



# **Age Discrimination (Consequential Provisions) Act 2004**

**No. 40, 2004**

**An Act to amend certain Acts as a consequence of the enactment of the *Age Discrimination Act 2004*, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus (<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# Age Discrimination (Consequential Provisions) Act 2004

No. 40, 2004

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**An Act to amend certain Acts as a consequence of the enactment of the *Age Discrimination Act 2004*, and for related purposes**

[Assented to 21 April 2004]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Age Discrimination (Consequential Provisions) Act 2004*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	21 April 2004
2. Schedule 1, items 1 to 6	At the same time as the <i>Age Discrimination Act 2004</i> commences	23 June 2004
3. Schedule 1, item 7	At the same time as the <i>Age Discrimination Act 2004</i> commences, subject to subsection (3)	23 June 2004
4. Schedule 1, items 8 to 13	At the same time as the <i>Age Discrimination Act 2004</i> commences	23 June 2004
5. Schedule 2, items 1 to 21	The later of: (a) immediately after the commencement of the <i>Age Discrimination Act 2004</i> ; and (b) immediately after the commencement of Schedule 1 to the <i>Australian Human Rights Commission Legislation Act 2004</i>	Never commenced
6. Schedule 2, item 22	Immediately after the commencement of Schedule 1 to the <i>Australian Human Rights Commission Legislation Act 2004</i> , subject to subsection (4)	Never commenced
7. Schedule 2, items 23 to 28	The later of: (a) immediately after the commencement of the <i>Age Discrimination Act 2004</i> ; and (b) immediately after the commencement of Schedule 1 to the <i>Australian Human Rights Commission Legislation Act 2004</i>	Never commenced

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
  - (3) If item 32 of Schedule 1 to the *Australian Human Rights Commission Legislation Act 2004* commences before the time the *Age Discrimination Act 2004* commences, item 7 of Schedule 1 to this Act does not commence at all.
  - (4) If the *Age Discrimination Act 2004* does not commence before the commencement of item 21 of Schedule 1 to the *Australian Human Rights Commission Legislation Act 2004*, item 22 of Schedule 2 to this Act does not commence at all.

### **3 Effect of change to short title of Human Rights and Equal Opportunity Commission Act**

If item 1 of Schedule 1 to the *Australian Human Rights Commission Legislation Act 2004* commences before the time the *Age Discrimination Act 2004* commences, this Act has effect as if the amendments of the *Human Rights and Equal Opportunity Commission Act 1986* contained in Schedule 1 to this Act were amendments of the *Australian Human Rights Commission Act 1986*.

### **4 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Consequential amendments

### *Human Rights and Equal Opportunity Commission Act 1986*

#### **1 Subsection 3(1) (before paragraph (a) of the definition of *unlawful discrimination*)**

Insert:

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

#### **2 Subsection 3(1) (before paragraph (d) of the definition of *unlawful discrimination*)**

Insert:

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

#### **3 Paragraph 11(1)(a)**

After “by”, insert “the *Age Discrimination Act 2004*,”.

#### **4 Subsection 11(3)**

Omit “or the *Disability Discrimination Act 1992*”, substitute “, the *Disability Discrimination Act 1992*, or the *Age Discrimination Act 2004*”.

#### **5 Subsection 14(8)**

Omit “or the *Disability Discrimination Act 1992*”, substitute “, the *Disability Discrimination Act 1992*, or the *Age Discrimination Act 2004*”.

#### **6 Subsection 16(2A)**

Omit “and the *Disability Discrimination Act 1992*”, substitute “, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004*”.

#### **7 Subsection 19(6)**

Omit “or the *Disability Discrimination Act 1992*”, substitute “, the *Disability Discrimination Act 1992*, or the *Age Discrimination Act 2004*”.



Note: If item 32 of Schedule 1 to the *Australian Human Rights Commission Legislation Act 2004* commences before the time the *Age Discrimination Act 2004* commences, this item does not commence at all. See subsection 2(3).

**8 Subsection 46PF(3) (note)**

After “See”, insert “sections 56 and 57 of the *Age Discrimination Act 2004*, ”.

***Inspector-General of Intelligence and Security Act 1986***

**9 Subparagraph 8(1)(a)(v)**

After “under”, insert “the *Age Discrimination Act 2004*, ”.

**10 Subparagraph 8(2)(a)(iv)**

After “under”, insert “the *Age Discrimination Act 2004*, ”.

**11 Subparagraph 8(3)(b)(i)**

After “under”, insert “the *Age Discrimination Act 2004*, ”.

