b) to produce to the Commissioner such relevant documents (if any) as are specified in the notice.

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

- (a) may take possession of, and may make copies of, or take extracts from, the documents;
- (b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry to which the documents relate; and
- (c) during that period shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Commissioner to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.

Directions to persons to attend compulsory conference

“24C. (1) For the purpose of inquiring into an act, and endeavouring to settle the matter to which the act relates, in accordance with section 24, the Commissioner may, by notice in writing, direct the persons referred to in sub-section (2) of this section to attend, at a time and place specified in the notice, a conference presided over by the Commissioner or a person appointed by the Commissioner.

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

- (a) where a complaint was made to the Commission in relation to that act—the complainant, or all the complainants, as the case requires;
- (b) the person who is alleged to have done the act; and
- (c) any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the inquiry or whose presence at the conference is, in the opinion of the Commissioner, likely to be conducive to the settlement of the matter to which the act relates.

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

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

Compulsory conference

“24D. (1) The person presiding at a conference held under this Division may require a person attending the conference to produce a document.

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

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“(3) Subject to sub-section (4), a body of persons, whether corporate or unincorporate, that is directed under section 24C to attend a conference shall be deemed to attend if an officer or employee of that body attends on behalf of that body.

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

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

Reference of matters to the Commission

“24E. (1) Where the Commissioner—

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

the Commissioner shall refer the matter to the Commission together with a report relating to any inquiries made by the Commissioner into the matter.

“(2) A report for the purposes of sub-section (1) shall not set out or describe anything said or done in the course of conciliation proceedings under this Division (including anything said or done at a conference held under this Division).

“(3) Evidence of anything said or done in the course of conciliation proceedings under this Division (including anything said or done at a conference held under this Division) is not admissible in subsequent proceedings under this Part relating to the matter.

“Division 3—Inquiries by Human Rights and Equal Opportunity Commission

Minister may appoint persons to participate in inquiries

“24F. (1) The Minister may appoint a person to participate, in accordance with this section, in the performance of the functions of the Commission.

“(2) The Minister may, under sub-section (1), appoint such number of persons as the Minister considers necessary for the purposes of this section.

“(3) A person who holds an appointment under sub-section (1) may, at the request of the President, participate in the holding of an inquiry under this Division as if the person were a member of the Commission and, for the purposes of the application of this Act in relation to the inquiry, the person shall be deemed to be a member of the Commission.

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“(4) A person appointed under sub-section (1)—

- (a) holds the appointment for such period, not exceeding 5 years, as is specified in the instrument of the person’s appointment, but is eligible for re-appointment; and
- (b) may resign the appointment by writing signed by the person and delivered to the Minister.

“(5) The Minister may—

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

“(6) The Minister may, for the purpose of appointing under sub-section (1) a person who is the holder of a judicial office of a State, enter into such arrangement with the appropriate Minister of the State as is necessary to secure that person’s services.

“(7) An arrangement under sub-section (6) may provide for the Commonwealth to reimburse a State with respect to the services of the person to whom the arrangement relates.

“(8) The appointment under sub-section (1) of the holder of a judicial office, or service by the holder of a judicial office pursuant to such an appointment, 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 pursuant to such an appointment shall be taken to be service as the holder of that judicial office.

“(9) Unless the contrary intention appears, 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;

‘State’ includes the Northern Territory.

Reference of matter to the Commission by the Minister

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

Inquiries into complaints

“25A. (1) Subject to sub-section (2), the Commission shall hold an inquiry into each complaint or matter referred to it under sub-section 24 (5) or 24E (1) or section 25.

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

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- (a) in the case of a complaint or matter referred to it under sub-section 24 (5) or 24E (1)—if the complainant notifies the Commission that the complainant does not wish the inquiry to be held or to continue; or
- (b) in the case of a matter referred to it under section 25—if the Minister notifies the Commission that the Minister does not wish the inquiry to be held or to continue.

Exercise of inquiry powers by Commission

“25B. (1) Subject to sub-section 20 (2), the powers of the Commission to hold inquiries under this Act may, if the President so directs, be exercised by a single member of the Commission who is a legally qualified person, or by 2 or more members of the Commission, at least one of whom is a legally qualified person.

