



Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022

No. 85, 2022

**An Act to amend the law relating to discrimination,
human rights and gender equality, and for other
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
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Contents

1	Short title.....	2
2	Commencement.....	2
3	Schedules.....	3
4	Review of operation of amendments	3
Schedule 1—Hostile workplace environments		4
	<i>Sex Discrimination Act 1984</i>	4
Schedule 2—Positive duty		7
Part 1—Duty		7
	<i>Sex Discrimination Act 1984</i>	7
Part 2—Compliance		11
	Division 1—Amendments commencing day after Royal Assent	11
	<i>Australian Human Rights Commission Act 1986</i>	11
	Division 2—Amendments commencing 12 months after Royal Assent	12
	<i>Australian Human Rights Commission Act 1986</i>	12
	<i>Inspector-General of Intelligence and Security Act 1986</i>	19
Schedule 3—Inquiries into systemic unlawful discrimination		21
	<i>Australian Human Rights Commission Act 1986</i>	21
Schedule 4—Representative applications		24
	<i>Australian Human Rights Commission Act 1986</i>	24
Schedule 6—Amendment of the Workplace Gender Equality Act 2012		28
	<i>Workplace Gender Equality Act 2012</i>	28
Schedule 7—Victimisation		33
Part 1—Amendments		33
	<i>Age Discrimination Act 2004</i>	33
	<i>Australian Human Rights Commission Act 1986</i>	35
	<i>Disability Discrimination Act 1992</i>	36
	<i>Racial Discrimination Act 1975</i>	37

<i>Sex Discrimination Act 1984</i>	38
Part 2—Application and transitional provisions	39
Schedule 8—Other amendments	43
<i>Australian Human Rights Commission Act 1986</i>	43
<i>Sex Discrimination Act 1984</i>	43



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**An Act to amend the law relating to discrimination,
human rights and gender equality, and for other
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[Assented to 12 December 2022]

The Parliament of Australia enacts:

No. 85, 2022

*Anti-Discrimination and Human Rights Legislation Amendment
(Respect at Work) Act 2022*

1

1 Short title

This Act is the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) 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. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 December 2022
2. Schedule 1	The day after this Act receives the Royal Assent.	13 December 2022
3. Schedule 2, Part 1	The day after this Act receives the Royal Assent.	13 December 2022
4. Schedule 2, Part 2, Division 1	The day after this Act receives the Royal Assent.	13 December 2022
5. Schedule 2, Part 2, Division 2	The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.	12 December 2023
6. Schedules 3 to 8	The day after this Act receives the Royal Assent.	13 December 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.
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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.

4 Review of operation of amendments

- (1) The Minister must cause an independent review to be conducted of the operation of the amendments made by this Act.
- (2) Without limiting subsection (1), the review must consider whether:
 - (a) the amendments made by this Act are operating effectively; and
 - (b) the Australian Human Rights Commission has capacity to carry out the functions relating to compliance with the positive duty in relation to sex discrimination in Division 4A of Part II of the *Australian Human Rights Commission Act 1986*, as inserted by Part 2 of Schedule 2 to this Act.
- (3) The review must commence as soon as practicable after the end of the period of 2 years after the day Division 2 of Part 2 of Schedule 2 to this Act commences and, in any event, not later than 3 years after that day.
- (4) The persons who conduct the review must give the Minister a written report of the review as soon as practicable and, in any event, not later than 9 months after commencement of the review.
- (5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

Schedule 1—Hostile workplace environments

Sex Discrimination Act 1984

1 Title

Omit “and discrimination involving harassment on the ground of sex”, substitute “, harassment on the ground of sex or hostile workplace environments”.

2 After paragraph 3(c)

Insert:

(ca) to eliminate, so far as is possible, discrimination involving subjecting persons to workplace environments that are hostile on the ground of sex; and

3 Subsection 4(1)

Insert:

workplace has the same meaning as in the *Work Health and Safety Act 2011*.

