



# Disability Discrimination Act 1992

No. 135 of 1992

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## An Act relating to discrimination on the ground of disability

[Assented to 5 November 1992]

The Parliament of Australia enacts:

### PART 1—PRELIMINARY

#### Short title

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

#### 5 Commencement

2.(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.

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(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.

**Objects** 5

3. 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 10
  - (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 15
- (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. 20

**Interpretation**

4.(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 25
- (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 30
- (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 35
- (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 40
- (g) an office of member of the Legislative Assembly within the meaning of the *Norfolk Island Act 1979*; or
- (h) an office or appointment in the Australian Public Service;

**“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
- 5 (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;

10 **“auxiliary aid”** means equipment (other than a palliative or therapeutic device) that provides assistance to a person with a disability to alleviate the effect of the disability;

15 **“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 Human Rights and Equal Opportunity Commission established by the *Human Rights and Equal Opportunity Commission Act 1986*;

20 **“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;

25 **“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 employee”** means a person who:

- 30 (a) holds an office or appointment in the Australian Public Service or is employed in a temporary capacity in a Department; or
- (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
- 35 *Commonwealth Teaching Service Act 1972*; or
- (e) is employed under the *Australian Security Intelligence Organization Act 1979*, the *Commonwealth Electoral Act 1918*, the *Supply and Development Act 1939* or the *Naval Defence Act 1910*; or
- 40 (f) is a member of the Defence Force; or
- (g) is a member, staff member or special member of the Australian Federal Police;

**“Commonwealth law”** means:

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- (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); 5

**“Commonwealth program”** means a program conducted by or on behalf of the Commonwealth Government;

**“complaint”** means a complaint lodged under section 69;

**“compulsory conference”** means a conference convened under section 74; 10

**“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 *Human Rights and Equal Opportunity Commission Act 1986*; 15

**“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 *Human Rights and Equal Opportunity Commission Act 1986*; 20

**“Department”** has the same meaning as that expression has in the *Public Service Act 1922*; 25

**“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 35
- (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; 40

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or

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- (j) may exist in the future; or
- (k) is imputed to a person;
- “**disability discrimination**” has the meaning given by sections 5 to 9 (inclusive);
- 5 “**discriminate**” has the meaning given by sections 5 to 9 (inclusive);
- “**document**” includes any book, register or other record of information, however compiled, recorded or stored;
- “**educational authority**” means a body or person administering an educational institution;
- 10 “**educational institution**” means a school, college, university or other institution at which education or training is provided;
- “**employment**” includes:
  - (a) part-time and temporary employment; and
  - (b) work under a contract for services; and
  - 15 (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
- 20 Commonwealth Employment Service;
- “**enactment**” has the same meaning as in the *Human Rights and Equal Opportunity Commission Act 1986*;
- “**exemption**” means an exemption granted under section 55;
- “**Federal Court**” means the Federal Court of Australia;
- 25 “**function**” includes duty;
- “**institution of tertiary education**” means a university, technical and further education institution or other institution at which tertiary education or training is provided;
- 30 “**interim determination**” means an interim determination under section 102;
- “**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:
  - 35 (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;
- 40 “**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

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worker does work under a contract between the employer of the contract worker and the person;

**“proposed enactment”** has the same meaning as in the *Human Rights and Equal Opportunity Commission Act 1986*;

**“public authority of the Commonwealth”** means: 5

(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 law of the Commonwealth or a law of a Territory, being an authority or body employing staff on its own behalf; or 10

(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; 15

**“registered organisation”** means an organisation within the meaning of the *Industrial Relations Act 1988*;

**“relative”**, in relation to a person, means a person who is related to the first-mentioned person by blood, marriage, affinity or adoption; 20

**“representative complaint”** means a complaint that the Commission determines, under section 89, should be dealt with as a representative complaint;

**“respondent”**, in relation to a complaint, means the person who is, or each of the persons who are, alleged to have done the act to which the complaint relates; 25

**“services”** includes:

(a) services relating to banking, insurance, superannuation and the provision of grants, loans, credit or finance; or 30

(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 35

(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;

**“technical and further education institution”** has the same meaning as that expression has in the *Employment, Education and Training Act 1988*; 40

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“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;

“this Act” includes the regulations;

5 “unjustifiable hardship” has the meaning given 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
- 10 (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.

15 (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.

**Disability discrimination**

20 5.(1) For the purposes of this Act, a person (“discriminator”) discriminates against another person (“aggrieved person”) on the ground of a disability of the aggrieved person if, because of the aggrieved person’s disability, the discriminator treats or proposes to treat the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person without the disability.

25 (2) For the purposes of subsection (1), circumstances in which a person treats or would treat another person with a disability are not materially different because of the fact that different accommodation or services may be required by the person with a disability.

**Indirect disability discrimination**

30 6. For the purposes of this Act, a person (“discriminator”) discriminates against another person (“aggrieved person”) on the ground of a disability of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition:

- 35 (a) with which a substantially higher proportion of persons without the disability comply or are able to comply; and
- (b) which is not reasonable having regard to the circumstances of the case; and
- (c) with which the aggrieved person does not or is not able to comply.

**Disability discrimination—palliative and therapeutic devices and auxiliary aids**

7. For the purposes of this Act, a person (“**discriminator**”) discriminates against another person with a disability (“**aggrieved person**”) if the discriminator treats the aggrieved person less favourably because of the fact that the aggrieved person is accompanied by, or possesses: 5

- (a) a palliative or therapeutic device; or
- (b) an auxiliary aid;

that is used by the aggrieved person, or because of any matter related to that fact, whether or not it is the discriminator’s practice to treat less favourably any person who is accompanied by, or is in possession of, and is the user of: 10

- (c) such a palliative or therapeutic device; or
- (d) such an auxiliary aid. 15

**Disability discrimination—interpreters, readers and assistants**

8. For the purposes of this Act, a person (“**discriminator**”) discriminates against another person with a disability (“**aggrieved person**”) if the discriminator treats the aggrieved person less favourably because of the fact that the aggrieved person is accompanied by: 20

- (a) an interpreter; or
- (b) a reader; or
- (c) an assistant; or
- (d) a carer;

who provides interpretive, reading or other services to the aggrieved person because of the disability, or because of any matter related to that fact, whether or not it is the discriminator’s practice to treat less favourably any person who is accompanied by: 25

- (e) an interpreter; or
- (f) a reader; or 30
- (g) an assistant; or
- (h) a carer.

**Disability discrimination—guide dogs, hearing assistance dogs and trained animals**

9.(1) For the purposes of this Act, a person (“**discriminator**”) discriminates against a person with: 35

- (a) a visual disability; or
- (b) a hearing disability; or
- (c) any other disability;

(“**aggrieved person**”) if the discriminator treats the aggrieved person less favourably because of the fact that the aggrieved person possesses, or is accompanied by: 40



- (d) a guide dog; or
- (e) a dog trained to assist the aggrieved person in activities where hearing is required, or because of any matter related to that fact; or
- 5 (f) any other animal trained to assist the aggrieved person to alleviate the effect of the disability, or because of any matter related to that fact;

10 whether or not it is the discriminator's practice to treat less favourably any person who possesses, or is accompanied by, a dog or any other animal.