“(2) Where the power of the Commission to hold an inquiry is being exercised by 2 or more members of the Commission—

- (a) if only one of those members is a legally qualified person—that member shall preside; or
- (b) if 2 or more of those members are legally qualified persons—
 - (i) if one of those persons is the President—the President shall preside; or
 - (ii) in any other case—those members shall elect one of those persons to preside.

“(3) In this section, ‘legally qualified person’ means a person who—

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

Single inquiry in relation to several complaints

“25C. Where the Commission is of the opinion that 2 or more complaints arise out of the same or substantially the same circumstances or subject-matter, it may hold a single inquiry in relation to those complaints.

Joinder of parties by the Commission

“25D. Where, before the holding of an inquiry, or at any stage during the holding of an inquiry, the Commission is of the opinion that a person ought to be joined as a party to the inquiry, it may, by notice in writing given to that person, join that person as a party to the inquiry.

Notice of inquiry and rights of parties at inquiry

“25E. (1) The Commission—

- (a) shall give a party to an inquiry, other than a person to whom the Commission grants leave to appear as a party to the inquiry, such notice in such manner as the Commission determines of the time and place at which it intends to hold the inquiry; and
- (b) shall give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Commission.

“(2) If a party to an inquiry to whom notice has been given under paragraph (1) (a) fails to attend at the time and place specified for the inquiry, the Commission may hold the inquiry in the absence of that party.

Parties to an inquiry

“25F. The parties to an inquiry shall be the complainant, the respondent, any person joined by the Commission as a party to the inquiry and any person to whom the Commission grants leave to appear as a party to the inquiry.

Right of appearance and to representation

“25G. (1) A party to an inquiry—

- (a) shall appear personally or, where the party is a body of persons, whether corporate or unincorporate, by an officer, employee or agent of the body; and
- (b) may—
 - (i) if the Commission has made arrangements under sub-section 25K (1) for counsel to appear at the inquiry to assist the Commission; or
 - (ii) in any other case—with the leave of the Commission, be represented by a solicitor or counsel or an agent.

“(2) A person, other than a solicitor or counsel, is not entitled to demand or receive any fee or reward for representing a party to an inquiry.

Inquiries may be held in private

“25H. (1) Subject to sub-section (2), an inquiry shall be held in public.

“(2) The Commission may, of its own motion or on the application of a party to the inquiry, if it is satisfied that it is appropriate to do so, direct that an inquiry, or a part of an inquiry, be held in private.

Commission may prohibit publication of evidence, &c.

“25J. (1) The Commission may direct that—

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

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(c) any information that might enable a person who has appeared before the Commission to be identified, shall not be published, or shall not be published except in such manner, and to such persons, as the Commission specifies.

“(2) Nothing in this section shall be taken to derogate from the Commission’s powers under section 25H.

Counsel assisting the Commission

“25K. (1) The Commission may make arrangements for counsel to appear at an inquiry to assist the Commission.

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

Determination of representative complaints

“25L. At an inquiry held in respect of a complaint that appears to the Commission to be a representative complaint, the Commission shall determine, as a preliminary matter, whether that complaint should be dealt with as a representative complaint.

Matters to be considered in determination of representative complaints

“25M. (1) The Commission shall not deal with a complaint as a representative complaint unless it is satisfied that the complaint was made on behalf of persons other than the complainant in good faith.

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

(a) that—

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

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- (vii) the respondent has acted on grounds apparently applying to the class as a whole, thereby making relief appropriate for the class as a whole; or
- (b) that, notwithstanding that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint.

Amendment of representative complaints

“25N. (1) Where the Commission is satisfied that a complaint could be dealt with as a representative complaint if the class of persons on whose behalf that complaint is lodged is increased, reduced or otherwise altered, the Commission may amend the complaint so that the complaint can be dealt with as a representative complaint.

“(2) Where the Commission is satisfied that a complaint has been wrongly made as a representative complaint, the Commission may amend the complaint by removing the names of the persons or the description of the class of persons on whose behalf the complaint was lodged so that the complaint can be dealt with as a complaint other than a representative complaint.

