



Disability Discrimination Act 1992

No. 135, 1992

Compilation No. 36

Compilation date:	13 December 2022
Includes amendments up to:	Act No. 85, 2022
Registered:	20 December 2022

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Disability Discrimination Act 1992* that shows the text of the law as amended and in force on 13 December 2022 (the **compilation date**).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	1
3 Objects	1
4 Interpretation	2
5 Direct disability discrimination	9
6 Indirect disability discrimination	10
7 Discrimination in relation to associates	11
8 Discrimination in relation to carers, assistants, assistance animals and disability aids	11
9 Carer, assistant, assistance animal and disability aid definitions	12
10 Act done because of disability and for other reason	14
11 Unjustifiable hardship	14
12 Application of Act	15
12A Application of the <i>Criminal Code</i>	17
13 Operation of State and Territory laws	17
14 Extent to which Act binds the Crown	18
Part 2—Prohibition of disability discrimination etc.	19
Division 1—Discrimination in work	19
15 Discrimination in employment	19
16 Discrimination against commission agents	19
17 Discrimination against contract workers	20
18 Partnerships	21
19 Qualifying bodies	21
20 Registered organisations under the <i>Fair Work (Registered Organisations) Act 2009</i>	22
21 Employment agencies	22
21A Exception—inherent requirements	23
21B Exception—unjustifiable hardship	24
Division 2—Discrimination in other areas	25
22 Education	25
23 Access to premises	25
24 Goods, services and facilities	26
25 Accommodation	27
26 Land	28

27	Clubs and incorporated associations	28
28	Sport	29
29	Administration of Commonwealth laws and programs	30
29A	Unjustifiable hardship	30
30	Requests for information	30
Division 2A—Disability standards		32
31	Disability standards	32
32	Unlawful to contravene disability standards	32
33	Division 5 generally not to apply to disability standards	33
34	This Part not to apply if person acts in accordance with disability standards	33
Division 3—Discrimination involving harassment		34
35	Harassment in employment	34
37	Harassment in education	35
39	Harassment in relation to the provision of goods and services	35
Division 4—Offences		36
41	Unlawful act not offence unless expressly so provided	36
42	Victimisation	36
43	Offence to incite doing of unlawful acts or offences	37
44	Advertisements	37
Division 5—Exemptions		38
45	Special measures	38
46	Superannuation and insurance	39
47	Acts done under statutory authority	40
48	Infectious diseases	41
49	Charities	42
51	Pensions and allowances	42
52	Migration	43
53	Combat duties and peacekeeping services	43
54	Peacekeeping services by the AFP	44
54A	Assistance animals	44
55	Commission may grant exemptions	45
56	Review by Administrative Appeals Tribunal	46
57	Notice of decisions to be published	47
58	Effect of exemptions	47
Division 6—Victimisation		48
58A	Victimisation	48

Part 3—Action plans	50
59 Scope	50
60 Action plans.....	50
61 Provisions of action plans.....	50
62 Action plans may have other provisions.....	51
63 Amendment of action plans.....	51
64 Action plans may be given to Commission	51
Part 4—Functions of the Australian Human Rights Commission	52
Division 1—Preliminary	52
67 Functions of the Commission	52
Part 5—Other offences	54
107 Failure to provide actuarial data or statistical data.....	54
Part 6—Disability Discrimination Commissioner	55
113 Disability Discrimination Commissioner	55
114 Terms and conditions of appointment	55
115 Remuneration of Commissioner	56
116 Leave of absence	56
117 Outside employment.....	56
118 Resignation.....	56
119 Termination of appointment	57
120 Acting Commissioner	57
Part 7—Miscellaneous	58
121 Delegation	58
122 Liability of persons involved in unlawful acts.....	58
123 Conduct by directors, employees and agents.....	58
124 Commonwealth taken to be employer	60
125 Unlawful act not basis of civil action unless expressly so provided.....	60
126 Protection from civil actions.....	60
127 Non-disclosure of private information.....	61
128 Information stored otherwise than in written form	63
129 Commissioner to give information	63
131 Courts to ensure just terms	64
132 Regulations.....	64

Endnotes	65
Endnote 1—About the endnotes	65
Endnote 2—Abbreviation key	67
Endnote 3—Legislation history	68
Endnote 4—Amendment history	74

An Act relating to discrimination on the ground of disability

Part 1—Preliminary

1 Short title

This Act may be cited as the *Disability Discrimination Act 1992*.

2 Commencement

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (3) If a provision of this Act does not commence under subsection (2) within the period of 12 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Objects

The objects of this Act are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
 - (i) work, accommodation, education, access to premises, clubs and sport; and
 - (ii) the provision of goods, facilities, services and land; and
 - (iii) existing laws; and
 - (iv) the administration of Commonwealth laws and programs; and
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and

Section 4

- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

4 Interpretation

- (1) In this Act, unless the contrary intention appears:

accommodation includes residential or business accommodation.

administrative office means:

- (a) an office established by, or an appointment made under, a law of the Commonwealth; and
- (b) an office established by, or an appointment made under, a law of a Territory; and
- (c) an appointment made by the Governor-General or a Minister otherwise than under a law of the Commonwealth or of a Territory; and
- (d) an appointment as a director of an incorporated company that is a public authority of the Commonwealth;

but does not include:

- (e) an office of member of the Assembly, member of the Executive, or Minister within the meaning of the *Australian Capital Territory (Self-Government) Act 1988*; or
- (f) an office of member of the Legislative Assembly, member of the Council or Minister of the Territory, within the meaning of the *Northern Territory (Self-Government) Act 1978*; or
- (h) an office or appointment in the Australian Public Service; or
- (i) an office of a person employed or engaged under the *Members of Parliament (Staff) Act 1984*.

Note: A person who holds an office mentioned in paragraph (h) or (i) is covered by the definition of **Commonwealth employee**.

assistance animal has the meaning given by subsection 9(2).

associate, in relation to a person, includes:

- (a) a spouse of the person; and

- (b) another person who is living with the person on a genuine domestic basis; and
- (c) a relative of the person; and
- (d) a carer of the person; and
- (e) another person who is in a business, sporting or recreational relationship with the person.

carer or assistant has the meaning given by subsection 9(1).

club means an association (whether incorporated or unincorporated) of persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that provides and maintains its facilities, in whole or in part, from the funds of the association.

Commission means the Australian Human Rights Commission.

commission agent means a person who does work for another person as the agent of that other person and who is remunerated, whether in whole or in part, by commission.

Commissioner means the Disability Discrimination Commissioner appointed under section 113.

committee of management, in relation to a club or a registered organisation, means the group or body of persons (however described) that manages the affairs of that club or organisation, as the case may be.

Commonwealth agency means an agency within the meaning of the *Privacy Act 1988*.

Commonwealth employee means a person who:

- (a) is appointed or engaged under the *Public Service Act 1999*;
- (b) holds an administrative office; or
- (c) is employed by a public authority of the Commonwealth; or
- (d) holds an office or appointment in the Commonwealth Teaching Service or is employed as a temporary employee under the *Commonwealth Teaching Service Act 1972*; or

Section 4

- (e) is employed under the *Australian Security Intelligence Organisation Act 1979* or the *Commonwealth Electoral Act 1918*; or
- (f) is a member of the Defence Force; or
- (g) is the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*); or
- (h) is a person employed or engaged under the *Members of Parliament (Staff) Act 1984*.

Note: See also section 124 (Commonwealth taken to be employer of Commonwealth employees).

Commonwealth law means:

- (a) an Act, or a regulation, rule, by-law or determination made under an Act; or
- (b) an ordinance of a Territory, or a regulation, rule, by-law or determination made under an ordinance of a Territory; or
- (c) an order or award made under a law referred to in paragraph (a) or (b).

Commonwealth program means a program conducted by or on behalf of the Commonwealth Government.

contract worker means a person who does work for another person under a contract between the employer of the first-mentioned person and that other person.

Convention means the Discrimination (Employment and Occupation) Convention, 1958 adopted by the General Conference of the International Labour Organization on 25 June 1958, a copy of the English text of which is set out in Schedule 1 of the *Australian Human Rights Commission Act 1986*.

Covenant on Civil and Political Rights means the International Covenant on Civil and Political Rights, a copy of the English text

of which is set out in Schedule 2 of the *Australian Human Rights Commission Act 1986*.

Department means an Agency within the meaning of the *Public Service Act 1999*.

Disabilities Convention means the Convention on the Rights of Persons with Disabilities, done at New York on 30 March 2007, as in force for Australia.

Note: The text of the Convention is set out in Australian Treaty Series 2008 No. 12 ([2008] ATS 12). In 2008, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

disability, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future (including because of a genetic predisposition to that disability); or
- (k) is imputed to a person.

Section 4

To avoid doubt, a **disability** that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

disability aid has the meaning given by subsection 9(3).

disability standards has the meaning given by subsection 31(1).

discriminate has the meaning given by sections 5 and 6.

Note: Section 7 (associates) and section 8 (carers, assistants, assistance animals and disability aids) extend the concept of discrimination.

educational authority means a body or person administering an educational institution.

educational institution means a school, college, university or other institution at which education or training is provided.

education provider means:

- (a) an educational authority; or
- (b) an educational institution; or
- (c) an organisation whose purpose is to develop or accredit curricula or training courses used by other education providers referred to in paragraph (a) or (b).

employment includes:

- (a) part-time and temporary employment; and
- (b) work under a contract for services; and
- (c) work as a Commonwealth employee; and
- (d) work as an employee of a State or an instrumentality of a State.

employment agency means any person who, or body that, whether for payment or not, assists persons to find employment or other work or assists employers to find employees or workers, and includes the Commonwealth Employment Service.

enactment has the same meaning as in the *Australian Human Rights Commission Act 1986*.

exemption means an exemption granted under section 55.