(2) Subsection (1) does not affect the liability of a person with a disability for damage to property caused by a dog or other animal trained to assist the person to alleviate the effect of the disability or because of any matter related to that fact.

15 **Act done because of disability and for other reason**

10. 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);

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

**Unjustifiable hardship**

25 **11.** For the purposes of this Act, in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including:

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any persons concerned; and
- (b) the effect of the disability of a person concerned; and
- 30 (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship; and
- (d) in the case of the provision of services, or the making available of facilities—an action plan given to the Commission under section 64.

35 **Application of Act**

**12.(1)** In this section:

“Australia” includes the external Territories;

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

40 (2) Subject to this section, this Act applies throughout Australia.

(3) This Act has effect in relation to acts done within a Territory.

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- (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: 5
- (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. 10
- (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 15
  - (b) a body or authority established for a public purpose by a law of the Commonwealth or a law of a Territory;
- 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: 20
- (a) give effect to the Convention; or
  - (b) give effect to the Covenant on Civil and Political Rights; or
  - (c) give effect to the International Covenant on Economic, Social and Cultural Rights; or 25
  - (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. 30
- (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. 40

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(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:

- 5 (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:

- 10 (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.

15 (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.

20 **Operation of State and Territory laws**

13.(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.

25 (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.

(4) If:

- 30 (a) a law of a State or Territory relating to discrimination deals with a matter dealt with by this Act; 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  
35 to make a complaint under this Act;

the person is not entitled to make a complaint or institute a proceeding under this Act in respect of that act or omission.

(5) If:

- 40 (a) a law of a State or Territory deals with a matter dealt with by this Act; 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. 5

**Extent to which Act binds the Crown**

**14.(1)** This Act binds the Crown in right of the Commonwealth, of each of the States and of Norfolk Island.

(2) This Act does not render the Crown in right of the Commonwealth, of a State or of Norfolk Island liable to be prosecuted for an offence. 10

**PART 2—PROHIBITION OF DISABILITY DISCRIMINATION**

*Division 1—Discrimination in work*

**Discrimination in employment 15**

**15.(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 or a disability of any of that other person's associates:

- (a) in the arrangements made for the purpose of determining who should be offered employment; or 20
- (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 or a disability of any of that employee's associates: 25

- (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 30
- (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. 35

(4) Neither paragraph (1)(b) nor (2)(c) renders unlawful discrimination by an employer against a person on the ground of the 40

person's disability, if taking into account the person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability:

- (a) would be unable to carry out the inherent requirements of the particular employment; or
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without the disability and the provision of which would impose an unjustifiable hardship on the employer.

**Discrimination against commission agents**

**16.(1)** It is unlawful for a principal to discriminate against a person on the ground of the person's disability or a disability of any of that person's associates:

- (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 or a disability of any of the person's associates:

- (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.

**(3)** Neither paragraph (1)(b) nor (2)(c) renders unlawful discrimination by a principal against a person on the ground of the person's disability, if taking into account the person's past training, qualifications and experience relevant to engagement as a commission agent and, if the person is already engaged by the principal as a commission agent, the person's performance as a commission agent, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability:

- (a) would be unable to carry out the inherent requirements of a commission agent; or
- (b) would, in order to carry out those requirements, require services

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or facilities that are not required by persons without the disability and the provision of which would impose an unjustifiable hardship on the principal.

**Discrimination against contract workers**

**17.(1)** It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's disability or a disability of any of the contract worker's associates: 5

- (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 10
- (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. 15

**(2)** Paragraph (1)(b) does not render it unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's disability, if taking into account the contract worker's past training, qualifications and experience relevant to working as a contract worker and, if the person is already working for the principal as a contract worker, the contract worker's performance as a contract worker, and all other relevant factors that it is reasonable to take into account, the person because of the contract worker's disability: 20

- (a) would be unable to carry out the inherent requirements of a contract worker; or 25
- (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without the disability and the provision of which would impose an unjustifiable hardship on the principal.

**Partnerships** 30

**18.(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 or a disability of any of the other person's associates:

- (a) in determining who should be invited to become a partner in the partnership; or 35
- (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 or a disability of any of the other person's associates: 40

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- (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.

5       (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 or a disability of any of the other person's associates:

- 10       (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.

15       (4) Neither paragraph (1)(a), (2)(a) nor (3)(b) renders unlawful discrimination by a person against another person on the ground of the other person's disability, if taking into account the other person's past training, qualifications and experience relevant to the proposed partnership or the partnership and, if the other person is already a partner, the other person's performance as a partner, and all other relevant factors that it is reasonable to take into account, the person

20       because of the other person's disability:

- (a) would be unable to carry out the inherent requirements of a partner in the proposed partnership or the partnership; or
- 25       (b) would, in order to carry out those requirements, require services or facilities that are not required by partners without the disability and the provision of which would impose an unjustifiable hardship on the partnership.

**Qualifying bodies**

30       19.(1) 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 or a disability of any of the person's associates:

- 35       (a) by refusing or failing to confer, renew or extend the authorisation or qualification; or
- (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
- 40       (c) by revoking or withdrawing the authorisation or qualification or varying the terms or the conditions upon which it is held.

(2) This section does not render it unlawful for an authority or body to discriminate against a person on the ground of the person's disability, if taking into account the person's past training, qualifications

and experience relevant to the particular profession, trade or occupation and, if the person is already a member of the profession, carrying on the trade or engaged in the occupation, the person's performance in the profession, trade or occupation, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability, would be unable to carry out the inherent requirements of the profession, trade or occupation. 5

**Registered organisations under the Industrial Relations Act**

**20.(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 or a disability of any of the person's associates: 10

- (a) by refusing or failing to accept the person's application for membership; or 15
- (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 or a disability of any of the member's associates: 20

- (a) by denying the member access or limiting the member's access, to any benefit provided by the organisation; or 25
- (b) by depriving the member of membership or varying the terms of membership; or
- (c) by subjecting the member to any other detriment.

**Employment agencies**

**21.(1)** It is unlawful for an employment agency to discriminate against a person on the ground of the person's disability or a disability of any of the person's associates: 30

- (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 35
- (c) in the manner in which it provides the person with any of its services.

**(2)** This section does not render it unlawful for an employment agency to discriminate against a person on the ground of the person's disability, if taking into account the person's past training, qualifications and experience relevant to the work sought, and all other relevant factors that it is reasonable to take into account, the person because of 40



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his or her disability, would be unable to carry out the inherent requirements of the work sought.

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

**Education**

5       **22.(1)** It is unlawful for an educational authority to discriminate against a person on the ground of the person's disability or a disability of any of the other person's associates:

- (a) by refusing or failing to accept the person's application for admission as a student; or
- 10       (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 or a disability of any of the student's associates:

- 15       (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.

20       **(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.

25       **(4)** This section does not render it unlawful to refuse or fail to accept a person's application for admission as a student at an educational institution where the person, if admitted as a student by the educational authority, would require services or facilities that are not required by students who do not have a disability and the provision of which would impose unjustifiable hardship on the educational authority.