Ordinary complaints not precluded by representative complaints

“25P. Nothing in this Part prevents a person from lodging a complaint, other than a representative complaint, under section 22, notwithstanding that the conduct in respect of which the complaint is lodged is also the conduct in respect of which a representative complaint has been lodged.

Resolution of complaint by conciliation

“25Q. The Commission—

- (a) may endeavour, by all such means as to it seem reasonable, to resolve a complaint the subject of an inquiry by conciliation; and
- (b) shall take all such steps as to it seem reasonable to effect an amicable settlement of a complaint the subject of an inquiry and for this purpose may adjourn an inquiry at any stage to enable the parties to negotiate with a view to settlement of the complaint by amicable arrangements.

Evidence and findings in other proceedings

“25R. In the course of an inquiry, the Commission may, in its discretion—

- (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal and draw any conclusions of fact from that transcript that it considers proper;
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the inquiry; and

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- (c) receive in evidence any report of the Commissioner if a copy of that report has been made available to every other party to the inquiry.

Powers of Commission to take evidence

“25S. (1) The Commission may take evidence on oath or affirmation and for that purpose a member of the Commission may administer an oath or affirmation.

“(2) A member of the Commission may summon a person to appear before the Commission to give evidence and to produce such documents (if any) as are referred to in the summons.

“(3) A person to whom an inquiry under this Part relates or who is a party to proceedings before the Commission may call witnesses.

“(4) A person appearing as a witness before the Commission may be examined, cross-examined and re-examined.

Fees for witnesses

“25T. (1) A person summoned to appear before the Commission is entitled to be paid, in respect of the person’s attendance, fees, and allowances for expenses, fixed by or in accordance with the regulations.

“(2) Subject to sub-section (3), the fees and allowances shall be paid—

- (a) in a case where the person was summoned at the request of a person other than the Commonwealth—by the person who made the request; or
(b) in any other case—by the Commonwealth.

“(3) The Commission may, in its discretion, order that the fees and allowances payable to a person summoned as mentioned in paragraph (2) (a) shall be paid, in whole or in part, by the Commonwealth.

Retention and copying of documents

“25U. The Commission may retain for a reasonable period and may make copies of, or of part of, any documents produced to the Commission in the course of an inquiry or proceedings.

Application of rules of evidence, &c.

“25v. (1) For the purposes of an inquiry, the Commission—

- (a) is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit;
(b) shall conduct the inquiry with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Commission permit; and

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- (c) may give directions relating to procedure that, in its opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties.

“(2) The member conducting, or presiding at, an inquiry shall determine any question relating to the admissibility of evidence and any other question of law or procedure.

Consideration of exceptions and exemptions

“25W. In determining whether an act is unlawful by reason of a provision of Part II, the Commission is not required to have regard to any exception or exemption provided for in that Part unless there is evidence before the Commission that the exception or exemption is or may be applicable in relation to that act.

Commission may dismiss frivolous, &c., complaints

“25X. Where, at any stage of an inquiry, the Commission is satisfied that a complaint is frivolous, vexatious, misconceived, lacking in substance or relates to an act that is not unlawful by reason of a provision of Part II, it may dismiss the complaint.

Making of interim determination

“25Y. (1) The Commission, or, where the President is of the opinion that it is expedient that the President alone should perform the functions of the Commission under this section, the President, may, on the application of the Commissioner under section 24A or on the application of a party to an inquiry at any time after the lodgement of the complaint into which that inquiry is held, make an interim determination of such a nature as would, if it were binding and conclusive upon the parties, preserve—

- (a) the status quo between the parties to the complaint; or
 - (b) the rights of the parties to the complaint,
- pending completion of the matter the subject of the complaint.

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

Determination or other decision of the Commission

“25Z. (1) After holding an inquiry, the Commission may—

- (a) dismiss the complaint the subject of the inquiry; or
- (b) find the complaint substantiated and make a determination, which may include any one or more of the following:
 - (i) a declaration that the respondent has engaged in conduct rendered unlawful by this Act and should not repeat or continue such unlawful conduct;
 - (ii) a declaration that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;

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- (iii) a declaration that the respondent should employ or re-employ the complainant;
- (iv) except where the complaint was dealt with as a representative complaint—a declaration that the respondent should pay to the complainant damages by way of compensation for any loss or damage suffered by reason of the conduct of the respondent;
- (v) a declaration that the respondent should promote the complainant;
- (vi) a declaration that the termination of a contract or agreement should be varied to redress any loss or damage suffered by the complainant;
- (vii) a declaration that it would be inappropriate for any further action to be taken in the matter.