4 After section 8

Insert:

8A Workplace environment that is hostile for 2 or more reasons

For the purposes of this Act, a workplace environment may be offensive, intimidating or humiliating to a person by reason of:

- (a) the sex of the person; or
- (b) a characteristic that appertains generally to persons of the sex of the person; or
- (c) a characteristic that is generally imputed to persons of the sex of the person;

if it is offensive, intimidating or humiliating by reason of 2 or more matters that include the sex or the characteristic, whether or not the sex or the characteristic is the dominant or substantial reason.

5 At the end of Division 3 of Part II

Add:

28M Hostile workplace environments

- (1) It is unlawful for a person to subject another person to a workplace environment that is hostile on the ground of sex.
- (2) A person (the *first person*) subjects another person (the *second person*) to a workplace environment that is hostile on the ground of sex if:
 - (a) the first person engages in conduct in a workplace where the first person or the second person, or both, work; and
 - (b) the second person is in the workplace at the same time as or after the conduct occurs; and
 - (c) a reasonable person, having regard to all the circumstances, would have anticipated the possibility of the conduct resulting in the workplace environment being offensive, intimidating or humiliating to a person of the sex of the second person by reason of:
 - (i) the sex of the person; or
 - (ii) a characteristic that appertains generally to persons of the sex of the person; or
 - (iii) a characteristic that is generally imputed to persons of the sex of the person.
- (3) For the purposes of subsection (2), the circumstances to be taken into account include, but are not limited to, the following:
 - (a) the seriousness of the conduct;
 - (b) whether the conduct was continuous or repetitive;
 - (c) the role, influence or authority of the person engaging in the conduct;
 - (d) any other relevant circumstance.
- (4) In this section:

conduct includes making a statement, whether the statement is made orally or in writing.

6 At the end of paragraphs 48(1)(gaaa), (gaa) and (gc)

Add:

; or (iii) subjecting a person to a workplace environment that is hostile on the ground of sex;

Schedule 2—Positive duty

Part 1—Duty

Sex Discrimination Act 1984

1 Subsection 10(2)

After “deals with”, insert “work health and safety,”.

2 Paragraph 10(4)(b)

After “that law”, insert “, other than a claim for workers compensation,”.

3 Subsection 11(2)

After “deals with”, insert “work health and safety,”.

4 Paragraph 11(4)(b)

After “that law”, insert “, other than a claim for workers compensation,”.

5 After paragraph 47A(2)(g)

Insert:

or (h) has made an allegation that a person has contravened a provision of Part IIA;

6 Subsection 47A(2)

Omit “paragraphs (a) to (g)”, substitute “paragraphs (a) to (h)”.

7 Subsection 47A(3)

Omit “that another person had done an act that was unlawful by reason of a provision of this Part (other than subsection (1))”, substitute “mentioned in paragraph (2)(g) or (h)”.

8 After Part II

Insert:

Part IIA—Duty to eliminate unlawful sex discrimination etc.

47B Simplified outline of this Part

An employer or a person conducting a business or undertaking must take reasonable and proportionate measures to eliminate, as far as possible, certain discriminatory conduct.

Division 4A of Part II of the *Australian Human Rights Commission Act 1986* confers functions on the President in relation to this duty, including inquiring into compliance, giving compliance notices and accepting undertakings.

47C Duty to eliminate unlawful sex discrimination etc.

Positive duty

- (1) An employer or a person conducting a business or undertaking (the **duty holder**) must take reasonable and proportionate measures to eliminate, as far as possible:
 - (a) conduct covered by subsection (2) by persons covered by subsection (3); and
 - (b) conduct covered by subsection (4).