30

**Access to premises**

**23.(1)** It is unlawful for a person to discriminate against another person on the ground of the other person's disability or a disability of any of that other person's associates:

- 35       (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,
- 40       any such premises; or
- (c) in relation to the provision of means of access to such premises; or

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- (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 5
  - (f) by requiring the other person to leave such premises or cease to use such facilities.
- (2) This section does not render it unlawful to discriminate against a person on the ground of the person's disability in relation to the provision of access to premises if: 10
- (a) the premises are so designed or constructed as to be inaccessible to a person with a disability; and
  - (b) any alteration to the premises to provide such access would impose unjustifiable hardship on the person who would have to provide that access. 15

**Goods, services and facilities**

- 24.(1) 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 or a disability of any of that other person's associates: 20
- (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 25
  - (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. 30
- (2) This section does not render it unlawful to discriminate against a person on the ground of the person's disability if the provision of the goods or services, or making facilities available, would impose unjustifiable hardship on the person who provides the goods or services or makes the facilities available. 35

**Accommodation**

- 25.(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 or a disability of any of that other person's associates:
- (a) by refusing the other person's application for accommodation; or 40
  - (b) in the terms or conditions on which the accommodation is offered to the other person; or

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(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.

5 (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 or a disability of any of the other person's associates:

- (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
- 10 (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
- 15 (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
  - 20 (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
  - 25 (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.

(3) This section does not apply to or in respect of:

- (a) the provision of accommodation in premises if:
  - 30 (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
- 35 (b) the accommodation is provided by a charitable or other voluntary body solely for persons who have a particular disability and the person discriminated against does not have that particular disability; or
- 40 (c) the provision of accommodation in premises where special services or facilities would be required by the person with a disability and the provision of such special services or facilities would impose unjustifiable hardship on the person providing or proposing to provide the accommodation whether as principal or agent.

**Land**

- 26.(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 or a disability of any of that person's associates:
- (a) by refusing or failing to dispose of an estate or interest in land to the other person; or 5
  - (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. 10

**Clubs and incorporated associations**

- 27.(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 or a disability of any of that person's associates: 15
- (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. 20
- (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 or a disability of any of the member's associates: 25
- (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 30
  - (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 35
  - (e) by subjecting the member to any other detriment.
- (3)** Paragraph (2)(c) does not render unlawful discrimination where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the club or incorporated association. 40
- (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.

**Sport**

5       **28.(1)** It is unlawful for a person to discriminate against another person on the ground of the other person's disability or a disability of any of the other person's associates by excluding that other person from a sporting activity.

10       **(2)** In subsection (1), a reference to a sporting activity includes a reference to an administrative or coaching activity in relation to any sport.

**(3)** Subsection (1) does not render unlawful discrimination against a person:

- 15       (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
- 20       (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.

**Administration of Commonwealth laws and programs**

25       **29.** 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, or a disability of any of the other person's associates in the performance of that function, the exercise of that power or the fulfilment of that responsibility.

**Requests for information**

35       **30.** If, because of another provision of this Part (other than section 32), it would be unlawful, in particular circumstances, for a person to discriminate against another person on the ground of the other person's disability, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or for the purposes of the doing of the act, information (whether by completing a form or otherwise) that persons who do not have a disability would not, in circumstances that are the same or are not  
40       materially different, be requested or required to provide.

**Disability standards**

**31.(1)** The Minister may formulate standards, to be known as disability standards, in relation to:

- (a) the employment of persons with a disability; and
- (b) the education of persons with a disability; and 5
- (c) the accommodation of persons with a disability; and
- (d) the provision of public transportation services and facilities by:
  - (i) the Commonwealth; and
  - (ii) a State; and
  - (iii) a Territory; and 10
  - (iv) a public authority of the Commonwealth; and
  - (v) an instrumentality of a State; and
  - (vi) a public authority of a Territory; and
  - (vii) any other person;to a person with a disability; and 15
- (e) the administration of Commonwealth laws and programs in respect of persons with a disability.

**(2)** Disability standards formulated in accordance with this section are to be laid before each House of the Parliament within 15 sitting days of that House after the disability standards are formulated and take effect only as provided by the following provisions of this section. 20

**(3)** If:

- (a) notice of a motion to amend the disability standards is given in either House of the Parliament within 15 sitting days after the disability standards have been laid before that House; and 25
- (b) the disability standards, whether or not as amended, are subsequently approved by that House; and
- (c) the other House approves the disability standards in the form approved by the first-mentioned House;

the disability standards take effect in the form so approved from the day on which that other House approves the disability standards in that form. 30

**(4)** If no notice of a motion to amend the disability standards is given in the House of Representatives or the Senate within 15 sitting days of the particular House after the guidelines have been laid before that House, the guidelines take effect from the day immediately after that 15th sitting day or, where that day differs in respect of each House, the later of those days. 35

**Unlawful to contravene disability standards**

**32.** It is unlawful for a person to contravene a disability standard. 40

**Division 5 not to apply to disability standards**

33. Division 5 does not apply in relation to a disability standard.

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

5 34. If a person acts in accordance with a disability standard this Part does not apply to the person's act.

***Division 3—Discrimination involving harassment***

**Harassment in employment**

- 10 35.(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.
- 15 (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.
- 20 (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.
- 25 (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.
- 30 (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.
- 35 (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.

**Harassment in employment—associates with disabilities**

- 36.(1)** It is unlawful for a person to harass another person who:
- (a) is an employee of that person; and
  - (b) has an associate with a disability;
- in relation to the disability. 5
- (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 an associate with a disability;
- in relation to the disability. 10
- (3)** It is unlawful for a person to harass another person:
- (a) who is seeking employment by the first-mentioned person or by an employer of the first-mentioned person; and
  - (b) has an associate with a disability;
- in relation to the disability. 15
- (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 an associate with a disability;
- in relation to the disability.
- (5)** It is unlawful for a person to harass another person who: 20
- (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 an associate with a disability;
- in relation to the disability. 25
- (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 30
  - (b) has an associate with a disability;
- in relation to the disability.

**Harassment in education**

- 37.** It is unlawful for a person who is a member of the staff of an educational institution to harass another person who: 35
- (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.



**Harassment in education—associates with disabilities**

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

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

**Harassment in relation to the provision of goods and services**

10 39. 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  
15 (b) has a disability;  
in relation to the disability.

**Harassment in relation to the provision of goods and services—associates with disabilities**

20 40. 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  
25 (b) has an associate with a disability;  
in relation to the disability.

25 ***Division 4—Offences***

**Unlawful act not offence unless expressly so provided**

41. 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.

30 **Victimisation**

42.(1) It is an offence for a person to commit an act of victimisation against another person.  
Penalty: Imprisonment for 6 months.

35 (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:

- 40 (a) has made, or proposes to make, a complaint under this Act; or  
(b) has brought, or proposes to bring, proceedings under this Act against any person; or

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- (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
  - (d) has attended, or proposes to attend, a conference held under Part 4; or 5
  - (e) has appeared, or proposes to appear, as a witness before the Commission in a proceeding under this Act; 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
  - (g) has made an allegation that a person has done an act that is unlawful by reason of a provision of this Part; 10
- 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).