“(2) A determination of the Commission under sub-section (1) is not binding or conclusive between any of the parties to the determination.

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

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

Proceedings in Federal Court

“25ZA. (1) The Commission or complainant may institute a proceeding in the Federal Court for an order to enforce a determination made pursuant to sub-section 25Y (1) or 25Z (1).

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

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

Assistance in proceedings before Commission

“25ZB. (1) Where—

- (a) a person has made a complaint in respect of which the Commission has held an inquiry under section 25A and the Commission has found the complaint to be substantiated; or
- (b) a person has done or is alleged to have done an act in respect of which an inquiry has been held by the Commission under section 25A and the Commission dismisses the complaint the subject of the inquiry,

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the Commission may, in its discretion, recommend to the Attorney-General that assistance be given to the person in respect of expenses incurred by the person in connection with the inquiry.

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

Assistance in proceedings before Federal Court

“25ZC. (1) A person who—

- (a) has instituted or proposes to institute a proceeding before the Federal Court under section 25ZA; or
- (b) has done or is alleged to have done an act in respect of which a proceeding has been instituted in the Federal Court under section 25ZA,

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

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

Offences relating to administration of Act

18. Section 27 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “insult,” and “sections 21 and 22 of”;
- (b) by inserting after sub-section (1) the following penalty:
 - “Penalty for an offence against sub-section (1):
 - (a) in the case of a natural person—\$1,000; or
 - (b) in the case of a body corporate—\$5,000.”;
- (c) by omitting from paragraph (2) (g) “section 22” and substituting “section 24C”; and
- (d) by omitting “Penalty: \$500.” and substituting the following penalty:
 - “Penalty for an offence against sub-section (2):
 - (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.”.

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19. After section 27 of the Principal Act the following sections are inserted in Part IV:

Failure to attend conference

“27A. A person who has been given a direction under sub-section 24C (1) to attend a conference shall not, without reasonable excuse—

- (a) fail to attend as required by the direction; or
- (b) fail to attend and report from day to day unless excused, or released from further attendance, by the person presiding at the conference.

Penalty:

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

Failure to furnish information, &c.

“27B. A person shall not, without reasonable excuse, refuse or fail—

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

when so required pursuant to section 24B, 24C or 24D.

Penalty:

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

Offences in relation to Commission

“27C. (1) A person served, as prescribed, with a summons to appear before the Commission as a witness shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report from day to day unless excused, or released from further attendance, by the Commission.

“(2) A person appearing before the Commission as a witness at an inquiry shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or make an affirmation;
- (b) refuse or fail to answer a question that is required by the member presiding at the inquiry to be answered; or
- (c) refuse or fail to produce a document that was required to be produced by a summons under this Act served on that person as prescribed.

“(3) A person shall not—

- (a) interrupt an inquiry or proceedings of the Commission;
- (b) use insulting language towards a member of the Commission when the member is exercising any powers or performing any functions as a member;

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- (c) make a publication in contravention of any direction given under section 25J;
- (d) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Commission is meeting or holding an inquiry; or
- (e) do any other act or thing that would, if the Commission were a court of record, constitute a contempt of that court.

Penalty:

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

Self-incrimination

“27D. (1) It is not a reasonable excuse for the purposes of section 27B for a person to refuse or fail to furnish information or produce a document that the furnishing of the information or the production of the document might incriminate the person, but evidence of the furnishing of the information or the production of the document is not admissible in evidence against the person in any civil or criminal proceeding before a court, other than a proceeding for an offence under section 27E.

“(2) Without limiting the generality of the expression ‘reasonable excuse’ in section 27C, it is hereby declared for the removal of doubt that it is a reasonable excuse for the purposes of that section for a person to refuse or fail to answer a question put to the person at an inquiry, or to refuse to produce a document, that the answer to the question or the production of the document might incriminate the person.