Conduct by duty holder, employees, workers and agents

- (2) For the purposes of subsection (1), this subsection covers the following conduct:
 - (a) discrimination on the ground of a person's sex that is unlawful under any of the following provisions:
 - (i) subsection 14(1) or (2) (employment);
 - (ii) section 15 (commission agents);
 - (iii) section 16 (contract workers);
 - (iv) section 17 (partnerships);
 - (b) sexual harassment, or harassment on the ground of sex, that is unlawful under section 28B;

- (c) conduct that is unlawful under section 28M (hostile workplace environments);
 - (d) acts of victimisation (within the meaning of section 47A) that relate to complaints, proceedings, assertions or allegations in relation to conduct mentioned in any of paragraphs (a) to (c) of this subsection.
- (3) For the purposes of paragraph (1)(a), this subsection covers the following persons:
- (a) the duty holder;
 - (b) if the duty holder is an employer—the duty holder’s employees;
 - (c) if the duty holder is a person conducting a business or undertaking—workers in the business or undertaking;
 - (d) the duty holder’s agents.

Other conduct towards employees and workers by any person

- (4) For the purposes of subsection (1), this subsection covers the following conduct:
- (a) sexual harassment, or harassment on the ground of sex, of persons covered by subsection (5) that is unlawful under subsection 28B(6) or (8);
 - (b) conduct in workplaces where persons covered by subsection (5) work that is unlawful under section 28M (hostile workplace environments);
 - (c) acts of victimisation (within the meaning of section 47A) against persons covered by subsection (5) that relate to complaints, proceedings, assertions or allegations in relation to conduct mentioned in any of paragraphs (2)(a) to (c).
- (5) For the purposes of subsection (4), this subsection covers the following persons:
- (a) if the duty holder is an employer—the duty holder’s employees;
 - (b) if the duty holder is a person conducting a business or undertaking—workers in the business or undertaking.

Matters to be taken into account

- (6) The following matters are to be taken into account in determining whether a duty holder complies with subsection (1):
- (a) the size, nature and circumstances of the duty holder's business or undertaking;
 - (b) the duty holder's resources, whether financial or otherwise;
 - (c) the practicability and the cost of measures to eliminate conduct covered by subsection (2) or (4);
 - (d) any other relevant matter.

Other duties not limited or otherwise affected

- (7) This section does not limit, or otherwise affect, a duty that a duty holder has under:
- (a) the *Work Health and Safety Act 2011*; or
 - (b) a law of a State or Territory that deals with work health and safety.
- (8) Paragraph (7)(b) does not limit the operation of section 10 or 11.

9 At the end of section 85

Add "or IIA".

10 After paragraph 94(2)(g)

Insert:

or (h) has made an allegation that a person has contravened a provision of Part IIA;

11 Subsection 94(2)

Omit "paragraphs (a) to (g)", substitute "paragraphs (a) to (h)".

12 Subsection 94(3)

Omit "that another person had done an act that was unlawful by reason of a provision of Part II", substitute "mentioned in paragraph (2)(g) or (h)".

13 At the end of section 110

Add "or IIA".

Part 2—Compliance

Division 1—Amendments commencing day after Royal Assent

Australian Human Rights Commission Act 1986

14 Subsection 3(1)

Insert:

positive duty in relation to sex discrimination means section 47C of the *Sex Discrimination Act 1984*.

15 After paragraph 11(1)(d)

Insert:

(da) the functions conferred on the Commission by section 35A; and

16 After Division 4 of Part II

Insert:

Division 4A—Functions relating to positive duty in relation to sex discrimination

35A Functions of Commission relating to positive duty in relation to sex discrimination

The following functions are conferred on the Commission:

- (a) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for complying with the positive duty in relation to sex discrimination;
- (b) to promote an understanding and acceptance, and the public discussion, of the positive duty in relation to sex discrimination;
- (c) to undertake research and educational programs in relation to the positive duty in relation to sex discrimination;

- (f) to do anything incidental or conducive to the performance of any of the preceding functions.

Note: The positive duty in relation to sex discrimination is section 47C of the *Sex Discrimination Act 1984*.

35AA Performance of functions relating to positive duty in relation to sex discrimination

In performing its functions under section 35A, the Commission must have regard to:

- (a) the need for guidelines and other materials to be available in multiple languages; and
(b) the cultural diversity of Australian workplaces.