**Offence to incite doing of unlawful acts or offences** 15

43. It is an offence for a person:

- (a) to incite the doing of an act that is unlawful under a provision of Divisions 1, 2 or 3; or
- (b) to incite the doing of an act that is an offence under a provision of this Division (other than this section); or 20
- (c) to assist or promote whether by financial assistance or otherwise the doing of such an act.

Penalty: Imprisonment for 6 months.

**Advertisements**

44.(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 or 3. 25

Penalty: \$1,000. 30

(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. 35

**Division 5—Exemptions**

**Special measures** 40

45. 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

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opportunities with other persons in circumstances in relation to which a provision is made by this Act; or

- 5 (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; and
  - (ii) the provision of goods, services, facilities or land; or
  - 10 (iii) the making available of facilities; or
  - (iv) the administration of Commonwealth laws and programs; or
  - (v) their capacity to live independently; or
- 15 (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
  - 20 (iii) the making available of facilities; or
  - (iv) the administration of Commonwealth laws and programs; or
  - (v) their capacity to live independently.

**Superannuation and insurance**

25 **46.(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
  - 30 (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:
    - 35 (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
  - 40 (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.

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- (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 5
  - (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;
- is offered to, or may be obtained by, the other person, if: 10
- (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 15
  - (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.

**Acts done under statutory authority**

47.(1) This Part does not render unlawful anything done by a person in direct compliance with: 20

- (a) a determination or decision of the Commission; or
- (b) an order of a court; or
- (c) an order or award of a court or tribunal having power to fix minimum wages to the extent that such an order or award has specific provisions relating to the payment of rates of salary or wages to persons who, if they were not in receipt of the salary or wages, would be eligible for a disability support pension, where the salary or wages are determined by reference to the capacity of the person. 25 30

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

(3) During the period beginning at the commencement of this section and ending 3 years after the day this section commences, this Part does not render unlawful anything done by a person in direct compliance with another law. 35

(4) In subsection (1):  
“disability support pension” has the same meaning as in the *Social Security Act 1991*.

(5) In subsection (2):  
“law” means: 40

- (a) a law of the Commonwealth or of a State or Territory; or

(b) regulations or any other instrument made under such a law.

**Infectious diseases**

5     **48.** 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.

**Exemption for charities**

10     **49.(1)** This Part does not:

- (a) affect a provision in a charitable instrument that confers charitable benefits, or enables charitable benefits to be conferred, wholly or in part on persons who have a disability or a particular disability; or
- 15     (b) render unlawful any act done to give effect to such provision.

(2) In this section:

"Australia" includes the external Territories;

"charitable benefits" means benefits for purposes that are exclusively charitable according to the law in force in any part of Australia;

20     "charitable instrument" means a deed, will or other document, whether made before or after the commencement of this Act, that confers charitable benefits or enables charitable benefits to be conferred on persons.

**Telecommunications**

25     **50.(1)** This Part does not render it unlawful for:

- (a) a carrier; or
- (b) a supplier of an eligible service;

30     to discriminate against another person on the ground of the other person's disability in the provision of telecommunications services through payphones and public payphones.

(2) In this section:

"carrier" has the same meaning as in the *Telecommunications Act 1991*;

"eligible service" has the same meaning as in the *Telecommunications Act 1991*;

35     "payphone" has the same meaning as in the *Telecommunications Act 1991*;

"public payphone" has the same meaning as in the *Telecommunications Act 1991*.

40     (3) Subsection (1) ceases to be in force at the end of 3 years after the day this section commences.

**Pensions and allowances**

- 51.(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
  - (c) the *Seamen's War Pensions and Allowances Act 1940*;
  - (d) the *Social Security Act 1991*; 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*.
- (2) This Part does not render unlawful anything done by a person in direct compliance with a provision referred to in subsection (1).

**Migration**

- 52.** Neither Division 1 nor 2:
- (a) affect discriminatory provisions in the *Migration Act 1958* or any regulation made under that Act; or
  - (b) render unlawful anything done by a person in relation to the administration of that Act or those regulations.

**Combat duties and peacekeeping services**

- 53.(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:
- (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*.

5 **Peacekeeping services by the AFP**

**54.(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.

10 (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.

**Commission may grant exemptions**

15 **55.(1)** The Commission may, on application by:

(a) a person:

(i) on that person’s own behalf; or

(ii) on behalf of that person and another person or other persons; or

20 (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

25 (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 (other than section 31 or 32), as specified in the instrument.

30 (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.

35 (3) An exemption, 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

40 (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.

**Review by Administrative Appeals Tribunal**

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

**Notice of decisions to be published** 5

57.(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; 10  
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. 15

(2) Any failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

**Effect of exemptions** 20

58. 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. 25

**PART 3—ACTION PLANS**

**Interpretation**

59. In this Part:

“service provider” means a Department, a department of a State, a public authority of the Commonwealth, an instrumentality of a State, an educational institution or a person who: 30

- (a) provides goods or services; or
- (b) makes facilities available;

whether for payment or not.

**Action plans** 35

60. A service provider may prepare and implement an action plan.



**Provisions of action plans**

61. The action plan of a service provider must include provisions relating to:

- 5 (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 service provider; and
- (c) the review of practices within the service provider with a view to the identification of any discriminatory practices; and
- 10 (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  
15 evaluating the policies and programs referred to in paragraph (a); and
- (f) the appointment of persons within the service provider to implement the provisions referred to in paragraphs (a) to (e) (inclusive).

**Action plans may have other provisions**

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

**Amendment of action plans**

63. A service provider may, at any time, amend its action plan.

25 **Copy of action plan to be given to Commission**

64. A service provider may give:

- (a) a copy of its action plan; or
- (b) any amendments to the plan;

to the Commission.

30 **Commission to sell action plans to public**

65. The Commission is to sell copies of action plans or amendments to action plans given to it under section 64 to the public for a prescribed fee.

**PART 4—INQUIRIES AND CIVIL PROCEEDINGS**

35

*Division 1—Preliminary*

**Interpretation**

66. For the purposes of this Part, 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.

**Functions of Human Rights and Equal Opportunity Commission**

**67.(1)** The following functions are conferred on the Commission:

- (a) to inquire into alleged infringements of Part 2, and endeavour by conciliation to effect a settlement of the matters to which the alleged infringements relate; 5
- (b) to inquire into, and make determinations on, matters referred to it by the Minister or the Commissioner;
- (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; 10
- (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; 15
- (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; 20
- (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; 25
- (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; 30
- (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; 35
- (m) to do anything incidental or conducive to the performance of any of the preceding functions.

**(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 section 45. 40

**(3)** The Commissioner must not participate in any inquiry held by the Commission under Division 3 or attend any meeting of the

Commission, be present during any deliberation of the Commission, or take any part in any decision of the Commission, in connection with such an inquiry.

**Functions of Commissioner**

5       **68.** The functions of the Commission under paragraph 67(1)(a) and the function of the Commission under paragraph 67(1)(m) to the extent that it relates to the performance of those functions, are to be performed by the Commissioner on behalf of the Commission.