False or misleading information

“27E. A person shall not furnish information or make a statement to the Commission, to the Commissioner or to any other person exercising powers or performing functions under this Act, knowing that the information or statement is false or misleading in a material particular.

Penalty:

- (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.

Non-disclosure of private information

“27F. (1) A person who is, or has at any time been, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorised to perform or exercise any function or power of the Commission or the Commissioner or any function or power on behalf of the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act, shall not, either directly or indirectly, except in the

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performance of a duty under or in connection with this Act or in the performance or exercise of such a function or power—

- (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 purpose of this Act or by reason of that person being or having been so authorised;
- (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, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorised to perform or exercise any function or power of the Commission or the Commissioner or any function or power on behalf of the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act, shall not be required—

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

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 any person in accordance with an arrangement in force under section 16 of the *Human Rights and Equal Opportunity Commission Act 1986*; 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.

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“(4) Nothing in sub-section (2) prevents a person from 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.”.

Establishment and functions of Council

20. Section 28 of the Principal Act is amended by omitting from sub-section (2) “Human Rights Commission” (wherever occurring) and substituting “Commission”.

Amendment of heading to Division 1 of Part VI

21. The heading to Division 1 of Part VI of the Principal Act is omitted and the following heading is substituted:

“Division 1—Race Discrimination Commissioner”.

22. Sections 29 and 30 of the Principal Act are repealed and the following sections are substituted:

Appointment of Race Discrimination Commissioner

“29. The Race Discrimination Commissioner shall be appointed by the Governor-General.

Terms and conditions of appointment

“30. (1) Subject to this section, the Commissioner holds office for such period, not exceeding 7 years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

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

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

Termination of appointment

23. Section 34 of the Principal Act is amended by omitting sub-section (3).

Repeal of section 37

24. Section 37 of the Principal Act is repealed.

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Repeal of section 39

25. Section 39 of the Principal Act is repealed.

Delegation

26. Section 40 of the Principal Act is amended—

- (a) by omitting “Human Rights Commission” (wherever occurring) and substituting “Commission”; and
- (b) by omitting “that Commission” (wherever occurring) and substituting “the Commission”.

Repeal of section 44A

27. Section 44A of the Principal Act is repealed.

Repeal of section 45

28. Section 45 of the Principal Act is repealed.

Commissioner to furnish information

29. Section 45A of the Principal Act is amended by omitting “Human Rights Commission” (wherever occurring) and substituting “Commission”.

Amendments of certain provisions of the Principal Act

30. The Principal Act is amended as set out in the Schedule.

Operation of Racial Discrimination Act

31. (1) A reference in the *Racial Discrimination Act 1975* to a complaint to the Commission shall be read as including a reference to a complaint made, before the commencement time, to the former Commission, being a complaint that had not been finally dealt with before the commencement time.

(2) Where, before the commencement time, the former Commission or the former Commissioner had commenced to perform, in relation to a particular matter, a function conferred on the former Commission by the *Racial Discrimination Act 1975*, but had not completed the performance of that function—

- (a) the Commission, or the Race Discrimination Commissioner, as the case may be, may continue and complete the performance of that function in relation to that matter; and
- (b) for the purposes of the performance of that function under paragraph (a), references in that Act to an inquiry into an act shall be read as including references to an inquiry into an act being made by the Commission, or by the Race Discrimination Commissioner, as the case may be, pursuant to that paragraph.

Consents by former Commission

32. Where, before the commencement time, the former Commission had, under sub-section 23 (2) of the *Racial Discrimination Act 1975*, given its consent to a conciliation committee performing the former Commission's function of endeavouring to effect a settlement of a matter in accordance with sub-section 21 (1) of that Act, that consent shall, on and after the commencement time, be deemed to have been given by the Commission.