Division 2—Amendments commencing 12 months after Royal Assent

Australian Human Rights Commission Act 1986

17 Subsection 3(1)

Insert:

compliance notice means a notice mentioned in subsection 35F(1).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

18 Subsection 8(6)

After “31(b)”, insert “, 35A(d)”.

19 Subsection 8(6)

After “31(k)”, insert “, 35A(f)”.

20 After subsection 11(3)

Insert:

- (3A) Notwithstanding paragraph (1)(da), the functions of the Commission do not include inquiring into an intelligence agency’s compliance with the positive duty in relation to sex discrimination.

- (3B) If the President reasonably suspects that an intelligence agency is not complying with the positive duty in relation to sex discrimination, the President must refer the matter to the Inspector-General of Intelligence and Security.

21 After subsection 19(2C)

Insert:

- (2D) Subsection (2) does not allow the President to delegate a power under section 35F, 35G or 35J to a person other than a member of the staff of the Commission who is:
- (a) an SES employee; or
 - (b) an acting SES employee; or
 - (c) classified as Executive Level 2 or equivalent; or
 - (d) acting in a position usually occupied by a member of the staff of the Commission who is so classified.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

22 After paragraph 35A(c)

Insert:

- (d) to inquire into a person's compliance with the positive duty in relation to sex discrimination;
- (e) to ensure compliance with the positive duty in relation to sex discrimination;

23 At the end of Division 4A of Part II

Add:

35B Performance of inquiry function relating to positive duty in relation to sex discrimination

- (1) The Commission may inquire into a person's compliance with the positive duty in relation to sex discrimination if the Commission reasonably suspects that the person is not complying.
- (2) The Commission must act fairly in the performance of the function referred to in paragraph 35A(d).

- (3) Subsection (2) does not impose a duty on the Commission that is enforceable in court.
- (4) Subsection (3) does not affect a legally enforceable obligation to observe the rules of natural justice.

35C Commission to notify person and give opportunity for making of submissions

- (1) As soon as practicable after commencing an inquiry into a person's compliance with the positive duty in relation to sex discrimination, the Commission must give the person a written notice stating the grounds on which the Commission commenced the inquiry.
- (2) The Commission must not find that a person is not complying with the positive duty in relation to sex discrimination unless it has given a reasonable opportunity to the person, to do, at the option of the person, either or both of the following:
 - (a) to appear before the Commission, whether in person or by a representative, and make oral submissions in relation to the person's compliance;
 - (b) to make written submissions to the Commission in relation to the person's compliance.

35D Application of certain provisions of Division 3

Sections 21, 22, 23 and 24 and subsection 26(1) apply in relation to the functions of the Commission set out in section 35A, and in relation to the performance of those functions, as if:

- (a) references in section 21 to a matter under examination or inquiry under Division 3 were references to a matter under inquiry under this Division; and
- (b) a reference in any of those provisions to another of those provisions were a reference to that other provision as applied by this section.

35E Notification of findings and recommendations

If, as a result of an inquiry into a person's compliance with the positive duty in relation to sex discrimination, the Commission finds that the person is not complying, the Commission:

- (a) must notify the person in writing of its finding and the reasons for the finding; and
- (b) may notify the person of any recommendations by the Commission for preventing a repetition or continuation of the failure to comply.

35F Giving of compliance notice

- (1) If, as a result of an inquiry into a person's compliance with the positive duty in relation to sex discrimination, the Commission finds that the person is not complying, the President may give the person a written notice.
- (2) The notice must:
 - (a) set out the name of the person to whom the notice is given; and
 - (b) set out brief details of the failure to comply; and
 - (c) specify action that the person must take, or refrain from taking, in order to address the failure; and
 - (d) specify a reasonable period (starting at least 21 days after the day the notice is given) within which the person must take, or refrain from taking, the specified action; and
 - (e) if the President considers it appropriate—specify a reasonable period within which the person must provide the Commission with evidence that the person has taken, or refrained from taking, the specified action; and
 - (f) set out any other matters prescribed by the regulations for the purposes of this paragraph.
- (3) However, if the President has accepted an undertaking from a person under Part 6 of the Regulatory Powers Act in relation to the positive duty in relation to sex discrimination, a notice must not be given to the person under subsection (1) unless the undertaking is withdrawn, cancelled or expired.