**Complaints**

10       **69.(1)** A complaint in writing alleging that a person has done an act that is unlawful under a provision of Part 2 may be lodged with the Commission by:

- (a) a person aggrieved by the act:
  - (i) on that person's own behalf; or
  - 15       (ii) on behalf of that person and another person or other persons also aggrieved by the act; or
- (b) 2 or more persons aggrieved by the act:
  - (i) on their own behalf; or
  - 20       (ii) on behalf of themselves and another person or other persons also aggrieved by the act; or
- (c) a person on behalf of another person or other persons aggrieved by the act.

(2) If it appears to the Commission that:

- (a) a person wishes to make a complaint under subsection (1); and
- 25       (b) that person requires assistance to formulate the complaint or to reduce it to writing;

it is the duty of the Commission to take reasonable steps to provide appropriate assistance to that person.

**Commissioner taken to be a complainant**

30       **70.** If:

- (a) the Commissioner has referred to the Commission a matter that came before the Commissioner otherwise than as the result of the making of a complaint to the Commission; or
- (b) the Minister has referred a matter to the Commission under
- 35       section 78;

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

- (c) the matter had been the subject of a complaint; and
- (d) the reference to the complainant in section 84 were a reference
- 40       to the Commissioner; and
- (e) a reference to the respondent were a reference to the person

who is, or each of the persons who are, alleged to have done the act to which the matter relates.

***Division 2—Inquiries by Commissioner***

**Inquiries by Commissioner**

71.(1) If: 5

- (a) a complaint relating to an alleged unlawful act is made to the Commission under section 69; or
- (b) it appears to the Commission that a person has done an act that is unlawful under a provision of Part 2;

the Commission must notify the Commissioner accordingly and the Commissioner must, subject to subsection (2), inquire into the act and endeavour, by conciliation, to effect a settlement of the matter to which the act relates. 10

(2) The Commissioner may decide not to inquire into an act, or, if the Commissioner has commenced to inquire into an act, decide not to continue to inquire into the act, if: 15

- (a) the Commissioner is satisfied that the act is not unlawful under a provision of Part 2; or
- (b) the Commissioner thinks the person aggrieved by the act does not desire, or no other person aggrieved by the act desires, that the inquiry be made or continued; or 20
- (c) in a case where a complaint has been made to the Commission in relation to the act (other than an act to which Division 4 of Part 2 applies)—a period of more than 12 months has elapsed since the act was done and the complaint was made to the Commission; or 25
- (d) in a case where a complaint has been made to the Commission in relation to the act—the Commissioner thinks that the complaint was trivial, vexatious, misconceived or lacking in substance; or 30
- (e) in a case where some other remedy has been sought in relation to the subject matter of the complaint—the Commissioner thinks that the subject matter of the complaint has been adequately dealt with; or
- (f) the Commissioner thinks that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the person aggrieved by the act; or 35
- (g) in a case where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the Commissioner thinks that the subject matter of the complaint has been adequately dealt with; or 40
- (h) the Commissioner thinks that the subject matter of the

complaint could be more effectively or conveniently dealt with by another statutory authority.

5 (3) If the Commissioner decides not to inquire into, or not to continue to inquire into, an act in respect of which a complaint was made to the Commission, the Commissioner must give notice in writing to the complainant or each of the complainants of that decision, of the reasons for that decision and of the rights of the complainant or each of the complainants under subsection (5).

10 (4) Subsection (3) does not apply in relation to a decision of the Commissioner that is made at the request of the complainant or all of the complainants, as the case requires.

15 (5) If the Commissioner has given a complainant a notice under subsection (3), the complainant may, within 21 days after receipt of the notice, by notice in writing served on the Commissioner, require the Commissioner to refer the complaint to the President.

(6) On receipt of a notice under subsection (5), the Commissioner must refer the complaint to the President together with a report relating to any inquiries made by the Commissioner into the complaint.

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

#### **Application for interim determination under section 102**

25 72.(1) If the Commissioner, at any time after a complaint is lodged and before the Commissioner declines to consider the complaint, resolves the complaint by conciliation or refers the matter to which the complaint relates to the Commission under subsection 76(1), the Commissioner may apply to the Commission for the making of an interim determination under section 102 or for the variation or revocation of any such determination.

30 (2) In relation to a matter arising under paragraph 71(1)(b), the Commissioner may apply to the Commission for the making of an interim determination under section 102, or for the variation or revocation of any such determination, at any time.

#### **Power to obtain information and documents**

35 73.(1) If the Commissioner has reason to believe that a person is capable of furnishing information (“**relevant information**”) or producing documents (“**relevant documents**”) relevant to an inquiry under this Division, the Commissioner may, by notice in writing served on the person, require the person, at such reasonable place, and within such  
40 reasonable period or on such reasonable date and at such reasonable time, as are specified in the notice:

(a) to give to the Commissioner, by writing signed by the person

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or, in the case of a body corporate, by an officer of the body corporate, such relevant information (if any) as is specified in the notice; and

- (b) to produce to the Commissioner such relevant documents (if any) as are specified in the notice. 5

(2) If documents are produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner:

- (a) may take possession of, and may make copies of, or take extracts from, the documents; and  
(b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry to which the documents relate; and 10  
(c) during that period must permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Commissioner to inspect at all reasonable times such of the documents as that person would be so entitled to inspect. 15

**Directions to persons to attend compulsory conference**

74.(1) Subject to section 85, for the purpose of inquiring into an act, and endeavouring to settle the matter to which the act relates, under section 71, the Commissioner may, by notice in writing, direct the persons referred to in subsection (2) or (3) of this section to attend, at a reasonable: 20

- (a) time; and  
(b) place; 25

specified in the notice, a conference presided over by the Commissioner or a person appointed by the Commissioner.

(2) Directions under subsection (1) to attend a conference in relation to an act must be given to:

- (a) if a complaint was made to the Commission in relation to that act—the complainant, or all the complainants, as the case requires; and 30

- (b) the person who is alleged to have done the act.

(3) Directions under subsection (1) to attend a conference in relation to an act may be given to any person who in the opinion of the Commissioner, is likely to be able to provide information relevant to the inquiry or whose presence at the conference is, in the opinion of the Commissioner, likely to be conducive to the settlement of the matter to which the act relates. 35

(4) A person who has been given a direction under subsection (1) to attend a conference is entitled to be paid by the Commonwealth a reasonable sum for the person's attendance at the conference. 40

(5) The Commissioner may, in a notice given to a person under subsection (1), require the person to produce such documents at the conference as are specified in the notice.

**Compulsory conference**

5       75.(1) The person presiding at a conference held under this Division may require a person attending the conference to produce a document.

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

10       (3) Subject to subsection (4), a body of persons, whether corporate or unincorporate, that is directed under section 74 to attend a conference is taken to attend if an officer or employee of that body attends on behalf of that body.

15       (4) Unless the person presiding at a conference under this Division consents:

(a) a natural person (other than a person with a disability) is not entitled to be represented at the conference by another person; and

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

**Reference of matters to the Commission**

76.(1) If the Commissioner:

25       (a) thinks that a matter cannot be settled by conciliation; or

(b) has endeavoured to settle a matter by conciliation but has not been successful; or

(c) thinks that the nature of a matter is such that it should be referred to the Commission;

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

35       (2) A report for the purposes of subsection (1) is not to set out or describe anything said or done in the course of conciliation proceedings under this Division (including anything said or done at a conference held under this Division).

