



Human Rights and Equal Opportunity Legislation Amendment Act (No. 2) 1992

No. 180 of 1992

**An Act to amend the law relating to human rights and
equal opportunity**

[Assented to 16 December 1992]

[Date of commencement 13 January 1993]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Human Rights and Equal Opportunity Legislation Amendment Act (No. 2) 1992*.

Amendment of Acts

2. The Acts specified in the Schedule are amended as set out in the Schedule.

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SCHEDULE

Section 2

AMENDMENTS OF ACTS

Human Rights and Equal Opportunity Commission Act 1986

Subsection 3(1):

Insert:

“ ‘**Aboriginal person**’ means a person of the Aboriginal race of Australia; ‘**Torres Strait Islander**’ means a descendant of an indigenous inhabitant of the Torres Strait Islands;”.

Subsection 8(1):

Add “and” at the end of paragraphs (a), (b) and (c).

Subsection 8(1):

After paragraph (c) insert:

“(ca) the Aboriginal and Torres Strait Islander Social Justice Commissioner; and”.

Subsection 8(7):

After “Race Discrimination Commissioner,” insert “Aboriginal and Torres Strait Islander Social Justice Commissioner,”.

Subsection 19(2):

Before paragraph (a) insert:

“(aa) a member of the Commission; or”.

After subsection 24(1):

Insert:

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

After Part II:

Insert:

SCHEDULE—continued

**“PART IIA—ABORIGINAL AND TORRES STRAIT ISLANDER
SOCIAL JUSTICE COMMISSIONER**

“Division 1—Establishment and functions

Interpretation

“46A. In this Part:

‘Commissioner’ means the Aboriginal and Torres Strait Islander Social Justice Commissioner;

‘human rights’ means:

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

Aboriginal and Torres Strait Islander Social Justice Commissioner

“46B.(1) There is to be an Aboriginal and Torres Strait Islander Social Justice Commissioner, who is to be appointed by the Governor-General.

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

**Functions of the Commission that are to be performed
by the Commissioner**

“46C.(1) The following functions are conferred on the Commission:

- (a) to submit a report to the Minister, as soon as practicable after 30 June in each year, regarding the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders, and including recommendations as to the action that should be taken to ensure the enjoyment and exercise of human rights by those persons;
- (b) to promote discussion and awareness of human rights in relation to Aboriginal persons and Torres Strait Islanders;
- (c) to undertake research and educational programs, and other programs, for the purpose of promoting respect for the human rights of Aboriginal persons and Torres Strait Islanders and promoting the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders;
- (d) to examine enactments, and proposed enactments, for the

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SCHEDULE—continued

purpose of ascertaining whether they recognise and protect the human rights of Aboriginal persons and Torres Strait Islanders, and to report to the Minister the results of any such examination.

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

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

- (a) organisations established by Aboriginal or Torres Strait Islander communities;
- (b) organisations of indigenous peoples in other countries;
- (c) international organisations and agencies;
- (d) such other organisations, agencies or persons as the Commissioner considers appropriate.

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

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

“Division 2—Administrative provisions

Terms and conditions of appointment

“46D.(1) Subject to this Division, the Commissioner holds office for such period, not exceeding 7 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

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

Remuneration

“46E.(1) The Commissioner is to be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination of that remuneration by the Remuneration Tribunal is in operation, the Commissioner is to be paid such remuneration as is prescribed.

SCHEDULE—continued

“(2) The Commissioner is to be paid such allowances as are prescribed.

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

Leave of absence

“46F.(1) Subject to section 87E of the *Public Service Act 1922*, the Commissioner has such recreation leave entitlements as are determined by the Remuneration Tribunal.

“(2) The Minister may grant the Commissioner leave of absence other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

Outside employment

“46G. The Commissioner must not, except with the approval of the Minister, engage in paid employment outside the duties of the office of Commissioner.

Resignation

“46H. The Commissioner may resign from the office of Commissioner by writing given to the Governor-General.

Termination of appointment

“46I.(1) The Governor-General may terminate the appointment of the Commissioner because of:

- (a) misbehaviour; or
- (b) a disability that makes the Commissioner incapable of performing the inherent requirements of the office.

“(2) The Governor-General must terminate the appointment of the Commissioner if the Commissioner:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
- (c) engages in paid employment outside the duties of the office of Commissioner otherwise than with the approval of the Minister.

Acting Commissioner

“46J.(1) The Minister may appoint a person to act as Commissioner:

- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or

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SCHEDULE—continued

- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office of Commissioner.

“(2) The validity of anything done by a person purporting to act under an appointment made under subsection (1) is not to be called in question on the ground that:

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

“Division 3—Miscellaneous

Commissioner may obtain information from government agencies

“46K.(1) If the Commissioner has reason to believe that a government agency has information or a document relevant to the performance by the Commissioner of functions under this Part, the Commissioner may give a written notice to the agency requiring the agency:

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

“(2) The notice must state:

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

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

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

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

“(4) If:

- (a) subsection (3) would prevent a government agency from complying with a requirement under this section to produce a document; and

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SCHEDULE—continued

- (b) the agency is able to provide a copy of the document that has had deleted from it the information that would reveal the identity of the individual concerned;

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

“(5) In this section:

‘government agency’ means:

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

Commissioner must give information to the Commission

“46L. The Commissioner must give to the Commission such information as the Commission from time to time requires relating to the operations of the Commissioner under this Part.

Minister must table etc. report of Commissioner

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

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

Sex Discrimination Act 1984

Long title:

Omit “or pregnancy”, substitute “pregnancy or family responsibilities”.

Section 3:

Add “and” at the end of paragraphs (a) and (b).

Section 3:

After paragraph (b) insert:

“(ba) to eliminate, so far as possible, discrimination involving dismissal of employees on the ground of family responsibilities; and”.

SCHEDULE—continued

Subsection 4(1):

Insert:

“ **‘family responsibilities’** has the meaning given by section 4A;”.

After section 4:

Insert:

Meaning of “family responsibilities”

“4A.(1) In this Act, **‘family responsibilities’**, in relation to an employee, means responsibilities of the employee to care for or support:

- (a) a dependent child of the employee; or
- (b) any other immediate family member who is in need of care and support.

“(2) In this section:

‘child’ includes an adopted child, a step-child or an ex-nuptial child;

‘dependent child’ means a child who is wholly or substantially dependent on the employee;

‘immediate family member’ includes:

- (a) a spouse of the employee; and
- (b) an adult child, parent, grandparent, grandchild or sibling of the employee or of a spouse of the employee;

‘spouse’ includes a former spouse, a de facto spouse and a former de facto spouse.”.

After section 7:

Insert:

Discrimination on the ground of family responsibilities

“7A. For the purposes of this Act, an employer discriminates against an employee on the ground of the employee’s family responsibilities if:

- (a) the employer treats the employee less favourably than the employer treats, or would treat, a person without family responsibilities in circumstances that are the same or not materially different; and
- (b) the less favourable treatment is by reason of:
 - (i) the family responsibilities of the employee; or
 - (ii) a characteristic that appertains generally to persons with family responsibilities; or
 - (iii) a characteristic that is generally imputed to persons with family responsibilities.”.

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SCHEDULE—continued

Section 8:

After “7(1)” insert “or section 7A”.

Section 14:

Add at the end:

“(4) It is unlawful for an employer to discriminate against an employee on the ground of the employee’s family responsibilities by dismissing the employee.”.

*[Minister’s second reading speech made in—
House of Representatives on 3 November 1992
Senate on 24 November 1992]*