Federal Court means the Federal Court of Australia.

function includes duty.

instrumentality of a State means a body or authority established for a public purpose by a law of a State and includes a local government body.

premises includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

President means President of the Commission.

principal means:

- (a) in relation to a commission agent—a person for whom the commission agent does work as a commission agent; and
- (b) in relation to a contract worker—a person for whom the contract worker does work under a contract between the employer of the contract worker and the person.

principal executive, in relation to a Commonwealth agency, has the same meaning as in Part V of the *Privacy Act 1988*.

proposed enactment has the same meaning as in the *Australian Human Rights Commission Act 1986*.

public authority of the Commonwealth means:

- (a) a body incorporated, whether before or after the commencement of this Act, for a public purpose by a law of the Commonwealth or a law of a Territory, being a body corporate employing staff on its own behalf; or
- (b) an authority or body, not being a body corporate, established, whether before or after the commencement of this Act, for a public purpose by, or in accordance with the provisions of, a

Section 4

- law of the Commonwealth or a law of a Territory, being an authority or body employing staff on its own behalf; or
- (c) an incorporated company over which the Commonwealth, or a body or authority referred to in paragraph (a) or (b), is in a position to exercise control.

reasonable adjustment: an adjustment to be made by a person is a **reasonable adjustment** unless making the adjustment would impose an unjustifiable hardship on the person.

registered charity means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.

registered organisation means an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*.

relative, in relation to a person, means a person who is related to the first-mentioned person by blood, marriage, affinity or adoption.

services includes:

- (a) services relating to banking, insurance, superannuation and the provision of grants, loans, credit or finance; or
- (b) services relating to entertainment, recreation or refreshment; or
- (c) services relating to transport or travel; or
- (d) services relating to telecommunications; or
- (e) services of the kind provided by the members of any profession or trade; or
- (f) services of the kind provided by a government, a government authority or a local government body.

State, except in subsections 12(11) and (12), includes the Australian Capital Territory and the Northern Territory.

Territory, except in subsection 12(12) or in paragraph (c) of the definition of **administrative office** in this subsection, does not include the Australian Capital Territory and the Northern Territory.

unjustifiable hardship has a meaning affected by section 11.

voluntary body means an association or other body (whether incorporated or unincorporated) the activities of which are not engaged in for the purpose of making a profit, but does not include:

- (a) a club; or
 - (b) a body established by a law of the Commonwealth, a State or a Territory; or
 - (c) an association that provides grants, loans, credit or finance to its members.
- (2) For the purposes of this Act, refusing or failing to do an act is taken to be the doing of an act and a reference to an act includes a reference to a refusal or failure to do an act.

5 Direct disability discrimination

- (1) For the purposes of this Act, a person (the **discriminator**) **discriminates** against another person (the **aggrieved person**) on the ground of a disability of the aggrieved person if, because of the disability, the discriminator treats, or proposes to treat, the aggrieved person less favourably than the discriminator would treat a person without the disability in circumstances that are not materially different.
- (2) For the purposes of this Act, a person (the **discriminator**) also **discriminates** against another person (the **aggrieved person**) on the ground of a disability of the aggrieved person if:
 - (a) the discriminator does not make, or proposes not to make, reasonable adjustments for the person; and
 - (b) the failure to make the reasonable adjustments has, or would have, the effect that the aggrieved person is, because of the disability, treated less favourably than a person without the

Section 6

disability would be treated in circumstances that are not materially different.

- (3) For the purposes of this section, circumstances are not *materially different* because of the fact that, because of the disability, the aggrieved person requires adjustments.

6 Indirect disability discrimination

- (1) For the purposes of this Act, a person (the *discriminator*) *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:
- (a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
 - (b) because of the disability, the aggrieved person does not or would not comply, or is not able or would not be able to comply, with the requirement or condition; and
 - (c) the requirement or condition has, or is likely to have, the effect of disadvantaging persons with the disability.
- (2) For the purposes of this Act, a person (the *discriminator*) also *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:
- (a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
 - (b) because of the disability, the aggrieved person would comply, or would be able to comply, with the requirement or condition only if the discriminator made reasonable adjustments for the person, but the discriminator does not do so or proposes not to do so; and
 - (c) the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.
- (3) Subsection (1) or (2) does not apply if the requirement or condition is reasonable, having regard to the circumstances of the case.

- (4) For the purposes of subsection (3), the burden of proving that the requirement or condition is reasonable, having regard to the circumstances of the case, lies on the person who requires, or proposes to require, the person with the disability to comply with the requirement or condition.

7 Discrimination in relation to associates

- (1) This Act applies in relation to a person who has an associate with a disability in the same way as it applies in relation to a person with the disability.

Example: It is unlawful, under section 15, for an employer to discriminate against an employee on the ground of a disability of any of the employee's associates.

- (2) For the purposes of subsection (1), but without limiting that subsection, this Act has effect in relation to a person who has an associate with a disability as if:
- (a) each reference to something being done or needed because of a disability were a reference to the thing being done or needed because of the fact that the person has an associate with the disability; and
 - (b) each other reference to a disability were a reference to the disability of the associate.
- (3) This section does not apply to section 53 or 54 (combat duties and peacekeeping services) or subsection 54A(2) or (3) (assistance animals).

Note: The combined effect of sections 7 and 8 is that this Act applies in relation to a person who has an associate who has a carer, assistant, assistance animal or disability aid in the same way as it applies in relation to a person with a disability.

8 Discrimination in relation to carers, assistants, assistance animals and disability aids

- (1) This Act applies in relation to having a carer, assistant, assistance animal or disability aid in the same way as it applies in relation to having a disability.
-

Section 9

Example: For the purposes of section 5 (direct discrimination), circumstances are not materially different because of the fact that a person with a disability requires adjustments for the person's carer, assistant, assistance animal or disability aid (see subsection 5(3)).

- (2) For the purposes of subsection (1), but without limiting that subsection, this Act has effect in relation to a person with a disability who has a carer, assistant, assistance animal or disability aid as if:
 - (a) each reference to something being done or needed because of a disability were a reference to the thing being done or needed because of the fact that the person has the carer, assistant, animal or aid; and
 - (b) each other reference to a disability were a reference to the carer, assistant, animal or aid.
- (3) This section does not apply to section 48 (infectious diseases) or section 54A (exemptions in relation to assistance animals).

Note: The combined effect of sections 7 and 8 is that this Act applies in relation to a person who has an associate who has a carer, assistant, assistance animal or disability aid in the same way as it applies in relation to a person with a disability.

9 Carer, assistant, assistance animal and disability aid definitions

Meanings of carer or assistant, assistance animal and disability aid

- (1) For the purposes of this Act, a ***carer or assistant***, in relation to a person with a disability, is one of the following who provides assistance or services to the person because of the disability:
 - (a) a carer;
 - (b) an assistant;
 - (c) an interpreter;
 - (d) a reader.
- (2) For the purposes of this Act, an ***assistance animal*** is a dog or other animal:

- (a) accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a persons with a disability to alleviate the effect of the disability; or
- (b) accredited by an animal training organisation prescribed by the regulations for the purposes of this paragraph; or
- (c) trained:
 - (i) to assist a person with a disability to alleviate the effect of the disability; and
 - (ii) to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.

Note: For exemptions from Part 2 for discrimination in relation to assistance animals, see section 54A.

- (3) For the purposes of this Act, a **disability aid**, in relation to a person with a disability, is equipment (including a palliative or therapeutic device) that:
 - (a) is used by the person; and
 - (b) provides assistance to alleviate the effect of the disability.

Having a carer, assistant, assistance animal or disability aid

- (4) The following table has effect:

Having a carer, assistant, assistance animal or disability aid		
Item	For the purposes of this Act, a person with a disability has ...	if the person ...
1	a carer or assistant	(a) is presently accompanied by the carer or assistant; or (b) was previously accompanied by the carer or assistant; or (c) may be accompanied by the carer or assistant in the future; or (d) is imputed to be accompanied by the carer or assistant.
2	an assistance animal or	(a) is presently accompanied by, or possesses,

Section 10

Having a carer, assistant, assistance animal or disability aid

Item	For the purposes of this Act, a person with a disability has ...	if the person ...
	disability aid	the animal or aid; or (b) was previously accompanied by, or possessed, the animal or aid; or (c) may be accompanied by, or possess, the animal or aid in the future; or (d) is imputed to be accompanied by, or to possess, the animal or aid.

10 Act done because of disability and for other reason

If:

- (a) an act is done for 2 or more reasons; and
- (b) one of the reasons is the disability of a person (whether or not it is the dominant or a substantial reason for doing the act);

then, for the purposes of this Act, the act is taken to be done for that reason.

11 Unjustifiable hardship

- (1) For the purposes of this Act, in determining whether a hardship that would be imposed on a person (the *first person*) would be an *unjustifiable hardship*, all relevant circumstances of the particular case must be taken into account, including the following:
 - (a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
 - (b) the effect of the disability of any person concerned;
 - (c) the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;
 - (d) the availability of financial and other assistance to the first person;
 - (e) any relevant action plans given to the Commission under section 64.