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

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

**Minister may appoint persons to participate in inquiries**

77.(1) The Minister may appoint a person or persons to participate, in accordance with this section, in the performance of the functions of the Commission. 5

(2) A person who holds an appointment under subsection (1) may, at the request of the President, participate in the holding of an inquiry under this Division as if the person were a member of the Commission and, for the purposes of the application of this Act in relation to the inquiry, the person is taken to be a member of the Commission. 10

(3) A person appointed under subsection (1):

(a) holds the appointment for such period, not exceeding 5 years, as is specified in the instrument of the person's appointment, but is eligible for re-appointment; and 15

(b) may resign the appointment by writing signed by the person and given to the Minister.

(4) The Minister may:

(a) determine the terms and conditions of appointment, including remuneration, of a person appointed under subsection (1); and 20

(b) at any time terminate such an appointment.

(5) The Minister may, for the purpose of appointing under subsection (1) a person who is the holder of a judicial office of a State, enter into such arrangement with the appropriate Minister of the State as is necessary to secure that person's services. 25

(6) An arrangement under subsection (5) may provide for the Commonwealth to reimburse a State with respect to the services of the person to whom the arrangement relates.

(7) The appointment under subsection (1) of the holder of a Commonwealth office, or service by the holder of a Commonwealth office under such an appointment, does not affect the person's tenure of that Commonwealth office or the person's rank, title, status, precedence, salary, annual leave or other allowances or other rights or privileges as the holder of that office and, for all purposes, the person's service under such an appointment is taken to be service as the holder of that office. 30  
35

(8) In this section:

“Commonwealth office” means:

(a) an office or Judge of a court created by the Parliament; or

(b) an office the holder of which has, because of holding that office, the same status as a Judge of a court created by the Parliament. 40



**Reference of matter to the Commission by the Minister**

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

**Inquiries into complaints**

5       79.(1) Subject to subsection (2), the Commission must hold an inquiry into each complaint or matter referred to it under subsection 76(1) or section 78.

(2) The Commission must not hold, or must discontinue, an inquiry into a complaint or matter referred to it under subsection 76(1) if:

- 10       (a) the complainant or the person aggrieved by the act notifies the Commission that the complainant or the person does not wish the inquiry to be held or to continue; and
- (b) the Commission is satisfied that the complainant or person:
- 15           (i) fully understands the consequences of notifying the Commission that he or she does not wish the inquiry to be held or to continue; and
- (ii) did not notify the Commission as a result of the undue influence of, or under the duress of, another person.

20       (3) The Commission must not hold, or discontinue, an inquiry into a complaint or matter referred to it under section 78, if the Minister notifies the Commission that the Minister does not wish the inquiry to be held or to continue.

**Exercise of inquiry powers by Commission**

25       80.(1) Subject to subsection 67(3), the powers of the Commission to hold inquiries under this Act may, if the President so directs, be exercised by a single member of the Commission who is a legally qualified person, or by 2 or more members of the Commission at least one of whom is a legally qualified person.

30       (2) If the power of the Commission to hold an inquiry is being exercised by 2 or more members of the Commission:

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

(3) In this section:

**“legally qualified person”** means a person who:

- 40       (a) is or has been a Judge of a court created by the Parliament or of a court of a State or a person who has the same designation and status as a Judge of a court created by the Parliament; or

- (b) is enrolled as a Barrister or Solicitor, as a Barrister and Solicitor, or as a legal practitioner of the High Court, or of another Federal Court or of the Supreme Court of a State or Territory.

**Single inquiry in relation to several complaints**

**81.** If the Commission thinks that 2 or more complaints arise out of the same or substantially the same circumstances or subject-matter, it may hold a single inquiry in relation to those complaints. 5

**Joinder of parties by Commission**

**82.** If, during the holding of an inquiry, or at any stage during the holding of an inquiry, the Commission thinks that a person should be joined as a party to the inquiry, it may, by notice in writing given to that person, join that person as a party to the inquiry. 10

**Notice of inquiry and rights of parties at inquiry**

**83.(1)** The Commission: 15

- (a) must give a party to an inquiry, other than a person to whom the Commission grants leave to appear as a party to the inquiry, such notice in such manner as the Commissioner determines of the time and place at which it intends to hold the inquiry; and
- (b) must give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Commission. 20

(2) If a party to an inquiry to whom notice has been given under paragraph (1)(a) fails to attend at the time and place specified for the inquiry, the Commission may hold the inquiry in the absence of that party. 25

**Parties to an inquiry**

**84.** The parties to an inquiry are to be the complainant, the respondent, any person joined by the Commission as a party to the inquiry and any person to whom the Commission grants leave to appear as a party to the inquiry. 30

**Right of appearance and to representation**

**85.(1)** Subject to subsection (2), a party to an inquiry:

- (a) if he or she has a disability—may be represented by an agent; and 35
- (b) in any other case—must appear personally or, where the party is a body of persons, whether corporate or unincorporate, by an officer, employee or agent of the body.

(2) A party to an inquiry may:

- (a) if the Commission has made arrangements under subsection 40

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88(1) for counsel to appear at the inquiry to assist the Commission; or

(b) in any other case—the leave of the Commission; be represented by a solicitor or counsel or an agent.

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

**Inquiries may be held in private**

86.(1) Subject to subsection (2), an inquiry is to be held in public.

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

**Commission may prohibit publication of evidence**

87.(1) The Commission may direct that:

15 (a) any evidence given before it; or  
(b) the contents of any document produced to the Commission; or  
(c) any information that might enable a person who has appeared before the Commission to be identified;

20 must not be published, or must not be published except in such manner, and to such persons, as the Commission specifies.

(2) This section is not to be taken to derogate from the Commission's powers under section 86.

**Counsel assisting the Commission**

25 88.(1) The Commission may make arrangements for counsel to appear at an inquiry to assist the Commission.

(2) Counsel assisting the Commission at an inquiry under arrangements made under subsection (1) must, in relation to that inquiry, be subject to the control and direction of the Commission.

**Determination of representative complaints**

30 89. At an inquiry held in respect of a complaint that appears to the Commission to be a representative complaint, the Commission must determine, as a preliminary matter, whether that complaint should be dealt with as a representative complaint.

**Matters to be considered in determination of representative complaints**

35 90.(1) The Commission must not deal with a complaint as a representative complaint unless it is satisfied that the complaint was made on behalf of persons other than the complainant in good faith.