***Sea Installations Act 1987***

**12 Schedule**

Insert in its appropriate alphabetical position, determined on a letter-by-letter basis:

*Age Discrimination Act 2004*

***Workplace Relations Act 1996***

**13 Section 93**

Omit “and the *Disability Discrimination Act 1992*”, substitute “, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004*”.

Note: The heading to section 93 is altered by omitting “**and Disability Discrimination Act**” and substituting “, **Disability Discrimination Act and Age Discrimination Act**”.

## Schedule 2—Amendments relating to the Australian Human Rights Commission Legislation Act 2004

### *Age Discrimination Act 2004*

#### 1 Section 4

Omit:

- Complaints can be made to the Commission about unlawful discrimination (see the definition of ***unlawful discrimination*** in subsection 3(1) of the *Human Rights and Equal Opportunity Commission Act 1986*, and section 46P of that Act).

substitute:

- Complaints can be made to the Commission about unlawful discrimination (see the definition of ***unlawful discrimination*** in subsection 3(1) of the *Australian Human Rights Commission Act 1986*, and section 46P of that Act).

#### 2 Subsection 5(1) (definition of **Commission**)

Repeal the definition, substitute:

**Commission** means the Australian Human Rights Commission established by the *Australian Human Rights Commission Act 1986*.

#### 3 Subsection 10(7)

Omit “*Human Rights and Equal Opportunity*” (wherever occurring), substitute “*Australian Human Rights*”.

#### 4 Subsection 12(4)

Omit “*Human Rights and Equal Opportunity*” (wherever occurring), substitute “*Australian Human Rights*”.

#### 5 Subsection 50(1) (note)

Omit “*Human Rights and Equal Opportunity*”, substitute “*Australian Human Rights*”.

**6 Paragraph 51(1)(e)**

Omit “*Human Rights and Equal Opportunity*” (wherever occurring), substitute “*Australian Human Rights*”.

**7 Subsection 51(1) (note)**

Omit “*Human Rights and Equal Opportunity*”, substitute “*Australian Human Rights*”.

**8 Subsection 51(2) (note)**

Omit “*Human Rights and Equal Opportunity*”, substitute “*Australian Human Rights*”.

**9 Part 6 (heading)**

Repeal the heading, substitute:

**Part 6—Functions of Australian Human Rights  
Commission**

**10 Before paragraph 53(1)(a)**

Insert:

- (aa) to promote an understanding and acceptance of, and compliance with, this Act;
- (ab) to disseminate information on discrimination on the ground of age and on the responsibility of persons and organisations to avoid such discrimination;
- (ac) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting the objects of this Act;
- (ad) to prepare, and to publish in the manner the Commission considers appropriate, guidelines for avoiding discrimination on the ground of age;

**11 Paragraphs 53(1)(b), (c) and (f)**

Repeal the paragraphs.

**12 Paragraph 53(1)(g)**

After “age”, insert “, subject to subsections (1A) and (1B)”.

### **13 Subsection 53(1) (note)**

Omit “*Human Rights and Equal Opportunity*”, substitute “*Australian Human Rights*”.

### **14 After subsection 53(1)**

Insert:

(1A) Except in a case to which subsection (1B) applies, the Commission may only intervene in proceedings as mentioned in paragraph (1)(g) if the Attorney-General approves the intervention. In deciding whether to approve the intervention, the Attorney-General may (but need not) have regard to the following matters:

- (a) whether the Commonwealth, or a person on behalf of the Commonwealth, has already intervened in the proceedings;
- (b) whether, in the Attorney-General’s opinion, the proceedings may affect to a significant extent the human rights of, or involve significant issues of discrimination against, persons who are not parties to them;
- (c) whether, in the Attorney-General’s opinion, the proceedings have significant implications for the administration of any of the following Acts:
  - (i) this Act;
  - (ii) the *Australian Human Rights Commission Act 1986*;
  - (iii) the *Disability Discrimination Act 1992*;
  - (iv) the *Racial Discrimination Act 1975*;
  - (v) the *Sex Discrimination Act 1984*;
- (d) whether, in the Attorney-General’s opinion, there are special circumstances such that it would be in the public interest for the Commission to intervene.

This subsection does not, by implication, limit the matters to which the Attorney-General may have regard.

(1B) If the President is:

- (a) a Justice of the High Court, or was such a Justice immediately before becoming President; or
- (b) a Judge of a court created by the Parliament, or was such a Judge immediately before becoming President;

then, before the Commission seeks leave to intervene in proceedings as mentioned in paragraph (1)(g), the Commission must give the Attorney-General written notice of the Commission's intention to seek leave to intervene, together with a statement of why the Commission considers it appropriate to intervene. The notice must be given at a time when there is still a reasonable period before the Commission seeks leave to intervene.