Certificates by former Commission

33. Where—

- (a) before the commencement time, a person had received, in accordance with sub-section 24 (3) of the *Racial Discrimination Act 1975*, a certificate stating the matters referred to in paragraph 24 (3) (a) or (b) of that Act signed by a member of the former Commission or by the former Commissioner; and
- (b) at the commencement time, the person had not instituted a proceeding under sub-section 24 (1) of that Act,

then, for the purposes of the institution of any proceeding by the person after the commencement time, the certificate so received by the person shall be deemed to state the matters referred to in paragraph 24 (3) (a) or (b) of the Principal Act as amended by this Act and to have been signed by a member of the Commission, or by the Race Discrimination Commissioner, as the case may be.

Delegations by former Commission and former Commissioner

34. (1) Where—

- (a) before the commencement time, the former Commission had, under sub-section 40 (1) of the *Racial Discrimination Act 1975*, delegated a power to a person (not being a member of the staff of the former Commission); and
- (b) immediately before the commencement time, the delegation had not been revoked,

then, after the commencement time, the power of the Commission that corresponds to the power delegated as mentioned in paragraph (a) shall for all purposes be deemed to have been delegated, under that sub-section, to that person by the Commission in the terms of the delegation by the former Commission.

(2) Where—

- (a) before the commencement time, the former Commissioner had, under sub-section 40 (2) of the *Racial Discrimination Act 1975*, delegated a power to a person (not being a member of the staff of the former Commission); and
- (b) immediately before the commencement time, the delegation had not been revoked,

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then, after the commencement time, the power exercisable by the Race Discrimination Commissioner that corresponds to the power delegated as mentioned in paragraph (a) shall for all purposes be deemed to have been delegated, under that sub-section, to that person by the Race Discrimination Commissioner in the terms of the delegation by the former Commissioner.

**PART IV—AMENDMENTS OF THE SEX DISCRIMINATION ACT
1984**

Principal Act

35. The *Sex Discrimination Act 1984*² is in this Part referred to as the Principal Act.

Interpretation

36. Section 4 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “Chairman”;
- (b) by omitting from sub-section (1) the definition of “Commission” and substituting the following definition:

“‘Commission’ means the Human Rights and Equal Opportunity Commission established by the *Human Rights and Equal Opportunity Commission Act 1986*,”;
- (c) by omitting “*Human Rights Commission Act 1981*” from the definition of “enactment” in sub-section (1) and substituting “*Human Rights and Equal Opportunity Commission Act 1986*”;
- (d) by inserting after the definition of “near relative” in sub-section (1) the following definition:

“‘President’ means President of the Commission;”;
- (e) by omitting “*Human Rights Commission Act 1981*” from the definition of “proposed enactment” in sub-section (1) and substituting “*Human Rights and Equal Opportunity Commission Act 1986*”.

Functions of Human Rights and Equal Opportunity Commission

37. Section 48 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “In addition to the functions of the Human Rights Commission under the *Human Rights Commission Act 1981*, the Commission has the following functions:” and substituting “The following functions are hereby conferred on the Commission:”;
- (b) by omitting from paragraph (g) “and”;
- (c) by inserting after paragraph (g) the following paragraphs:

“(ga) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of discrimination on the ground of sex, marital status or pregnancy and discrimination involving sexual harassment;

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- (gb) 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 issues of discrimination on the ground of sex, marital status or pregnancy or discrimination involving sexual harassment;” and
- (d) by omitting from sub-section (3) “If the Commissioner is a member of the Commission, the” and substituting “The”.

Functions of Commissioner

38. Section 49 of the Principal Act is amended by omitting sub-sections (2) and (3).

Amendment of heading to Division 3 of Part III

39. The heading to Division 3 of Part III of the Principal Act is omitted and the following heading is substituted:

“Division 3—Inquiries by Human Rights and Equal Opportunity Commission”.

40. Before section 58 of the Principal Act the following section is inserted in Division 3 of Part III:

Minister may appoint persons to participate in inquiries

“57A. (1) The Minister may appoint a person to participate, in accordance with this section, in the performance of the functions of the Commission.

“(2) The Minister may, under sub-section (1), appoint such number of persons as the Minister considers necessary for the purposes of this section.

“(3) A person who holds an appointment under sub-section (1) may, at the request of the President, participate in the holding of an inquiry under this Division as if the person were a member of the Commission and, for the purposes of the application of this Act in relation to the inquiry, the person shall be deemed to be a member of the Commission.