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- (2) In considering whether a complaint was made on behalf of persons other than the complainant in good faith, the Commission must satisfy itself:
- (a) that:
    - (i) the class is so numerous that joinder of all its members is impractical; and 5
    - (ii) there are questions of law or fact common to all members of the class; and
    - (iii) the claims of the complainant are typical of the claims of the class; and 10
    - (iv) multiple complainants would be likely to produce varying determinations that could have incompatible or inconsistent results for the individual members of the class; and
    - (v) the respondent has acted on grounds apparently applying to the class as a whole, thereby making relief appropriate for the class as a whole; or 15
  - (b) that, assuming that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of representative complaint. 20

**Amendment of representative complaints**

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

(2) If the Commission is satisfied that a complaint has been wrongly made as a representative complaint, the Commission may amend the complaint by removing the names of the persons or the description of the class of persons on whose behalf the complaint was lodged so that the complaint can be dealt with as a complaint other than a representative complaint. 30

**Ordinary complaints not precluded by representative complaints**

92. This Part does not prevent a person from lodging a complaint, other than a representative complaint, under section 69, notwithstanding that the conduct in respect of which the complaint is lodged is also the conduct in respect of which a representative complaint has been lodged. 35

**Resolution of complaint by conciliation**

93. The Commission: 40
- (a) may endeavour, by all such means as seem reasonable to it, to resolve a complaint the subject of an inquiry by conciliation; and

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

**Evidence and finding in other proceedings**

94. In the course of an inquiry, the Commission may, in its discretion:

- 10 (a) receive in evidence the transcript of evidence in any other proceedings before a court or tribunal and draw any conclusions of fact from that transcript that it thinks proper; and
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the inquiry; and
- 15 (c) receive in evidence any report of the Commissioner if a copy of that report has been made available to every other party to the inquiry.

**Powers of Commission to take evidence**

20 95.(1) The Commission may take evidence on oath or affirmation and for that purpose a member of the Commission may administer an oath or affirmation.

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

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

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

**Fees for witnesses**

30 96.(1) A person summoned to appear before the Commission is entitled to be paid in respect of the person's attendance, fees, and allowances for expenses, fixed by or in accordance with the regulations.

(2) Subject to subsection (3), the fees and allowances must be paid:

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

(b) in any other case—by the Commonwealth.

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

**Retention and copying of documents**

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

**Application of rules of evidence**

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98.(1) For the purposes of an inquiry, the Commission:

(a) is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks fit; and

(b) must conduct the inquiry with as little formality and technicality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Commission permit; and

10

(c) may give directions relating to procedure that it thinks will enable costs of delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties.

15

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

**Consideration of exceptions and exemptions**

99. In determining whether an act is unlawful under a provision of Part 2, the Commission is not required to have regard to any exception or exemption provided for in that Part unless there is evidence before the Commission that the exception or exemption is or may be applicable in relation to that act.

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**Commission may dismiss trivial etc. complaints**

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100. The Commission may, at any stage of an inquiry, dismiss a complaint if:

(a) the Commission thinks that a complaint is trivial, vexatious, misconceived or lacking in substance; or

(b) the Commission is satisfied that the complaint relates to an act that is not unlawful under a provision of Part 2; or

30

(c) in a case where some other remedy has been sought in relation to the subject matter of the complaint—the Commission thinks that the subject matter of the complaint has been adequately dealt with; or

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(d) the Commission thinks that some other more appropriate remedy in relation to the subject matter of a complaint is reasonably available to the person aggrieved by the act; or

(e) in a case where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the Commission thinks the subject matter of the complaint has been adequately dealt with; or

40

- (f) the Commission thinks that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.

5 **President may dismiss trivial etc. complaints referred under subsection 71(5)**

**101.(1)** If a complaint is referred to the President under subsection 71(5), the President may, without holding an inquiry, dismiss the complaint if:

- 10 (a) the President thinks the complaint is trivial, vexatious, misconceived, lacking in substance or stale; or
- (b) the President is satisfied that the complaint relates to an act that is not unlawful under a provision of Part 2; or
- 15 (c) in a case where some other remedy has been sought in relation to the subject matter of the complaint—the President thinks that the subject matter of the complaint has been adequately dealt with; or
- (d) the President thinks that some other appropriate remedy in relation to the subject matter of the complaint is reasonably available to the person aggrieved by the act; or
- 20 (e) in a case where the subject matter of the complaint has already been dealt with by the Commission or by another statutory authority—the President thinks that the subject matter of the complaint has been adequately dealt with; or
- 25 (f) the President thinks that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.

(2) If the President does not dismiss a complaint referred to him or her under subsection (1), the President must refer the complaint to the Commissioner for the Commissioner to continue to inquire into the act under section 71.

(3) For the purposes of subsection (1), a complaint is stale in a case where the complaint has been made to the Commission in relation to an act (other than an act to which Division 4 of Part 2 applies) if a period of more than 12 months has elapsed since the act was done and the complaint was made to the Commission.

**Making of interim determination**

40 **102.(1)** The Commission, or, where the President thinks that it is expedient that the President alone should perform the functions of the Commission under this section, the President, may, on the application of the Commissioner under section 72 or on the application of a party to an inquiry at any time after the lodgment of a complaint into which that inquiry is held, make an interim determination of such a nature as would, if it were binding and conclusive on the parties, maintain:

- (a) the position between the parties to the complaint immediately before the lodging of the complaint; or
  - (b) the rights of the parties to the complaint;
- pending completion of the matter the subject of the complaint.
- (2) An interim determination under subsection (1) is not binding or conclusive between any of the parties to the determination. 5

**Determination or other decision of the Commission**

**103.(1)** After holding an inquiry, the Commission may:

- (a) dismiss the complaint the subject of the inquiry; or
  - (b) if it finds the complaint substantiated—so find and make a determination which, if appropriate, may include any one or more of the following: 10
    - (i) a declaration that the respondent had engaged in conduct, or committed an act, that is unlawful under a provision of Part 2 of this Act and should not repeat or continue such unlawful conduct; 15
    - (ii) a declaration that the respondent should perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;
    - (iii) a declaration that the respondent should employ or re-employ the complainant; 20
    - (iv) if the complaint was not dealt with as a representative complaint—a declaration that the respondent should pay to the complainant damages by way of compensation for any loss or damage suffered because of the conduct of the respondent; 25
    - (v) a declaration that the respondent should promote the complainant;
    - (vi) a declaration that the termination of a contract or agreement should be varied to redress any loss or damage suffered by the complainant; 30
    - (vii) a declaration that it would be inappropriate for any further action to be taken in the matter.
- (2) A determination of the Commission under subsection (1) is not binding or conclusive between any of the parties to the determination. 35
- (3) The Commission may, in the making of a determination under subsection (1), state any findings of fact upon which the determination is based.
- (4) The damage referred to in paragraph (1)(b) includes injury to the complainant's feelings or humiliation suffered by the complainant. 40
- (5) In this section:  
“**complainant**”, in relation to a complaint that is made by a person:



(a) on behalf of persons who include a person other than the complainant; or

(b) on behalf of another person or other persons;

means the persons on whose behalf the complaint is made.

**5 Proceedings in Federal Court**

**104.(1)** The Commission or complainant may institute a proceeding in the Federal Court for an order to enforce a determination made pursuant to subsection 102(1) or 103(1).