35G Reconsideration of compliance notice

President must reconsider compliance notice if requested

- (1) A person to whom a compliance notice is given may request the President to reconsider the compliance notice.
- (2) The request must:
 - (a) be made in writing; and
 - (b) set out the reasons for the request; and
 - (c) be given to the President within 21 days after the day the compliance notice is given to the person.
- (3) If requested, the President must reconsider the compliance notice.

President may reconsider compliance notice on own initiative

- (4) The President may reconsider a compliance notice given to a person without receiving a request if satisfied there is sufficient reason to do so.

Reconsideration

- (5) The President must act expeditiously in reconsidering a compliance notice.
- (6) After reconsidering a compliance notice, the President must:
 - (a) affirm the compliance notice; or
 - (b) vary the compliance notice; or
 - (c) revoke the compliance notice.
- (7) The President must give written notice of a decision under subsection (6) to the person to whom the compliance notice was given, setting out the reasons for the decision.

Decisions by delegates

- (8) If the President's functions under this section are performed by a delegate of the President, the delegate who reconsiders a compliance notice:
 - (a) must not have been involved in giving the compliance notice; and

- (b) must hold a position, or perform duties, of at least the same level as the person who gave the compliance notice.

35H Review of compliance notice

- (1) A person who has been given a compliance notice may apply to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) for a review of the notice on either or both of the following grounds:
 - (a) the person has not failed to comply as set out in the notice;
 - (b) the notice does not comply with subsection 35F(2) or (3).
- (1A) The application must be made within:
 - (a) if the compliance notice has been reconsidered under section 35G—21 days after the person was given a notice of a decision under subsection 35G(6) relating to the compliance notice; or
 - (b) otherwise—21 days after the day the compliance notice was given to the person.
- (2) At any time after the application has been made, the court concerned may stay the operation of the notice on the terms and conditions that the court considers appropriate.
- (3) The court concerned may confirm, vary or cancel the notice after reviewing it.

35J Enforcement of compliance notice

- (1) The President may apply to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) for an order under subsection (2) if:
 - (a) a person has been given a compliance notice; and
 - (b) the notice has not been revoked or cancelled; and
 - (c) the notice is not being reconsidered under section 35G or reviewed under section 35H; and
 - (d) the President considers that the person has not complied with the notice.

- (2) If the court concerned is satisfied that the person has not complied with the notice, the court may make any or all of the following orders:
- (a) an order directing the person to comply with the notice;
 - (b) any other order that the court considers appropriate.

35K Enforceable undertakings

Enforceable provision

- (1) Section 47C of the *Sex Discrimination Act 1984* is enforceable under Part 6 of the Regulatory Powers Act.

Note 1: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Note 2: Section 47C of the *Sex Discrimination Act 1984* is the positive duty in relation to sex discrimination.

Authorised persons

- (2) For the purposes of Part 6 of the Regulatory Powers Act, the President is an authorised person in relation to section 47C of the *Sex Discrimination Act 1984*.
- (3) The President may, in writing, delegate the President's powers and functions under Part 6 of the Regulatory Powers Act in relation to section 47C of the *Sex Discrimination Act 1984* to a member of the staff of the Commission who is:
- (a) an SES employee; or
 - (b) an acting SES employee; or
 - (c) classified as Executive Level 2 or equivalent; or
 - (d) acting in a position usually occupied by a member of the staff of the Commission who is so classified.

Note: The expressions **SES employee** and **acting SES employee** are defined in the *Acts Interpretation Act 1901*.