“(4) A person appointed under sub-section (1)—

- (a) holds the appointment for such period, not exceeding 5 years, as is specified in the instrument of the person’s appointment, but is eligible for re-appointment; and
- (b) may resign the appointment by writing signed by the person and delivered to the Minister.

“(5) The Minister may—

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

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“(6) The Minister may, for the purpose of appointing under sub-section (1) a person who is the holder of a judicial office of a State, enter into such arrangement with the appropriate Minister of the State as is necessary to secure that person’s services.

“(7) An arrangement under sub-section (6) may provide for the Commonwealth to reimburse a State with respect to the services of the person to whom the arrangement relates.

“(8) The appointment under sub-section (1) of the holder of a judicial office, or service by the holder of a judicial office pursuant to such an appointment, 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 pursuant to such an appointment shall be taken to be service as the holder of that judicial office.

“(9) 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.”.

Exercise of inquiry powers by Commission

41. Section 60 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:

“(1) Subject to sub-section 48 (3), the powers of the Commission to hold inquiries under this Act may, if the President so directs, be exercised by a single member of the Commission who is a legally qualified person, or by 2 or more members of the Commission at least one of whom is a legally qualified person.

“(2) Where the power of the Commission to hold an inquiry is being exercised by 2 or more members of the Commission—

- (a) if only one of those members is a legally qualified person—that member shall preside; or
- (b) if 2 or more of those members are legally qualified persons—
 - (i) if one of those persons is the President—the President shall preside; or
 - (ii) in any other case—those members shall elect one of those persons to preside.”.

Making of interim determination

42. Section 80 of the Principal Act is amended by omitting from sub-section (1) “Chairman” (wherever occurring) and substituting “President”.

Particulars of complaints not to be communicated

43. Section 92 of the Principal Act is amended by omitting from paragraph (2) (b) “to an authority of a State in accordance with an arrangement in force under section 11 of the *Human Rights Commission Act 1981*;” and substituting “to any person in accordance with an arrangement in force under section 16 of the *Human Rights and Equal Opportunity Commission Act 1986*;”.

Terms and conditions of appointment

44. (1) Section 97 of the Principal Act is amended by omitting from sub-section (1) “5 years” and substituting “7 years”.

(2) The amendment made by sub-section (1) does not affect the appointment, or the term of office, of the person who, immediately before the commencement of this section, held office as the Sex Discrimination Commissioner.

Non-disclosure of private information

45. Section 112 of the Principal Act is amended—

(a) by omitting the penalty at the end of sub-section (1) and substituting the following penalty:

“Penalty: \$5,000 or imprisonment for 1 year, or both.”; and

(b) by omitting sub-section (3) and substituting the following sub-sections:

“(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 any person in accordance with an arrangement in force under section 16 of the *Human Rights and Equal Opportunity Commission Act 1986*; 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.

“(3A) Nothing in sub-section (2) prevents a person from 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.”.

Operation of Sex Discrimination Act

46. (1) A reference in the *Sex Discrimination Act 1984* to a complaint to the Commission shall be read as including a reference to a complaint made, before the commencement time, to the former Commission, being a complaint that had not been finally dealt with before the commencement time.

(2) A reference in the *Sex Discrimination Act 1984* to a complaint or matter referred to the Commission under a provision of that Act shall be read as including a reference to a complaint or matter referred, before the commencement time, to the former Commission under the provision concerned.

(3) A reference in the *Sex Discrimination Act 1984* to an act or thing done by or to, or an instrument made by or given to, the Commission or a member of the Commission under a provision of that Act shall be read as including a reference to an act or thing done by or to, or an instrument made by or given to, the former Commission or a member of the former Commission, as the case may be, before the commencement time, under the provision concerned.

(4) The reference in paragraph 94 (2) (e) of the *Sex Discrimination Act 1984* to the Commission shall be read as including a reference to the former Commission.

(5) The references in section 112 of the *Sex Discrimination Act 1984* to the Commission shall be read as including references to the former Commission.