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

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

**15 Assistance in proceedings before Commission**

**105.(1)** If a person has:

(a) made a complaint; or

(b) done, or is alleged to have done, an act in respect of which a person has made a complaint;

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

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

**30 Assistance in proceedings before Federal Court**

**106.(1)** A person who has:

(a) instituted or proposes to institute a proceeding before the Federal Court under section 104; or

**35** (b) done, or is alleged to have done, an act in respect of which a proceeding has been instituted in the Federal Court under section 104;

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

**40** (2) If an application is made by a person under subsection (1) and the Attorney-General is satisfied that it will involve hardship to that person to refuse the application and that, in all the circumstances, it is

reasonable that the application be granted, the Attorney-General may authorise the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in respect of the proceedings as the Attorney-General determines. 5

## **PART 5—OTHER OFFENCES**

### **Failure to provide actuarial data or statistical data**

**107.(1)** If a person has engaged in an act of discrimination that would, apart from section 46, be unlawful, the Commissioner 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 Commissioner 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 Commissioner or the Commission, as the case may be, makes such a requirement of a person, the person must not, without reasonable excuse, fail to comply with the requirement. 10  
15

Penalty: \$1,000.

**(2)** Subsection 4K(2) of the *Crimes Act 1914* does not apply to this section. 20

### **Failure to attend conference**

**108.** A person who has been given a direction under subsection 74(1) to attend a conference must not, without reasonable excuse:

- (a) fail to attend as required by the direction; or
- (b) fail to attend and report from day to day unless excused, or released from further attendance, by the person presiding at the conference. 25

Penalty: \$1,000.

### **Failure to give information or produce documents**

**109.(1)** A person must not, without reasonable excuse, refuse or fail: 30

- (a) to give information; or
- (b) to produce a document;

when so required under section 73, 74 or 75.

Penalty: \$1,000. 35

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

**Offences in relation to Commission**

**110.(1)** A person served, as prescribed, with a summons to appear before the Commission as a witness must not, without reasonable excuse:

- 5 (a) fail to attend as required by the summons; or  
(b) fail to appear and report from day to day unless excused, or released from further attendance, by the Commission.
- 10 **(2)** A person appearing before the Commission as a witness at an inquiry must not, without reasonable excuse:
- (a) refuse or fail to be sworn or make an affirmation; or  
(b) refuse or fail to answer a question that is required by the member presiding at the inquiry to be answered; or  
15 (c) refuse or fail to produce a document that was required to be produced by a summons under this Act served on that person as prescribed.
- (3)** A person must not:
- (a) interrupt an inquiry or proceedings of the Commission; or  
20 (b) use insulting language towards a member of the Commission when the member is exercising any powers or performing any functions as a member; or  
(c) make a publication in contravention of any direction given under section 87; or  
25 (d) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Commission is meeting or holding an inquiry.

Penalty: \$1,000.

**Self-incrimination**

30 **111.(1)** It is not a reasonable excuse for the purposes of section 109 for a person to refuse or fail to give information or produce a document that the giving of the information or the production of the document might incriminate the person, but any information given, document produced or evidence given under section 73, 74 or 75, and any  
35 information or thing (including any document) obtained as a direct or indirect consequence of the giving of the information or production of the document is not admissible in evidence against the person in any civil or criminal proceedings before a court, other than a proceeding for an offence under section 112.

40 **(2)** Without limiting the generality of the expression “reasonable excuse” in section 110, it is a reasonable excuse for the purposes of that section for a person to refuse or fail to answer a question put to the person at an inquiry, or to refuse to produce a document, that the answer to the question or the production of the document might incriminate the person.

**False or misleading information**

112. A person must not give information or make a statement to the Commission, to the Commissioner or to any other person exercising powers or performing functions under this Act, knowing that the information or statement is false or misleading in a material particular. 5  
Penalty: Imprisonment for 6 months.

**PART 6—DISABILITY DISCRIMINATION COMMISSIONER**

**Disability Discrimination Commissioner**

113. There is to be a Disability Discrimination Commissioner, who is to be appointed by the Governor-General. 10

**Terms and conditions of appointment**

114.(1) Subject to this section, the Commissioner holds office for such period, not exceeding 7 years, as is specified in the instrument of the person's appointment, but is eligible for re-appointment.

(2) The Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General. 15

**Remuneration of Commissioner**

115.(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. 20

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

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*. 25

**Leave of absence**

116.(1) Subject to section 87E of the *Public Service Act 1922*, the Commissioner has such recreation leave entitlements as are determined by the Remuneration Tribunal. 30

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

**Outside employment**

117. The Commissioner must not, except with the approval of the Minister, engage in paid employment outside the duties of the office of Commissioner. 35

**Resignation**

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

**Termination of appointment**

5 **119.(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.

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

- 15 (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.

20 **Acting Commissioner**

**120.(1)** The Minister may appoint a person to act as Commissioner:

- 25 (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.

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

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

**PART 7—MISCELLANEOUS**

**Delegation**

**121.(1)** The Commission may, by writing under its seal, delegate to:

- 40 (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. 5

(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; 10

approved by the Commission, all or any of the powers exercisable by the Commissioner under this Act.

**Liability of persons involved in unlawful acts**

122. A person who causes, instructs, induces, aids or permits another person to do an act that is unlawful under Division 1, 2 or 3 of Part 2 is, for the purposes of this Act, taken also to have done the act. 15

**Conduct by directors, servants and agents**

123.(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: 20

(a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant 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. 25 30

(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 a servant or agent of the person within the scope of his or her actual or apparent authority; and 35

(b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant 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 40

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took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

5 (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.

10 (6) If a person attends a conference under Division 2 of Part 4, or appears before the Commission under Division 3 of Part 4, on behalf of a body of persons, whether corporate or unincorporate, any conduct by that person in so attending or appearing is taken, for the purposes of this Act, to be conduct of the body.

15 (7) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

20 (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.

25 (9) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

**Commonwealth taken to be employer**

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

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

30 125.(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.

35 (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.

**Protection from civil actions**

40 126.(1) The Commission, a member of the Commission, the Commissioner or a person acting under the direction or authority of the Commission or of the Commissioner or a delegate under section 121 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 or the Commissioner.

(2) If:

(a) a complaint has been made to the Commission; or 5

(b) 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 the complaint or submission was made, the document or information was given or the evidence was given. 10

**Non-disclosure of private information**

**127.(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, except in the performance of a duty under or in connection with this Act or in the performance or exercise of such a function or power: 15

(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 25

(b) make use of any such information as is mentioned in paragraph (a); or 30

(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.

(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: 35

(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 40



for the purposes of this Act or because of that person being or having been so authorised; or

- 5 (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.

10 (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

- 15 (b) divulging or communicating information, or producing a document, to any person in accordance with an arrangement in force under section 16 of the *Human Rights and Equal Opportunity Commission Act 1986*; or

- 20 (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.

25 (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.

30 **Information stored otherwise than in written form**

35 128. 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.

**Commissioner to give information**

129. 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.

40 **Jurisdiction of Federal Court**

130. The Federal Court has jurisdiction with respect to matters arising under Part 4.

**Courts to ensure just terms**

**131.(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. 5

**(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. 10

**Regulations**

**132.(1)** The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or 15
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**(2)** Before making any regulations for the purposes of section 31 or 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. 20

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*[Minister's second reading speech made in—  
House of Representatives on 26 May 1992  
Senate on 8 September 1992]*