Example: One of the circumstances covered by paragraph (1)(a) is the nature of the benefit or detriment likely to accrue to, or to be suffered by, the community.

- (2) For the purposes of this Act, the burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.

12 Application of Act

- (1) In this section:

Australia includes the external Territories.

limited application provisions means the provisions of Divisions 1, 2, 2A and 3 of Part 2 other than sections 20, 29 and 30.

- (2) Subject to this section, this Act applies throughout Australia.
- (3) This Act has effect in relation to acts done within a Territory.
- (4) The limited application provisions have effect as provided in subsection (3) of this section and the following provisions of this section and not otherwise.
- (5) Sections 15, 16 and 17 have effect in relation to discrimination against:
- (a) Commonwealth employees in connection with their employment as Commonwealth employees; and
 - (b) persons seeking to become Commonwealth employees.
- (6) Section 19 has effect in relation to discrimination by an authority or body in the exercise of a power under a Commonwealth law to confer, renew, extend, revoke or withdraw an authorisation or qualification.
- (7) The limited application provisions have effect in relation to acts done by, or on behalf of:
- (a) the Commonwealth or the Administration of a Territory; or
 - (b) a body or authority established for a public purpose by a law of the Commonwealth or a law of a Territory;

Section 12

in the exercise of a power conferred by a law of the Commonwealth or a law of a Territory.

- (8) The limited application provisions have effect in relation to discrimination against a person with a disability to the extent that the provisions:
- (a) give effect to the Convention; or
 - (b) give effect to the Covenant on Civil and Political Rights; or
 - (ba) give effect to the Disabilities Convention; or
 - (c) give effect to the International Covenant on Economic, Social and Cultural Rights; or
 - (d) relate to matters external to Australia; or
 - (e) relate to matters of international concern.
- (9) The limited application provisions have effect in relation to discrimination by a foreign corporation, or a trading or financial corporation formed within the limits of the Commonwealth, or by a person in the course of the person's duties or purported duties as an officer or employee of such a corporation.
- (10) Without limiting the effect of subsection (9), the limited application provisions have effect in relation to discrimination by a trading or financial corporation formed within the limits of the Commonwealth, or by a person in the course of the person's duties or purported duties as an officer or employee of such a corporation, to the extent that the discrimination takes place in the course of the trading activities of the trading corporation or the financial activities of the financial corporation, as the case may be.
- (11) The limited application provisions have effect in relation to discrimination in the course of, or in relation to, the carrying on of the business of:
- (a) banking, other than State banking not extending beyond the limits of the State concerned; or
 - (b) insurance, other than State insurance not extending beyond the limits of the State concerned.

- (12) The limited application provisions have effect in relation to discrimination in the course of, or in relation to, trade or commerce:
- (a) between Australia and a place outside Australia; or
 - (b) among the States; or
 - (c) between a State and a Territory; or
 - (d) between 2 Territories.
- (13) The limited application provisions have effect in relation to discrimination within Australia involving persons or things, or matters arising outside Australia.
- (14) The provisions of Division 3 of Part 2 have effect in relation to acts done within Australia involving persons or things, or matters arising outside Australia.

12A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

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

13 Operation of State and Territory laws

- (1) A reference in this section to this Act is a reference to this Act as it has effect because of a provision of section 12.
 - (2) A reference in this section to a law of a State or Territory is a reference to a law of a State or Territory that deals with discrimination on the grounds of disability.
 - (3) This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.
- (3A) Subsection (3) does not apply in relation to Division 2A of Part 2 (Disability standards).

Section 14

- (4) If:
- (a) a law of a State or Territory relating to discrimination deals with a matter dealt with by this Act (including a matter dealt with by a disability standard); and
 - (b) a person has made a complaint or initiated a proceeding under that law in respect of an act or omission in respect of which the person would, apart from this subsection, have been entitled to make a complaint under the *Australian Human Rights Commission Act 1986* alleging that the act or omission is unlawful under a provision of Part 2 of this Act;
- the person is not entitled to make a complaint or institute a proceeding under the *Australian Human Rights Commission Act 1986* alleging that the act or omission is unlawful under a provision of Part 2 of this Act.
- (5) If:
- (a) a law of a State or Territory deals with a matter dealt with by this Act (including a matter dealt with by a disability standard); and
 - (b) an act or omission by a person that constitutes an offence against that law also constitutes an offence against this Act;
- the person may be prosecuted and convicted either under that law of the State or Territory or under this Act, but nothing in this subsection renders a person liable to be punished more than once in respect of the same act or omission.

14 Extent to which Act binds the Crown

- (1) This Act binds the Crown in right of the Commonwealth and of each of the States.
- (2) This Act does not render the Crown in right of the Commonwealth or of a State liable to be prosecuted for an offence.

Part 2—Prohibition of disability discrimination etc.

Division 1—Discrimination in work

15 Discrimination in employment

- (1) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against a person on the ground of the other person's disability:
 - (a) in the arrangements made for the purpose of determining who should be offered employment; or
 - (b) in determining who should be offered employment; or
 - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against an employee on the ground of the employee's disability:
 - (a) in the terms or conditions of employment that the employer affords the employee; or
 - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
 - (c) by dismissing the employee; or
 - (d) by subjecting the employee to any other detriment.
- (3) Neither paragraph (1)(a) nor (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's disability, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

16 Discrimination against commission agents

- (1) It is unlawful for a principal to discriminate against a person on the ground of the person's disability:

Part 2 Prohibition of disability discrimination etc.

Division 1 Discrimination in work

Section 17

- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent; or
 - (b) in determining who should be engaged as a commission agent; or
 - (c) in the terms or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's disability:
- (a) in the terms or conditions that the principal affords the commission agent as a commission agent; or
 - (b) by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with the position as a commission agent; or
 - (c) by terminating the engagement; or
 - (d) by subjecting the commission agent to any other detriment.

17 Discrimination against contract workers

It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's disability:

- (a) in the terms or conditions on which the principal allows the contract worker to work; or
- (b) by not allowing the contract worker to work or continue to work; or
- (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
- (d) by subjecting the contract worker to any other detriment.

18 Partnerships

- (1) It is unlawful for 3 or more persons who are proposing to form themselves into a partnership to discriminate against another person on the ground of the other person's disability:
 - (a) in determining who should be invited to become a partner in the partnership; or
 - (b) in the terms or conditions on which the other person is invited to become a partner in the partnership.
- (2) It is unlawful for any one or more of the partners in a partnership consisting of 3 or more partners to discriminate against another person on the ground of the other person's disability:
 - (a) in determining who should be invited to become a partner in the partnership; or
 - (b) in the terms or conditions on which the other person is invited to become a partner in the partnership.
- (3) It is unlawful for any one or more of the partners in a partnership consisting of 3 or more partners to discriminate against another partner in the partnership on the ground of the other partner's disability:
 - (a) by denying the other partner access, or limiting the other partner's access, to any benefit arising from being a partner in the partnership; or
 - (b) by expelling the other partner from the partnership; or
 - (c) by subjecting the partner to any other detriment.

19 Qualifying bodies

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of the person's disability:

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification; or

Section 20

- (b) in the terms or conditions on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by revoking or withdrawing the authorisation or qualification or varying the terms or the conditions upon which it is held.

20 Registered organisations under the *Fair Work (Registered Organisations) Act 2009*

- (1) It is unlawful for a registered organisation, the committee of management of a registered organisation or a member of the committee of management of a registered organisation to discriminate against a person, on the ground of the person's disability:
 - (a) by refusing or failing to accept the person's application for membership; or
 - (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.
- (2) It is unlawful for a registered organisation, the committee of management of a registered organisation or a member of the committee of management of a registered organisation to discriminate against a person who is a member of the registered organisation, on the ground of the member's disability:
 - (a) by denying the member access or limiting the member's access, to any benefit provided by the organisation; or
 - (b) by depriving the member of membership or varying the terms of membership; or
 - (c) by subjecting the member to any other detriment.

21 Employment agencies

- (1) It is unlawful for an employment agency to discriminate against a person on the ground of the person's disability:
 - (a) by refusing to provide the person with any of its services; or
 - (b) in the terms or conditions on which it offers to provide the person with any of its services; or

- (c) in the manner in which it provides the person with any of its services.
- (2) This Part does not require an employment agency to ensure that an employer complies with this Act.
- (3) Subsection (2) does not affect the operation of section 122 (which applies if an employment agency causes, instructs, induces, aids or permits an employer to do an unlawful act).

21A Exception—inherent requirements

Inherent requirements

- (1) This Division does not render it unlawful for a person (the ***discriminator***) to discriminate against another person (the ***aggrieved person***) on the ground of a disability of the aggrieved person if:
 - (a) the discrimination relates to particular work (including promotion or transfer to particular work); and
 - (b) because of the disability, the aggrieved person would be unable to carry out the inherent requirements of the particular work, even if the relevant employer, principal or partnership made reasonable adjustments for the aggrieved person.
- (2) For the purposes of paragraph (1)(b), the following factors are to be taken into account in determining whether the aggrieved person would be able to carry out the inherent requirements of the particular work:
 - (a) the aggrieved person's past training, qualifications and experience relevant to the particular work;
 - (b) if the aggrieved person already works for the discriminator—the aggrieved person's performance in working for the discriminator;
 - (c) any other factor that it is reasonable to take into account.
- (3) For the purposes of this section, the aggrieved person ***works*** for another person if:

Part 2 Prohibition of disability discrimination etc.

