

Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Act 2022

No. 48, 2022

An Act to amend the law relating to the appointment of members of the Australian Human Rights Commission, and for related purposes

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No. 48, 2022

An Act to amend the law relating to the appointment of members of the Australian Human Rights Commission, and for related purposes

[*Assented to 9 November 2022*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Act 2022*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. | 10 November 2022 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Age Discrimination Act 2004

1 Subsection 53A(1) (note)

Repeal the note, substitute:

Note: Subject to subsection 53B(1A), the Age Discrimination Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

2 Subsection 53A(2)

Repeal the subsection, substitute:

(2) A person must not be appointed under subsection (1) as the Age Discrimination Commissioner unless the Minister is satisfied that:

(a) the person has appropriate qualifications, knowledge or experience; and

(b) the selection of the person for the appointment is the result of a process that:

(i) was merit‑based; and

(ii) included public advertising of the position.

(3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Age Discrimination Commissioner under a previous appointment under subsection (1).

3 Subsection 53B(1)

Omit the second sentence.

4 After subsection 53B(1)

Insert:

(1A) A person must not be appointed as the Age Discrimination Commissioner under section 53A for a period if the sum of the following exceeds 7 years:

(a) that period;

(b) any periods of previous appointment of the person as the Age Discrimination Commissioner under that section.

Australian Human Rights Commission Act 1986

5 After subsection 8A(1)

Insert:

(1A) A person must not be appointed under subsection (1) as the President unless the Minister is satisfied that:

(a) the person has appropriate qualifications, knowledge or experience; and

(b) the selection of the person for the appointment is the result of a process that:

(i) was merit‑based; and

(ii) included public advertising of the position.

(1B) Paragraph (1A)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the President under a previous appointment under subsection (1).

6 Subsection 8B(2)

Repeal the subsection, substitute:

(2) A person must not be appointed under subsection (1) as the Human Rights Commissioner unless the Minister is satisfied that:

(a) the person has appropriate qualifications, knowledge or experience; and

(b) the selection of the person for the appointment is the result of a process that:

(i) was merit‑based; and

(ii) included public advertising of the position.

(3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Human Rights Commissioner under a previous appointment under subsection (1).

7 Subsection 37(1)

After “subsection (2)”, insert “or (3)”.

8 Subsection 37(1)

Omit “, not exceeding 7 years,”.

9 After subsection 37(1)

Insert:

(2) A person must not be appointed as the President under section 8A for a period if the sum of the following exceeds 7 years:

(a) that period;

(b) any periods of previous appointment of the person as the President under that section.

(3) A person must not be appointed as the Human Rights Commissioner under section 8B for a period if the sum of the following exceeds 7 years:

(a) that period;

(b) any periods of previous appointment of the person as the Human Rights Commissioner under that section.

10 Subsection 46B(2)

Repeal the subsection, substitute:

(2) A person must not be appointed under subsection (1) as the Aboriginal and Torres Strait Islander Social Justice Commissioner unless the Minister is satisfied that:

(a) the person has significant experience in community life of Aboriginal persons or Torres Strait Islanders; and

(b) the selection of the person for the appointment is the result of a process that:

(i) was merit‑based; and

(ii) included public advertising of the position.

(3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Aboriginal and Torres Strait Islander Social Justice Commissioner under a previous appointment under subsection (1).

11 Subsection 46D(1)

Omit “, not exceeding 7 years,”.

12 After subsection 46D(1)

Insert:

(1A) A person must not be appointed as the Aboriginal and Torres Strait Islander Social Justice Commissioner under section 46B for a period if the sum of the following exceeds 7 years:

(a) that period;

(b) any periods of previous appointment of the person as the Aboriginal and Torres Strait Islander Social Justice Commissioner under that section.

13 Subsection 46MC(2)

Repeal the subsection, substitute:

(2) A person must not be appointed under subsection (1) as the National Children’s Commissioner unless the Minister is satisfied that:

(a) the person has appropriate qualifications, knowledge or experience; and

(b) the selection of the person for the appointment is the result of a process that:

(i) was merit‑based; and

(ii) included public advertising of the position.

(3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the National Children’s Commissioner under a previous appointment under subsection (1).

14 Section 46MD

Before “The National”, insert “(1)”.

15 Section 46MD

Omit the second sentence.

16 At the end of section 46MD

Add:

(2) A person must not be appointed as the National Children’s Commissioner under section 46MC for a period if the sum of the following exceeds 7 years:

(a) that period;

(b) any periods of previous appointment of the person as the National Children’s Commissioner under that section.

Disability Discrimination Act 1992

17 Subsection 113(2)

Repeal the subsection, substitute:

(2) A person must not be appointed under subsection (1) as the Disability Discrimination Commissioner unless the Minister is satisfied that:

(a) the person has appropriate qualifications, knowledge or experience; and

(b) the selection of the person for the appointment is the result of a process that:

(i) was merit‑based; and

(ii) included public advertising of the position.

(3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Disability Discrimination Commissioner under a previous appointment under subsection (1).

18 Subsection 114(1)

Omit “, not exceeding 7 years,”.

19 After subsection 114(1)

Insert:

(1A) A person must not be appointed as the Disability Discrimination Commissioner under section 113 for a period if the sum of the following exceeds 7 years:

(a) that period;

(b) any periods of previous appointment of the person as the Disability Discrimination Commissioner under that section.

Racial Discrimination Act 1975

20 Subsection 29(2)

Repeal the subsection, substitute:

(2) A person must not be appointed under subsection (1) as the Race Discrimination Commissioner unless the Minister is satisfied that:

(a) the person has appropriate qualifications, knowledge or experience; and

(b) the selection of the person for the appointment is the result of a process that:

(i) was merit‑based; and

(ii) included public advertising of the position.

(3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Race Discrimination Commissioner under a previous appointment under subsection (1).

21 Subsection 30(1)

Omit “, not exceeding 7 years,”.

22 After subsection 30(1)

Insert:

(2) A person must not be appointed as the Race Discrimination Commissioner under section 29 for a period if the sum of the following exceeds 7 years:

(a) that period;

(b) any periods of previous appointment of the person as the Race Discrimination Commissioner under that section.

Sex Discrimination Act 1984

23 Subsection 96(2)

Repeal the subsection, substitute:

(2) A person must not be appointed under subsection (1) as the Sex Discrimination Commissioner unless the Minister is satisfied that:

(a) the person has appropriate qualifications, knowledge or experience; and

(b) the selection of the person for the appointment is the result of a process that:

(i) was merit‑based; and

(ii) included public advertising of the position.

(3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Sex Discrimination Commissioner under a previous appointment under subsection (1).

24 Subsection 97(1)

Omit “, not exceeding 7 years,”.

25 After subsection 97(1)

Insert:

(2) A person must not be appointed as the Sex Discrimination Commissioner under section 96 for a period if the sum of the following exceeds 7 years:

(a) that period;

(b) any periods of previous appointment of the person as the Sex Discrimination Commissioner under that section.

26 Existing appointments

The amendments made by this Schedule do not affect:

(a) the validity of an appointment that was made before the commencement of this item; or

(b) a period of appointment that was specified in an instrument of appointment before that commencement.

[*Minister’s second reading speech made in—*

*House of Representatives on 27 July 2022*

*Senate on 3 August 2022*]

(60/22)