(6) Where, before the commencement time, the former Commission had commenced to perform, in relation to a particular matter, a function conferred on the former Commission by the *Sex Discrimination Act 1984*, but had not completed the performance of that function—

- (a)** the Commission may continue and complete the performance of that function in relation to that matter; and
- (b)** for the purposes of the performance of that function under paragraph (a), references in that Act to an inquiry by the Commission shall be read as including references to an inquiry by the Commission pursuant to that paragraph.

Operation of certain provisions of Sex Discrimination Act

47. (1) Where—

- (a)** before the commencement time, the former Commission had made a decision under section 44 of the *Sex Discrimination Act 1984*; and
- (b)** at the commencement time, the former Commission had not complied with sub-section 46 (1) of that Act in relation to that decision,

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the Commission shall, not later than one month after the commencement time, cause to be published in the *Gazette* a notice in relation to that decision in accordance with sub-section 46 (1) of that Act.

(2) A notice in relation to a complaint, being a notice served on the Commissioner under sub-section 52 (4) of the *Sex Discrimination Act 1984* before the commencement time, shall, after the commencement time, be deemed to require the Commissioner to refer the complaint to the Commission.

(3) Where—

- (a) within the period of 28 days immediately preceding the commencement time, the former Commission served notice on a person under section 87 of the *Sex Discrimination Act 1984*; and
- (b) at the commencement time, the person had not complied with the requirement made by the notice,

the requirement made by the notice shall, after the commencement time, be deemed to be a requirement to disclose to the Commission, before the expiration of the period of 28 days after the notice was served, the information specified in the notice.

(4) Where—

- (a) before the commencement time, the former Commission had, under sub-section 104 (1) of the *Sex Discrimination Act 1984*, delegated a power to a person (not being a member, or a member of the staff, of the former Commission); and
- (b) immediately before the commencement time, the delegation had not been revoked,

then, after the commencement time, the power of the Commission that corresponds to the power delegated as mentioned in paragraph (a) shall for all purposes be deemed to have been delegated, under that sub-section, to that person by the Commission in the terms of the delegation by the former Commission.

(5) Section 111 of the *Sex Discrimination Act 1984* shall be deemed to continue to operate, for the benefit of the former Commission, the members of the former Commission and persons acting under the direction or authority of the former Commission or pursuant to a delegation by the former Commission under section 104 of that Act, in respect of acts or things done by the former Commission or by such a member or person before the commencement time.

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SCHEDULE

Section 30

AMENDMENTS OF CERTAIN PROVISIONS OF THE RACIAL DISCRIMINATION ACT 1975

Paragraph 6A (2) (b)—

Omit “he”, substitute “the person”.

Sub-section 10 (3)—

Omit “him”, substitute “the person”.

Paragraph 27 (2) (b)—

Omit “his”, substitute “the other person’s”.

Paragraph 27 (2) (c)—

Omit “his”, substitute “the other person’s”.

Sub-section 31 (1)—

Omit “he”, substitute “the Commissioner”.

Sub-section 31 (3)—

Omit “1973-1974”, substitute “1973”.

Section 33—

(a) Omit “his office”, substitute “from the office of Commissioner”.

(b) Omit “him”, substitute “the Commissioner”.

Paragraph 34 (2) (b)—

Omit “his” (wherever occurring).

Section 35—

Omit “his office”, substitute “the office of Commissioner”.

Sub-section 36 (5)—

Omit “he”, substitute “the person”.

Sub-section 36 (6)—

Omit “his”, substitute “the person’s”.

Sub-section 40 (2)—

Omit “him” (wherever occurring), substitute “the Commissioner”.

Sub-section 41 (2)—

Omit “his” (wherever occurring), substitute “the member’s”.

Sub-section 42 (3)—

Omit “1973-1974”, substitute “1973”.

Sub-section 43 (3)—

Omit “he”, substitute “the Chairman”.

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SCHEDULE—continued

Section 45A—

Omit “his”, substitute “the Commissioner’s”.

Section 47—

Omit “his”, substitute “from”.

NOTES

1. No. 52, 1975, as amended. For previous amendments, see No. 91, 1976; No. 18, 1980; No. 25, 1981; and No. 38, 1983.
2. No. 4, 1984, as amended. For previous amendments, see No. 72, 1984.

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