Division 1 Discrimination in work

Section 21B

- (a) the other person employs the aggrieved person; or
- (b) the other person engages the aggrieved person as a commission agent; or
- (c) the aggrieved person works for the other person as a contract worker; or
- (d) the other person and the aggrieved person are members of a partnership; or
- (e) both of the following apply:
 - (i) the other person is an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation;
 - (ii) the aggrieved person is a member of that profession, carrying on that trade or engaged in that occupation.

Opportunities for promotion, transfer and training and registered organisations

- (4) This section does not apply in relation to:
 - (a) discrimination referred to in paragraph 15(2)(b) or (d), 16(2)(b) or (d), 17(c) or (d) or 18(3)(c), other than discrimination in determining who should be offered promotion or transfer; or
 - (b) discrimination referred to in section 20 (registered organisations under the *Fair Work (Registered Organisations) Act 2009*).

21B Exception—unjustifiable hardship

This Division does not render it unlawful for a person (the ***discriminator***) to discriminate against another person on the ground of a disability of the other person if avoiding the discrimination would impose an unjustifiable hardship on the discriminator.

Division 2—Discrimination in other areas**22 Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's disability:
 - (a) by refusing or failing to accept the person's application for admission as a student; or
 - (b) in the terms or conditions on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's disability:
 - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority; or
 - (b) by expelling the student; or
 - (c) by subjecting the student to any other detriment.
- (2A) It is unlawful for an education provider to discriminate against a person on the ground of the person's disability:
 - (a) by developing curricula or training courses having a content that will either exclude the person from participation, or subject the person to any other detriment; or
 - (b) by accrediting curricula or training courses having such a content.
- (3) This section does not render it unlawful to discriminate against a person on the ground of the person's disability in respect of admission to an educational institution established wholly or primarily for students who have a particular disability where the person does not have that particular disability.

23 Access to premises

It is unlawful for a person to discriminate against another person on the ground of the other person's disability:

Section 24

- (a) by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or
- (b) in the terms or conditions on which the first-mentioned person is prepared to allow the other person access to, or the use of, any such premises; or
- (c) in relation to the provision of means of access to such premises; or
- (d) by refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or
- (e) in the terms or conditions on which the first-mentioned person is prepared to allow the other person the use of any such facilities; or
- (f) by requiring the other person to leave such premises or cease to use such facilities.

24 Goods, services and facilities

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's disability:

- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person; or
- (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
- (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

25 Accommodation

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's disability:
 - (a) by refusing the other person's application for accommodation; or
 - (b) in the terms or conditions on which the accommodation is offered to the other person; or
 - (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.

- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's disability:
 - (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person; or
 - (b) by evicting the other person from accommodation occupied by the other person; or
 - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person; or
 - (d) by refusing to permit the other person to make reasonable alterations to accommodation occupied by that person if:
 - (i) that person has undertaken to restore the accommodation to its condition before alteration on leaving the accommodation; and
 - (ii) in all the circumstances it is likely that the person will perform the undertaking; and
 - (iii) in all the circumstances, the action required to restore the accommodation to its condition before alteration is reasonably practicable; and
 - (iv) the alteration does not involve alteration of the premises of any other occupier; and
 - (v) the alteration is at that other person's own expense.

Section 26

- (3) This section does not apply to or in respect of:
- (a) the provision of accommodation in premises if:
 - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside on those premises; and
 - (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (a)(i) or near relatives of such a person; or
 - (b) the provision of accommodation if:
 - (i) the accommodation is provided by a registered charity, or by a voluntary body that is not a charity; and
 - (ia) the accommodation is provided solely for persons who have a particular disability; and
 - (ii) the person discriminated against does not have that particular disability.

26 Land

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's disability:
- (a) by refusing or failing to dispose of an estate or interest in land to the other person; or
 - (b) in the terms or conditions on which an estate or interest in land is offered to the other person.
- (2) This section does not apply in relation to a disposal of an estate or interest in land by will or by way of gift.

27 Clubs and incorporated associations

- (1) It is unlawful for a club or incorporated association, the committee of management of a club or a member of the committee of management of a club or incorporated association to discriminate against a person who is not a member of the club or association on the ground of the person's disability:

- (a) by refusing or failing to accept the person's application for membership; or
 - (b) in the terms or conditions on which the club or association is prepared to admit the person to membership.
- (2) It is unlawful for a club or incorporated association, the committee of management of a club or a member of the committee of management of a club or incorporated association to discriminate against a person who is a member of the club or association on the ground of the member's disability:
- (a) in the terms or conditions of membership that are afforded to the member; or
 - (b) by refusing or failing to accept the member's application for a particular class or type of membership; or
 - (c) by denying the member access, or limiting the member's access to any benefit provided by the club or association; or
 - (d) by depriving the member of membership or varying the terms of membership; or
 - (e) by subjecting the member to any other detriment.
- (4) Neither subsection (1) nor (2) renders it unlawful to discriminate against a person on the ground of the person's disability if membership (however described) of the club or incorporated association is restricted only to persons who have a particular disability and the first-mentioned person does not have that disability.

28 Sport

- (1) It is unlawful for a person to discriminate against another person on the ground of the other person's disability by excluding that other person from a sporting activity.
- (2) In subsection (1), a reference to a sporting activity includes a reference to an administrative or coaching activity in relation to any sport.

Section 29

- (3) Subsection (1) does not render unlawful discrimination against a person:
- (a) if the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity; or
 - (b) if the persons who participate or are to participate in the sporting activities are selected by a method which is reasonable on the basis of their skills and abilities relevant to the sporting activity and relative to each other; or
 - (c) if a sporting activity is conducted only for persons who have a particular disability and the first-mentioned person does not have that disability.

29 Administration of Commonwealth laws and programs

It is unlawful for a person who performs any function or exercises any power under a Commonwealth law or for the purposes of a Commonwealth program or has any other responsibility for the administration of a Commonwealth law or the conduct of a Commonwealth program, to discriminate against another person on the ground of the other person's disability in the performance of that function, the exercise of that power or the fulfilment of that responsibility.

29A Unjustifiable hardship

This Division (other than section 30) does not render it unlawful for a person (the *discriminator*) to discriminate against another person on the ground of a disability of the other person if avoiding the discrimination would impose an unjustifiable hardship on the discriminator.

30 Requests for information

- (1) This section applies in relation to a person (the *first person*) if, under Division 1 or this Division, it would be unlawful for the first person, in doing a particular act, to discriminate against another person on the ground of a disability of the other person.

- (2) It is unlawful for the first person to request or require the other person to provide information (whether by completing a form or otherwise) if:
- (a) the first person requests or requires the information in connection with, or for the purposes of, doing the act referred to in subsection (1); and
 - (b) either or both of the following applies:
 - (i) persons who do not have the disability would not be requested or required to provide the information in circumstances that are not materially different;
 - (ii) the information relates to the disability.
- (3) Subsection (2) does not apply if:
- (a) evidence is produced to the effect that none of the purposes for which the first person requested or required the information was the purpose of unlawfully discriminating against the other person on the ground of the disability; and
 - (b) the evidence is not rebutted.
- Example: An employer may not require a prospective employee to provide genetic information if the employer intends to use that information to unlawfully discriminate against the employee on the ground of a disability of the employee.
- However, the employer may require such information in order to determine if the prospective employee would be able to carry out the inherent requirements of the employment or to determine what reasonable adjustments to make for the employee.
- (4) This section has effect subject to subsection 54A(5) (evidence that an animal is an assistance animal).

Division 2A—Disability standards

31 Disability standards

- (1) The Minister may, by legislative instrument, formulate standards, to be known as *disability standards*, in relation to any area in which it is unlawful under this Part for a person to discriminate against another person on the ground of a disability of the other person.
- (2) Without limiting subsection (1), a disability standard may:
 - (a) deal with the following:
 - (i) reasonable adjustments;
 - (ii) strategies and programs to prevent harassment or victimisation of persons with a disability;
 - (iii) unjustifiable hardship;
 - (iv) exemptions from the disability standard, including the power (if any) of the Commission to grant such exemptions; or
 - (b) provide that the disability standard, in whole or in part, is or is not intended to affect the operation of a law of a State or Territory.
- (3) Before making a disability standard, the Minister must take into consideration any comments made to the Minister by a Minister of a State or Territory who is responsible for matters relating to disability discrimination.
- (4) A legislative instrument made under this section does not take effect before the end of the period in which it could be disallowed in either House of the Parliament.

32 Unlawful to contravene disability standards

It is unlawful for a person to contravene a disability standard.

33 Division 5 generally not to apply to disability standards

Division 5 (other than subsections 55(1A) to (1D) and any reference in that Division to those provisions) does not apply in relation to a disability standard.

34 This Part not to apply if person acts in accordance with disability standards

If a person acts in accordance with a disability standard this Part (other than this Division) does not apply to the person's act.