Relevant court

- (4) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to section 47C of the *Sex Discrimination Act 1984*:
- (a) the Federal Court;
 - (b) the Federal Circuit and Family Court of Australia (Division 2).

Enforceable undertaking may be published on the Commission's website

- (5) The President may publish on the Commission's website an undertaking given in relation to section 47C of the *Sex Discrimination Act 1984*.

Extension to external Territories

- (6) Part 6 of the Regulatory Powers Act, as that Part applies in relation to section 47C of the *Sex Discrimination Act 1984*, extends to every external Territory.

24 Subsection 36(9)

After "section 33", insert ", 35D".

25 Section 49B

After "Part", insert "II,".

Inspector-General of Intelligence and Security Act 1986

26 Subsection 3(1)

Insert:

positive duty in relation to sex discrimination means section 47C of the *Sex Discrimination Act 1984*.

27 At the end of subsection 8(1)

Add:

- ; and (e) at the request of the Attorney-General or the responsible Minister or of the Inspector-General's own motion, to inquire
-

into any matter that may relate to compliance by ASIO with the positive duty in relation to sex discrimination.

28 At the end of subsection 8(2)

Add:

- ; and (d) at the request of the Attorney-General or the responsible Minister or of the Inspector-General's own motion, to inquire into any matter that may relate to compliance by ASIS, AGO or ASD with the positive duty in relation to sex discrimination.

29 At the end of subsection 8(3)

Add:

- ; and (d) at the request of the Attorney-General or the responsible Minister or of the Inspector-General's own motion, to inquire into any matter that may relate to compliance by DIO or ONI with the positive duty in relation to sex discrimination.

30 Subsection 8(4)

After "paragraph (2)(a)", insert "or (d)".

Schedule 3—Inquiries into systemic unlawful discrimination

Australian Human Rights Commission Act 1986

1 Subsection 3(1)

Insert:

systemic unlawful discrimination: see subsection 35L(2).

2 Subsection 8(6)

Omit “and 31(b)”, substitute “, 31(b) and 35L(1)(a)”.

3 Subsection 8(6)

Omit “and 31(k)”, substitute “, 31(k) and 35L(1)(b)”.

4 Subsection 8(6A)

Omit “and 32A”, substitute “, 32A and 35Q”.

5 Before paragraph 11(1)(e)

Insert:

(db) the functions conferred on the Commission by section 35L;
and

6 After subsection 11(3)

Insert:

(3C) Notwithstanding paragraph (1)(db), the functions of the Commission do not include inquiring into a matter that may relate to systemic unlawful discrimination or suspected systemic unlawful discrimination of an intelligence agency.

7 Subsection 11(4)

Omit “subsection (3)”, substitute “any of subsections (3) to (3C)”.

8 Before Division 5 of Part II

Insert:

Division 4B—Functions relating to systemic discrimination

35L Functions of Commission relating to systemic discrimination

- (1) The following functions are conferred on the Commission:
 - (a) to inquire into any matter that may relate to systemic unlawful discrimination or suspected systemic unlawful discrimination;
 - (b) to do anything incidental or conducive to the performance of any of the preceding functions.
- (2) In this Act:

systemic unlawful discrimination means unlawful discrimination that:

- (a) affects a class or group of persons; and
- (b) is continuous, repetitive or forms a pattern.

35M Performance of functions relating to systemic discrimination

The Commission may perform the functions referred to in paragraph 35L(1)(a) when:

- (a) the Commission is requested to do so by the Minister; or
- (b) it appears to the Commission to be desirable to do so.

35N Application of certain provisions of Division 3

Sections 21, 22, 23 and 24 and subsection 26(1) apply in relation to the functions of the Commission set out in section 35L, and in relation to the performance of those functions, as if:

- (a) references in section 21 to a matter under examination or inquiry under Division 3 were references to a matter under inquiry under this Division; and
- (b) a reference in any of those provisions to another of those provisions were a reference to that other provision as applied by this section.