**15 Subsection 53(2) (definition of *enactment*)**

Omit "*Human Rights and Equal Opportunity*", substitute "*Australian Human Rights*".

**16 Subsection 53(2) (definition of *proposed enactment*)**

Omit "*Human Rights and Equal Opportunity*", substitute "*Australian Human Rights*".

**17 Sections 55 and 58**

Repeal the sections.

**18 Pre-commencement delegations remain in effect**

- (1) Although this Schedule repeals section 55 of the *Age Discrimination Act 2004*, a delegation under that section that was in force immediately before the repeal continues in force after the repeal as if the repeal had not happened.
- (2) However, subitem (1) does not apply to a delegation to:
  - (a) the Human Rights Commissioner; or
  - (b) the Race Discrimination Commissioner; or
  - (c) the Aboriginal and Torres Strait Islander Social Justice Commissioner; or
  - (d) the Sex Discrimination Commissioner; or
  - (e) the Disability Discrimination Commissioner.
- (3) In subitem (2), ***Human Rights Commissioner*** has the same meaning as in the *Human Rights and Equal Opportunity Commission Act 1986* as in force immediately before the commencement of Schedule 1 to the *Australian Human Rights Commission Legislation Act 2004*.

**19 Repealed civil liability provisions continue to apply in relation to pre-commencement acts etc.**

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Although this Schedule repeals section 58 of the *Age Discrimination Act 2004*, that section continues to apply, in relation to acts or omissions that happened before the repeal, as if the repeal had not happened.

**20 Section 60**

Repeal the section.

**21 Repealed non-disclosure provisions continue to apply in relation to certain pre-commencement matters**

Although this Schedule repeals section 60 of the *Age Discrimination Act 2004*, that section continues to apply, in relation to information a person acquired before the repeal, or documents a person had before the repeal, as if the repeal had not happened.

***Australian Human Rights Commission Act 1986***

**22 Paragraph 11(1)(a)**

Omit “by the *Disability Discrimination Act 1992*, the *Age Discrimination Act 2004*”, substitute “by the *Age Discrimination Act 2004*, the *Disability Discrimination Act 1992*”.

Note: If the *Age Discrimination Act 2004* does not commence before the commencement of item 21 of Schedule 1 to the *Australian Human Rights Commission Legislation Act 2004*, this item does not commence at all. See subsection 2(4).

**23 Paragraph 11(5)(c)**

Repeal the paragraph, substitute:

- (c) whether, in the Attorney-General’s opinion, the proceedings have significant implications for the administration of any of the following Acts:
  - (i) this Act;
  - (ii) the *Age Discrimination Act 2004*;
  - (iii) the *Disability Discrimination Act 1992*;
  - (iv) the *Racial Discrimination Act 1975*;
  - (v) the *Sex Discrimination Act 1984*;

**24 Paragraph 31(2)(c)**

Repeal the paragraph, substitute:

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(c) whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of any of the following Acts:

- (i) this Act;
- (ii) the *Age Discrimination Act 2004*;
- (iii) the *Disability Discrimination Act 1992*;
- (iv) the *Racial Discrimination Act 1975*;
- (v) the *Sex Discrimination Act 1984*;

**25 After subparagraph 46PV(1)(b)(i)**

Insert:

- (ia) the *Age Discrimination Act 2004*;

***Disability Discrimination Act 1992***

**26 Paragraph 67(3)(c)**

Repeal the paragraph, substitute:

(c) whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of any of the following Acts:

- (i) this Act;
- (ii) the *Age Discrimination Act 2004*;
- (iii) the *Australian Human Rights Commission Act 1986*;
- (iv) the *Racial Discrimination Act 1975*;
- (v) the *Sex Discrimination Act 1984*;

***Racial Discrimination Act 1975***

**27 Paragraph 20(2)(c)**

Repeal the paragraph, substitute:

(c) whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of any of the following Acts:

- (i) this Act;
- (ii) the *Age Discrimination Act 2004*;
- (iii) the *Australian Human Rights Commission Act 1986*;
- (iv) the *Disability Discrimination Act 1992*;

(v) the *Sex Discrimination Act 1984*;

### ***Sex Discrimination Act 1984***

#### **28 Paragraph 48(3)(c)**

Repeal the paragraph, substitute:

- (c) whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of any of the following Acts:
  - (i) this Act;
  - (ii) the *Age Discrimination Act 2004*;
  - (iii) the *Australian Human Rights Commission Act 1986*;
  - (iv) the *Disability Discrimination Act 1992*;
  - (v) the *Racial Discrimination Act 1975*;

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[*Minister's second reading speech made in—  
House of Representatives on 26 June 2003  
Senate on 1 December 2003*]

(109/03)

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