Division 3—Discrimination involving harassment

35 Harassment in employment

- (1) It is unlawful for a person to harass another person who:
 - (a) is an employee of that person; and
 - (b) has a disability;in relation to the disability.
 - (2) It is unlawful for a person to harass another person who:
 - (a) is an employee of a person by whom the first-mentioned person is employed; and
 - (b) has a disability;in relation to the disability.
 - (3) It is unlawful for a person to harass another person who:
 - (a) is seeking employment by the first-mentioned person or by an employer of the first-mentioned person; and
 - (b) has a disability;in relation to the disability.
 - (4) It is unlawful for a person to harass another person who:
 - (a) is a commission agent or contract worker of that person; and
 - (b) has a disability;in relation to the disability.
 - (5) It is unlawful for a person to harass another person who:
 - (a) is a commission agent or contract worker of a person of whom the first-mentioned person is a commission agent or contract worker; and
 - (b) has a disability;in relation to the disability.
 - (6) It is unlawful for a person to harass another person who:
 - (a) is seeking to become a commission agent or contract worker of the first-mentioned person or of a person of whom the
-

first-mentioned person is a commission agent or contract worker; and
(b) has a disability;
in relation to the disability.

37 Harassment in education

It is unlawful for a person who is a member of the staff of an educational institution to harass another person who:

- (a) is a student at that educational institution or is seeking admission to that educational institution as a student; and
- (b) has a disability;
in relation to the disability.

39 Harassment in relation to the provision of goods and services

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to harass another person who:

- (a) wants to acquire the goods or services or to make use of the facilities; and
- (b) has a disability;
in relation to the disability.

Division 4—Offences

41 Unlawful act not offence unless expressly so provided

Except as expressly provided by this Division, nothing in this Act makes it an offence to do an act that is unlawful because of a provision of this Part.

42 Victimisation

- (1) It is an offence for a person to commit an act of victimisation against another person.

Penalty: Imprisonment for 6 months.

- (2) For the purposes of subsection (1), a person is taken to commit an act of victimisation against another person if the first-mentioned person subjects, or threatens to subject, the other person to any detriment on the ground that the other person:
- (a) has made, or proposes to make, a complaint under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (b) has brought, or proposes to bring, proceedings under this Act or the *Australian Human Rights Commission Act 1986* against any person; or
 - (c) has given, or proposes to give, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (d) has attended, or proposes to attend, a conference held under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (e) has appeared, or proposes to appear, as a witness in a proceeding under this Act or the *Australian Human Rights Commission Act 1986*; or

- (f) has reasonably asserted, or proposes to assert, any rights of the person or the rights of any other person under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (g) has made an allegation that a person has done an act that is unlawful by reason of a provision of this Part;
- or on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in any of paragraphs (a) to (g) (inclusive).

43 Offence to incite doing of unlawful acts or offences

It is an offence for a person:

- (a) to incite the doing of an act that is unlawful under a provision of Division 1, 2, 2A or 3; or
- (c) to assist or promote whether by financial assistance or otherwise the doing of such an act.

Penalty: Imprisonment for 6 months.

44 Advertisements

- (1) It is an offence for a person to publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention by that person to do an act that is unlawful under a provision of Division 1, 2, 2A or 3.

Penalty: 10 penalty units.

- (2) For the purposes of subsection (1), **advertisement** includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, show cards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films or in any other way, and the reference in that subsection to publish or display, in relation to an advertisement, is to be construed accordingly.

Division 5—Exemptions

45 Special measures

- (1) This Part does not render it unlawful to do an act that is reasonably intended to:
- (a) ensure that persons who have a disability have equal opportunities with other persons in circumstances in relation to which a provision is made by this Act; or
 - (b) afford persons who have a disability or a particular disability, goods or access to facilities, services or opportunities to meet their special needs in relation to:
 - (i) employment, education, accommodation, clubs or sport; or
 - (ii) the provision of goods, services, facilities or land; or
 - (iii) the making available of facilities; or
 - (iv) the administration of Commonwealth laws and programs; or
 - (v) their capacity to live independently; or
 - (c) afford persons who have a disability or a particular disability, grants, benefits or programs, whether direct or indirect, to meet their special needs in relation to:
 - (i) employment, education, accommodation, clubs or sport; or
 - (ii) the provision of goods, services, facilities or land; or
 - (iii) the making available of facilities; or
 - (iv) the administration of Commonwealth laws and programs; or
 - (v) their capacity to live independently.
- (2) However, subsection (1) does not apply:
- (a) in relation to discrimination in implementing a measure referred to in that subsection if the discrimination is not necessary for implementing the measure; or

- (b) in relation to the rates of salary or wages paid to persons with disabilities.

Note: For discrimination in relation to the rates of salary or wages paid to persons with disabilities, see paragraphs 47(1)(c) and (d).

46 Superannuation and insurance

- (1) This Part does not render it unlawful for a person to discriminate against another person, on the ground of the other person's disability, by refusing to offer the other person:
- (a) an annuity; or
 - (b) a life insurance policy; or
 - (c) a policy of insurance against accident or any other policy of insurance; or
 - (d) membership of a superannuation or provident fund; or
 - (e) membership of a superannuation or provident scheme;
- if:
- (f) the discrimination:
 - (i) is based upon actuarial or statistical data on which it is reasonable for the first-mentioned person to rely; and
 - (ii) is reasonable having regard to the matter of the data and other relevant factors; or
 - (g) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the discrimination is reasonable having regard to any other relevant factors.
- (2) This Part does not render it unlawful for a person to discriminate against another person, on the ground of the other person's disability, in respect of the terms or conditions on which:
- (a) an annuity; or
 - (b) a life insurance policy; or
 - (c) a policy of insurance against accident or any other policy of insurance; or
 - (d) membership of a superannuation or provident fund; or
 - (e) membership of a superannuation or provident scheme;

Section 47

is offered to, or may be obtained by, the other person, if:

- (f) the discrimination:
 - (i) is based upon actuarial or statistical data on which it is reasonable for the first-mentioned person to rely; and
 - (ii) is reasonable having regard to the matter of the data and other relevant factors; or
- (g) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the discrimination is reasonable having regard to any other relevant factors.

47 Acts done under statutory authority

- (1) This Part does not render unlawful anything done by a person in direct compliance with:
 - (b) an order of a court; or
 - (c) an instrument (an *industrial instrument*) that is:
 - (i) a fair work instrument (within the meaning of the *Fair Work Act 2009*); or
 - (ii) a transitional instrument or Division 2B State instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*);to the extent to which the industrial instrument has specific provisions relating to the payment of rates of salary or wages to persons, in circumstances in which:
 - (iii) if the persons were not in receipt of the salary or wages, they would be eligible for a disability support pension; and
 - (iv) the salary or wages are determined by reference to the capacity of the person; or
 - (d) an order, award or determination of a court or tribunal having power to fix minimum wages, to the extent to which the order, award or determination has specific provisions relating to the payment of rates of salary or wages to persons, in circumstances in which:

- (i) if the persons were not in receipt of the salary or wages, they would be eligible for a disability support pension; and
- (ii) the salary or wages payable to each person are determined by reference to the capacity of that person.

Note: A person does not comply with an industrial instrument for the purpose of this subsection if that person purports to comply with a provision of that instrument that has no effect. Accordingly, the exemption under this subsection for acting in direct compliance with such an instrument would not apply in such circumstances.

(2) This Part does not render unlawful anything done by a person in direct compliance with a prescribed law.

(4) In subsection (1):

disability support pension has the same meaning as in the *Social Security Act 1991*.

(5) In subsection (2):

law means:

- (a) a law of the Commonwealth or of a State or Territory; or
- (b) regulations or any other instrument made under such a law.

Note: See also subsection 98(6B) of the *Civil Aviation Act 1988*, which allows regulations made under that Act to contain provisions that are inconsistent with this Act if the inconsistency is necessary for the safety of air navigation.

48 Infectious diseases

This Part does not render it unlawful for a person to discriminate against another person on the ground of the other person's disability if:

- (a) the person's disability is an infectious disease; and
- (b) the discrimination is reasonably necessary to protect public health.

Note: For discrimination in relation to an assistance animal that has an infectious disease, see subsection 54A(4).

Section 49

49 Charities

This Part does not:

- (a) affect a provision (whether made before or after the commencement of this Part) of the governing rules (within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*) of a registered charity, if the provision:
 - (i) confers benefits for charitable purposes; or
 - (ii) enables such benefits to be conferred; wholly or in part on persons who have a disability or a particular disability; or
- (b) make unlawful any act done to give effect to such a provision.

51 Pensions and allowances

- (1) This Part does not affect discriminatory provisions relating to pensions, allowances or benefits in:
 - (a) the *Defence Service Homes Act 1918*; or
 - (b) the *Papua New Guinea (Member of the Forces Benefits) Act 1957*; or
 - (d) the *Social Security Act 1991* or a legislative instrument made under that Act; or
 - (da) the *Social Security (Administration) Act 1999* or a legislative instrument made under that Act; or
 - (db) the *Social Security (International Agreements) Act 1999*; or
 - (e) the *Veterans' Affairs Legislation Amendment Act 1988*; or
 - (f) the *Veterans' Entitlements Act 1986*; or
 - (g) the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*; or
 - (h) the *Military Rehabilitation and Compensation Act 2004*; or
 - (i) the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*; or
 - (j) the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*.

- (2) This Part does not render unlawful anything done by a person in direct compliance with a provision referred to in subsection (1).

52 Migration

Divisions 1, 2 and 2A do not:

- (a) affect discriminatory provisions in:
 - (i) the *Migration Act 1958*; or
 - (ii) a legislative instrument made under that Act; or
- (b) render unlawful anything that is permitted or required to be done by that Act or instrument.

53 Combat duties and peacekeeping services

- (1) This Part does not render it unlawful for a person to discriminate against another person on the ground of the other person's disability in connection with employment, engagement or appointment in the Defence Force:
- (a) in a position involving the performance of combat duties, combat-related duties or peacekeeping service; or
 - (b) in prescribed circumstances in relation to combat duties, combat-related duties or peacekeeping service; or
 - (c) in a position involving the performance of duties as a chaplain or a medical support person in support of forces engaged or likely to be engaged in combat duties, combat-related duties or peacekeeping service.

- (2) In this section:

combat duties means such duties as are declared by the regulations to be combat duties for the purposes of this section.

combat-related duties means such duties as are declared by the regulations to be combat-related duties for the purposes of this section.

medical support person means:

Section 54

- (a) a person exclusively engaged in the search for, or the collection, transport or treatment of, the wounded or sick, or in the prevention of disease; or
- (b) a person exclusively engaged in the administration of medical units and establishments.

peacekeeping service has the same meaning as in the *Veterans' Entitlements Act 1986*.

54 Peacekeeping services by the AFP

- (1) This Part does not render it unlawful for a person to discriminate against another person on the ground of the other person's disability in connection with selection for peacekeeping duties as part of a Peacekeeping Force.

- (2) In this section:

AFP means the Australian Federal Police.

Peacekeeping Force means a force raised or organised for the purpose of peacekeeping in an area outside Australia.

54A Assistance animals

- (1) This section applies in relation to a person with a disability who has an assistance animal.

Note: For when a person with a disability *has an assistance animal*, see subsections 9(2) and (4).

- (2) This Part does not render it unlawful for a person to request or to require that the assistance animal remain under the control of:
 - (a) the person with the disability; or
 - (b) another person on behalf of the person with the disability.
- (3) For the purposes of subsection (2), an assistance animal may be under the control of a person even if it is not under the person's direct physical control.

- (4) This Part does not render it unlawful for a person (the *discriminator*) to discriminate against the person with the disability on the ground of the disability, if:
- (a) the discriminator reasonably suspects that the assistance animal has an infectious disease; and
 - (b) the discrimination is reasonably necessary to protect public health or the health of other animals.
- (5) This Part does not render it unlawful for a person to request the person with the disability to produce evidence that:
- (a) the animal is an assistance animal; or
 - (b) the animal is trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.
- (6) This Part does not render it unlawful for a person (the *discriminator*) to discriminate against the person with the disability on the ground that the person with the disability has the assistance animal, if:
- (a) the discriminator requests or requires the person with the disability to produce evidence referred to in subsection (5); and
 - (b) the person with the disability neither:
 - (i) produces evidence that the animal is an assistance animal; nor
 - (ii) produces evidence that the animal is trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.
- (7) This Part does not affect the liability of a person for damage to property caused by an assistance animal.

55 Commission may grant exemptions

- (1) The Commission may, on application by:
- (a) a person:
 - (i) on that person's own behalf; or

Section 56

- (ii) on behalf of that person and another person or other persons; or
 - (iii) on behalf of another person or other persons; or
 - (b) 2 or more persons:
 - (i) on their own behalf; or
 - (ii) on behalf of themselves and another person or other persons; or
 - (iii) on behalf of another person or other persons;
- by instrument grant to the person or persons to whom the application relates, as the case may be, an exemption from the operation of a provision of Division 1 or 2, as specified in the instrument.
- (2) The Commission may, on application by a person to, or in respect of, whom an exemption from a provision of Division 1 or 2 has been granted under subsection (1), being an application made before the expiration of the period to which the exemption was granted, grant a further exemption from the operation of that provision.
 - (3) An exemption granted under subsection (1), or further exemption, from the operation of a provision of Division 1 or 2:
 - (a) may be granted subject to such terms and conditions as are specified in the instrument; and
 - (b) may be expressed to apply only in such circumstances, or in relation to such activities, as are specified in the instrument; and
 - (c) are to be granted for a specified period not exceeding 5 years.

56 Review by Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for a review of decisions made by the Commission under section 55.

57 Notice of decisions to be published

- (1) The Commission, not later than one month after it makes a decision under section 55, is to cause to be published in the *Gazette* a notice of the making of the decision:
 - (a) setting out its findings on material questions of facts; and
 - (b) referring to the evidence on which those findings were based; and
 - (c) giving the reasons for the making of the decision; and
 - (d) containing a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates by or on behalf of any person or persons whose interests are affected by the decision.
- (2) Any failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

58 Effect of exemptions

This Part does not render it unlawful for a person who has been granted an exemption from a provision of Division 1 or 2, or a person in the employment or under the direction or control of a person who has been granted such an exemption, to do an act in accordance with the provisions of the instrument by which the exemption was granted.

Division 6—Victimisation

58A Victimisation

- (1) It is unlawful for a person to commit an act of victimisation against another person.

Note 1: See also section 42 (offence of victimisation).

Note 2: See also the definition of **unlawful discrimination** in the *Australian Human Rights Commission Act 1986*.

- (2) For the purposes of subsection (1), a person (the **first person**) commits an act of victimisation against another person if the first person subjects, or threatens to subject, the other person to any detriment on the ground that the other person:
- (a) has made, or proposes to make, a complaint under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (b) has brought, or proposes to bring, proceedings under this Act or the *Australian Human Rights Commission Act 1986* against any person; or
 - (c) has given, or proposes to give, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (d) has attended, or proposes to attend, a conference held under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (e) has appeared, or proposes to appear, as a witness in a proceeding under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (f) has reasonably asserted, or proposes to assert, any rights of the person or the rights of any other person under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (g) has made an allegation that a person has done an act that is unlawful by reason of a provision of this Part;

Section 58A

or on the ground that the first person believes that the other person has done, or proposes to do, an act or thing referred to in any of paragraphs (a) to (g), inclusive.

Part 3—Action plans

59 Scope

This Part applies in relation to a person (the *action planner*) who, under Part 2, is prohibited from discriminating against another person on the ground of a disability of the other person.

60 Action plans

The action planner may prepare and implement an action plan.

61 Provisions of action plans

The action plan must include provisions relating to:

- (a) the devising of policies and programs to achieve the objects of this Act; and
- (b) the communication of these policies and programs to persons within the action planner; and
- (c) the review of practices within the action planner with a view to the identification of any discriminatory practices; and
- (d) the setting of goals and targets, where these may reasonably be determined against which the success of the plan in achieving the objects of the Act may be assessed; and
- (e) the means, other than those referred to in paragraph (d), of evaluating the policies and programs referred to in paragraph (a); and
- (f) the appointment of persons within the action planner to implement the provisions referred to in paragraphs (a) to (e) (inclusive).

62 Action plans may have other provisions

The action plan may include provisions, other than those referred to in section 61, that are not inconsistent with the objects of this Act.

63 Amendment of action plans

The action planner may, at any time, amend the action plan.

64 Action plans may be given to Commission

- (1) The action planner may give a copy of the action plan, or of any amendments to the action plan, to the Commission.
- (2) If the action planner does so, the Commission must make the copy available to the public.

Part 4—Functions of the Australian Human Rights Commission

Division 1—Preliminary

67 Functions of the Commission

- (1) The following functions are conferred on the Commission:
- (c) to exercise the powers conferred on it by section 55;
 - (d) to report to the Minister on matters relating to the development of disability standards;
 - (e) to monitor the operation of such standards and report to the Minister the results of such monitoring;
 - (f) to receive action plans under section 64;
 - (g) to promote an understanding and acceptance of, and compliance with, this Act;
 - (h) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting the objects of this Act;
 - (i) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to the objects of this Act, and to report to the Minister the results of any such examination;
 - (j) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to discrimination on the ground of disability;
 - (k) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of discrimination on the ground of disability;

- (l) where the Commission thinks 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 disability;
- (m) to do anything incidental or conducive to the performance of any of the preceding functions.

Note: For the provisions about inquiries into complaints of discrimination and conciliation of those complaints: see Part IIB of the *Australian Human Rights Commission Act 1986*.

- (2) The Commission is not to regard an enactment or proposed enactment as being inconsistent with or contrary to the objects of this Act for the purposes of paragraph (1)(i) because of a provision of the enactment or proposed enactment that is included for the purpose referred to in subsection 45(1) (special measures).

Part 5—Other offences

107 Failure to provide actuarial data or statistical data

- (1) If a person has engaged in an act of discrimination that would, apart from section 46, be unlawful, the President or the Commission may, by notice in writing served on the person as prescribed, require the person within 28 days after service of the notice on the person, to disclose to the President or to the Commission, as the case may be, the source of the actuarial or statistical data on which the act of discrimination was based and, where the President or the Commission, as the case may be, makes such a requirement of a person, the person must not fail to comply with the requirement.

Penalty: 10 penalty units.

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

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

- (1B) Subsection (1) is an offence of strict liability.

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

- (2) Subsection 4K(2) of the *Crimes Act 1914* does not apply to this section.

Part 6—Disability Discrimination Commissioner

113 Disability Discrimination Commissioner

- (1) There is to be a Disability Discrimination Commissioner, who is to be appointed by the Governor-General.
- (2) A person must not be appointed under subsection (1) as the Disability Discrimination Commissioner unless the Minister is satisfied that:
 - (a) the person has appropriate qualifications, knowledge or experience; and
 - (b) the selection of the person for the appointment is the result of a process that:
 - (i) was merit-based; and
 - (ii) included public advertising of the position.
- (3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Disability Discrimination Commissioner under a previous appointment under subsection (1).

114 Terms and conditions of appointment

- (1) Subject to this section, the Commissioner holds office for such period as is specified in the instrument of the person's appointment, but is eligible for re-appointment.
- (1A) A person must not be appointed as the Disability Discrimination Commissioner under section 113 for a period if the sum of the following exceeds 7 years:
 - (a) that period;
 - (b) any periods of previous appointment of the person as the Disability Discrimination Commissioner under that section.

Section 115

- (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.

115 Remuneration of Commissioner

- (1) The Commissioner is to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Remuneration Tribunal is in operation, the Commissioner is to be paid such remuneration as is prescribed.
- (2) The Commissioner is to be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

116 Leave of absence

- (1) 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.

117 Outside employment

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

118 Resignation

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

119 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Commissioner because of:
 - (a) misbehaviour; or
 - (b) a disability which renders 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.

120 Acting Commissioner

The Minister may appoint a person to act as Commissioner:

- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office of Commissioner.

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

Part 7—Miscellaneous

121 Delegation

- (1) The Commission may, by writing under its seal, delegate to:
 - (a) a member of the Commission; or
 - (b) the Commissioner; or
 - (c) a member of the staff of the Commission; or
 - (d) another person or body of persons;all or any of the powers conferred on the Commission under this Act, other than powers in connection with the performance of the functions that, under section 67, are to be performed by the Commissioner on behalf of the Commission.
- (2) The Commissioner may, by writing signed by the Commissioner, delegate to:
 - (a) a member of the staff of the Commission; or
 - (b) any other person or body of persons;approved by the Commission, all or any of the powers exercisable by the Commissioner under this Act.

122 Liability of persons involved in unlawful acts

A person who causes, instructs, induces, aids or permits another person to do an act that is unlawful under Division 1, 2, 2A, 3 or 6 of Part 2 is, for the purposes of this Act, taken also to have done the act.

123 Conduct by directors, employees and agents

- (1) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

Section 123

- (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the director, employee or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, for the purposes of this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to a particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
 - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If:
 - (a) a person other than a body corporate is convicted of an offence; and
 - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;the person is not liable to be punished by imprisonment for that offence.
- (7) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

Section 124

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
 - (b) the person's reasons for the intention, opinion, belief or purpose.
- (8) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (9) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

124 Commonwealth taken to be employer

For the purposes of this Act, the Commonwealth is taken to be the employer of all Commonwealth employees.

125 Unlawful act not basis of civil action unless expressly so provided

- (1) This Act does not confer on a person a right of action in respect of the doing of an act that is unlawful under a provision of Part 2 unless a provision of this Act expressly provides otherwise.
- (2) For the purposes of subsection (1), a reference to an act that is unlawful under a provision of Part 2 includes a reference to an act that is an offence under a provision of Division 4 of that Part.

126 Protection from civil actions

- (1A) Subsection (1) applies in relation to any of the following persons:
- (a) the Commission;
 - (b) the Commissioner or another member of the Commission;
 - (c) a person acting under the direction or authority of:
 - (i) the Commission; or
 - (ii) the Commissioner or another member of the Commission;

- (d) a person acting under a delegation under section 121.
- (1) The person is not liable to an action or other proceeding for damages for or in relation to an act done, or omitted to be done, in good faith in the performance, or purported performance, of any function, or in the exercise or purported exercise of any power or authority, conferred on the Commission, the Commissioner or the other member of the Commission.
- (2) If a submission has been made, a document or information has been given, or evidence has been given, to the Commission or the Commissioner, a person is not liable to an action, suit or other proceeding in respect of loss, damage or injury of any kind suffered by another person because only that submission was made, the document or information was given or the evidence was given.

127 Non-disclosure of private information

- (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, must not, either directly or indirectly:
- (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 because of that person's office of employment under or for the purposes of this Act or because of that person being or having been so authorised; or
 - (b) make use of any such information as is mentioned in paragraph (a); or
 - (c) produce to any person a document relating to the affairs of another person given for the purposes of this Act.

Penalty: Imprisonment for 2 years.

Section 127

- (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, must 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 because of that person's office or employment under or for the purposes of this Act or because 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, because of that person's office or employment under or for the purposes of this Act or because of that person being or having been so authorised;
- except where it is necessary to do so for the purposes of this Act.
- (3) This section does not prohibit a person from:
- (a) making a record of information that is required or permitted by an Act to be recorded, if the record is made for the purposes of or under that Act; or
 - (b) divulging or communicating information, or producing a document, to any person in accordance with an arrangement in force under section 16 of the *Australian Human Rights Commission Act 1986*; or
 - (c) divulging or communicating information, or producing a document that is 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 under that Act.

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

Section 128

- (3A) Subsection (1) does not prevent a person from making a record of, divulging, communicating or making use of information, or producing a document, if the person does so:
- (a) in the performance of a duty under or in connection with this Act; or
 - (b) in the performance or exercise of a function or power conferred on the Commission or on the Commissioner under this Act.

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

- (4) Subsection (2) does not prevent a person from being required, for the purposes of or under an Act, to divulge or communicate information, or to produce a document, that is 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.

128 Information stored otherwise than in written form

If information is recorded or stored by means of a mechanical, electronic or other device, any duty imposed by this Act to produce the document recording that information is to be construed as a duty to provide a document containing a clear reproduction in writing of the information.

129 Commissioner to give information

The Commissioner must give to the Commission such information relating to the operations of the Commissioner under this Act as the Commission from time to time requires.

Section 131

131 Courts to ensure just terms

- (1) In any case where, but for this section, the application of any of the provisions of this Act would result in an acquisition of property from any person having been made otherwise than on just terms, the person is entitled to such compensation from the Commonwealth as is necessary to ensure that the acquisition is made on just terms.
- (2) The Federal Court has jurisdiction with respect to matters arising under subsection (1) and that jurisdiction is exclusive of the jurisdiction of all other courts, other than jurisdiction of the High Court under section 75 of the Constitution.

132 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (1A) Without limiting the generality of subsection (1), the Governor-General may make regulations for the purposes of subsection 55(1C) prescribing a body as a body that the Commission must consult in relation to all or specified kinds of public transportation services or facilities.
- (2) Before making any regulations for the purposes of section 47, the Governor-General is to take into consideration any comments made to the Minister by a Minister of a State or Territory who is responsible for matters relating to disability discrimination.

Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

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

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

Editorial changes

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

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

Misdescribed amendments

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

Endnotes

Endnote 1—About the endnotes

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

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

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Disability Discrimination Act 1992	135, 1992	5 Nov 1992	s 1 and 2: 5 Nov 1992 (s 2(1)) s 3–14, 59–65, 67(1)(d)–(m), 113–120, 126, 127, 129 and 132: 26 Nov 1992 (s 2(3) and gaz 1992, No S346) Remainder: 1 Mar 1993 (s 2(3) and gaz 1992, No S346)	
Sex Discrimination and other Legislation Amendment Act 1992	179, 1992	16 Dec 1992	s 4: 26 Nov 1992 (s 2(2)) Sch: 1 Mar 1993 (s 2(2))	s 4
Law and Justice Legislation Amendment Act 1993	13, 1994	18 Jan 1994	s 3–5: 18 Jan 1994 (s 2(1))	s 4(2)
Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994	164, 1994	16 Dec 1994	Sch 6: 16 Dec 1994 (s 2(1))	—
Human Rights Legislation Amendment Act 1995	59, 1995	28 June 1995	s 4, 5 and Sch: 28 June 1995 (s 2(1))	s 4 and 5
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Sch 11 (item 61): 31 Dec 1996 (s 2(2) and 1996, No S535) Sch 19 (item 18): 25 Nov 1996 (s 2(1))	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Workplace Relations and Other Legislation Amendment Act (No. 2) 1996	77, 1996	19 Dec 1996	Sch 3 (items 1, 2): 25 Nov 1996 (s 2(4))	—
Defence Legislation Amendment Act (No. 1) 1999	116, 1999	22 Sept 1999	Sch 5 (item 2): 1 Jan 2001 (s 2(4))	—
as amended by				
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 2 (item 9): 1 Jan 2001 (s 2(1) (item 38))	—
Human Rights Legislation Amendment Act (No. 1) 1999	133, 1999	13 Oct 1999	s 4–20 and Sch 1 (items 3–32): 13 Apr 2000 (s 2(3)) s 21: 13 Oct 1999 (s 2(1)) s 22: 10 Dec 1999 (s 2(2) and gaz 1999, No S598)	s 4–20
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 394–396): 5 Dec 1999 (s 2(1), (2) and gaz 1999, No S584)	—
Australian Security Intelligence Organisation Legislation Amendment Act 1999	161, 1999	10 Dec 1999	Sch 3 (items 1, 25): 10 Dec 1999 (s 2(2))	—
Australian Federal Police Legislation Amendment Act 2000	9, 2000	7 Mar 2000	Sch 2 (item 28) and Sch 3 (items 20, 24, 34, 35): 2 July 2000 (s 2(1) and gaz 2000, No S328)	Sch 3 (items 20, 24, 34, 35)

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 176, 177, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 24: 24 May 2001 (s 2(1)(a))	s 4(1) and (2)
Disability Discrimination Amendment Act 2002	62, 2002	3 July 2002	Sch 1: 19 Aug 2002 (s 2(1) item 2)	—
Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002	105, 2002	14 Nov 2002	Sch 3 (item 41): 12 May 2003 (s 2(1) item 23)	—
Age Discrimination (Consequential Provisions) Act 2004	40, 2004	21 Apr 2004	Sch 2 (item 26): never commenced (s 2(1) item 7)	—
Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004	52, 2004	27 Apr 2004	Sch 3 (item 20): 1 July 2004 (s 2(1) item 6)	—
Disability Discrimination Amendment (Education Standards) Act 2005	19, 2005	1 Mar 2005	Sch 1: 10 Aug 2005 (s 2(1) item 2)	—
Civil Aviation Amendment Act 2005	86, 2005	6 July 2005	Sch 1 (item 2): 6 July 2005 (s 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	s 4: 25 June 2009 (s 2(1) item 1) Sch 5 (items 28–30, 65, 66, 84): 1 July 2009 (s 2(1) items 11, 14, 21) Sch 5 (item 31): 5 Aug 2009 (s 2(1) item 12)	s 4 and Sch 5 (item 84)
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Sch 2 (items 1–90) and Sch 3 (items 22–31, 117, 118): 5 Aug 2009 (s 2(1) items 3, 7, 10) Sch 2 (items 101, 102): 27 Mar 2006 (s 2(1) item 4) Sch 2 (items 103–105): 8 Jan 2010 (s 2(1) item 5)	Sch 2 (items 63, 86)
Fair Work Amendment (State Referrals and Other Measures) Act 2009	124, 2009	9 Dec 2009	Sch 2 (item 124): 1 Jan 2010 (s 2(1) item 10)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 543–546) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012	169, 2012	3 Dec 2012	Sch 2 (items 173–176): 3 Dec 2012 (s 2(1) item 7)	—
Charities (Consequential Amendments and Transitional Provisions) Act 2013	96, 2013	28 June 2013	Sch 1 (item 14): 1 Jan 2014 (s 2(1) item 2)	—

Disability Discrimination Act 1992

71

Compilation No. 36

Compilation date: 13/12/2022

Registered: 20/12/2022

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 3 (items 70–74): 25 Mar 2015 (s 2(1) item 10)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 1 (item 97) and Sch 2 (items 356–396): 18 June 2015 (s 2(1) items 2, 6) Sch 2 (items 127, 128): 1 July 2016 (s 2(1) item 5) Sch 1 (items 184–195, 197–203): 27 May 2015 (s 2(1) item 3)	Sch 1 (items 184–203) and Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 54, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)
Safety, Rehabilitation and Compensation Legislation Amendment (Defence Force) Act 2017	108, 2017	14 Sept 2017	Sch 3 (item 11): 12 Oct 2017 (s 2(1) item 5)	—
Social Services Legislation Amendment (Welfare Reform) Act 2018	26, 2018	11 Apr 2018	Sch 18: 12 Apr 2018 (s 2(1) item 22)	—
Parliamentary Workplace Reform (Set the Standard Measures No. 1) Act 2022	7, 2022	22 Feb 2022	Sch 3 (items 3, 4): 23 Feb 2022 (s 2(1) item 1)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Act 2022	48, 2022	9 Nov 2022	Sch 1 (items 17–19, 26): 10 Nov 2022 (s 2(1) item 1)	Sch 1 (item 26)
Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022	85, 2022	12 Dec 2022	Sch 7 (items 11–13, 17, 18): 13 Dec 2022 (s 2(1) item 6)	Sch 7 (items 17, 18)

Number and year	FRLI registration or Assent	Commencement	Application, saving and transitional provisions
50, 2006	17 Mar 2006 (F2006L00820)	Sch 35: 27 Mar 2006 (r 2(b))	—
as amended by Act No. 70, 2009	8 July 2009	Sch 2 (item 106): 27 Mar 2006 (s 2(1) item 6)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 4	am No 179, 1992; No 60, 1996; No 116, 1999; No 133, 1999; No 146, 1999; No 161, 1999; No 9, 2000; No 105, 2002; No 19, 2005; SLI 2006 No 50; No 54, 2009; No 70, 2009; No 46, 2011; No 169, 2012; No 59, 2015; No 164, 2015; No 7, 2022
ss. 5–9	rs. No. 70, 2009
s. 11	rs. No. 70, 2009
s. 12	am. No. 70, 2009
s. 12A.....	ad. No. 24, 2001
s. 13	am. No. 133, 1999; No. 70, 2009
s 14	am No 59, 2015
Part 2	
Part 2 heading	am No 85, 2022
Division 1	
ss. 15–19	am. No. 70, 2009
s 20	am No 60, 1996; No 105, 2002; No 54, 2009; No 70, 2009
s 21	am No 70, 2009
s 21A.....	ad No 70, 2009 am No 54, 2009 ed C34
s. 21B.....	ad. No. 70, 2009
Division 2	
s. 22	am. No. 19, 2005; No. 70, 2009
s. 23	am. No. 70, 2009
s. 24	am. No. 70, 2009
s. 25	am. No. 70, 2009; No. 169, 2012
s. 26	am. No. 70, 2009
s. 27	am. No. 70, 2009
s. 28	am. No. 70, 2009

Endnote 4—Amendment history

Provision affected	How affected
s. 29	am. No. 70, 2009
s. 29A.....	ad. No. 70, 2009
s. 30	rs. No. 70, 2009
Division 2A	
Heading to Div. 2A..... of Part 2	ad. No. 70, 2009
s. 31	am. No. 133, 1999; No. 62, 2002; No. 19, 2005 rs. No. 70, 2009
s. 33	rs. No. 62, 2002
s. 34	am. No. 70, 2009
Division 3	
s. 36	rep. No. 70, 2009
s. 38	rep. No. 70, 2009
s. 40	rep. No. 70, 2009
Division 4	
s. 42	am. No. 133, 1999; No. 70, 2009
s. 43	am. No. 24, 2001; No. 70, 2009
s. 44	am. No. 70, 2009
Division 5	
s. 45	am. No. 70, 2009
s. 47	am. No. 60, 1996; No. 133, 1999; No. 86, 2005; No. 54, 2009; No. 70, 2009; No. 124, 2009
s. 48	am. No. 70, 2009
s. 49	am. No. 169, 2012 rs. No. 96, 2013
s. 50	rep. No. 70, 2009
s. 51	am. No. 164, 1994; No. 52, 2004; No. 108, 2017; No. 26, 2018
s. 52	rs. No. 70, 2009
s. 54A.....	ad. No. 70, 2009
s. 55	am. No. 62, 2002; No. 70, 2009
s. 58	am. No. 70, 2009

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Division 6	
Division 6	ad No 85, 2022
s 58A.....	ad No 85, 2022
Part 3	
s. 59	rs. No. 70, 2009
ss. 60–62	am. No. 70, 2009
ss. 63, 64	rs. No. 70, 2009
s. 65	rep. No. 70, 2009
Part 4	
Heading to Part 4	rs. No. 133, 1999; No. 70, 2009
Division 1	
s. 66	rep. No. 133, 1999
s 67	am No 133, 1999; No 70, 2009
s. 68	rep. No. 133, 1999
s. 69	am. No. 179, 1992
	rep. No. 133, 1999
s. 70	rep. No. 133, 1999
Div. 2 of Part 4.....	rep. No. 133, 1999
ss. 71–76	rep. No. 133, 1999
Div. 3 of Part 4.....	rep. No. 133, 1999
ss. 77–88	rep. No. 133, 1999
ss. 89, 90	rs. No. 179, 1992
	rep. No. 133, 1999
s. 90A.....	ad. No. 179, 1992
	rep. No. 133, 1999
s. 91	am. No. 179, 1992
	rep. No. 133, 1999
s. 92	rs. No. 179, 1992
	rep. No. 133, 1999
ss. 93–97	rep. No. 133, 1999
s. 98	am. No. 179, 1992

Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 133, 1999
ss. 99–101	rep. No. 133, 1999
ss. 102, 103	am. No. 179, 1992
	rep. No. 133, 1999
s. 104	rs. No. 179, 1992
	rep. No. 133, 1999
s. 104A	ad. No. 179, 1992
	rep. No. 59, 1995
s. 104B	ad. No. 179, 1992
	am. No. 13, 1994
	rep. No. 59, 1995
s. 104C	ad. No. 179, 1992
	rep. No. 59, 1995
s. 105	rep. No. 133, 1999
s. 106	am. No. 179, 1992; No. 13, 1994
	rep. No. 59, 1995
Div. 3A of Part 4	ad. No. 59, 1995
	rep. No. 133, 1999
ss. 105A–105F	ad. No. 59, 1995
	rep. No. 133, 1999
s. 106	ad. No. 59, 1995
	rep. No. 133, 1999
Div. 4 of Part 4	ad. No. 179, 1992
	rep. No. 133, 1999
ss. 106A–106F	ad. No. 179, 1992
	rep. No. 133, 1999
Part 5	
s. 107	am. No. 133, 1999; No. 24, 2001; No. 70, 2009
ss. 108–111	rep. No. 133, 1999
s. 112	am. No. 133, 1999
	rep. No. 137, 2000

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Part 6	
s 113	am No 59, 1995; No 70, 2009; No 48, 2022
s 114	am No 48, 2022
s. 116	am. No. 146, 1999
s 120	am No 46, 2011
Part 7	
s 122	am No 70, 2009; No 85, 2022
s 123	am No 133, 1999; No 5, 2015
s. 126	am. No. 133, 1999; No. 70, 2009
s 127	am No 24, 2001; No 70, 2009
s. 130	rep. No. 133, 1999
s. 132	am. No. 62, 2002; No. 70, 2009