35P Commission to give opportunity for making of submissions

In an inquiry into a matter under this Division, the Commission must not make an adverse finding about a person unless it has given a reasonable opportunity to the person, to do, at the option of the person, either or both of the following:

- (a) to appear before the Commission, whether in person or by a representative, and make oral submissions in relation to the matter;
- (b) to make written submissions to the Commission in relation to the matter.

35Q Reports

- (1) If the Commission has undertaken an inquiry into a matter under this Division, the Commission may do either or both of the following:
 - (a) report to the Minister in relation to the inquiry;
 - (b) publish a report in relation to the inquiry.
- (2) The Commission may include in its report any recommendations by the Commission for addressing the matter.

9 Subsection 36(9)

After “section 33”, insert “or 35N”.

10 Section 46

Omit “or section 32A”, substitute “, section 32A or subsection 35Q(1)”.

Schedule 4—Representative applications

Australian Human Rights Commission Act 1986

1 Subsection 3(1)

Insert:

representative application means an application under subsection 46PO(1) that is made on behalf of at least one person other than the person making the application, but does not include an application that commences a representative proceeding in accordance with Part IVA of the *Federal Court of Australia Act 1976*.

2 Before subsection 46PO(1)

Insert:

Making an application

3 Subsection 46PO(1)

Omit “any person who was an affected person in relation to the complaint may make an application”, substitute “an application may be made”.

4 Subsection 46PO(1) (note)

Repeal the note.

5 After subsection 46PO(2)

Insert:

- (2A) The application may be made:
- (a) by an affected person in relation to the terminated complaint:
 - (i) on that person’s own behalf; or
 - (ii) on behalf of that person and one or more other affected persons in relation to the terminated complaint; or
 - (b) by 2 or more affected persons in relation to the terminated complaint:

- (i) on their own behalf; or
- (ii) on behalf of themselves and one or more other affected persons in relation to the terminated complaint; or
- (c) by a person or trade union who lodged the terminated complaint, on behalf of one or more affected persons in relation to the terminated complaint.

Note: Part IVA of the *Federal Court of Australia Act 1976* also allows representative proceedings to be commenced in the Federal Court in certain circumstances.

6 After subsection 46PO(3A)

Insert:

Court orders

7 After subsection 46PO(4)

Insert:

- (4A) In the case of a representative application, subsection (4) applies as if a reference to an applicant included a reference to a person on whose behalf the application is made, other than one who has opted out under subsection 46POB(3).

8 After section 46PO

Insert:

46POA Conditions for making a representative application

- (1) A representative application may not be made without the written consent of each person on whose behalf the application is made (other than the person making the application).
 - (2) A representative application must:
 - (a) describe or otherwise identify the persons on whose behalf the application is made; and
 - (b) include a statement by the person making the application certifying that each person on whose behalf the application is made has consented, in writing, to the making of the application on the person's behalf; and
 - (c) specify the nature of the relief sought.
-

46POB Additional rules applying to representative applications

Separate applications may not be made

- (1) A person on whose behalf a representative application is made is not entitled to make a separate application under subsection 46PO(1) in respect of the same subject matter unless the person opts out under subsection (3) of this section.

Right to opt out

- (2) If a representative application is made, the court concerned must fix a date before which a person may opt out of the proceeding commenced by the application.
- (3) A person on whose behalf the application is made (other than the person who made the application) may opt out of the proceeding by written notice to the court concerned:
 - (a) before the date so fixed; and
 - (b) in accordance with the rules of court of the court concerned (if any).
- (4) The court concerned, on the application of the person who made the application, a respondent or a person on whose behalf the application is made, may fix another date so as to extend the period during which a person may opt out of the proceeding.
- (5) Except with the leave of the court concerned, the hearing of the proceeding must not commence earlier than the date before which a person may opt out of the proceeding.

Settlement and discontinuance

- (6) A proceeding commenced by a representative application may not be settled or discontinued without the approval of the court concerned.
- (7) If the court concerned gives such an approval, it may make such orders as are just with respect to the distribution of any money paid under a settlement or paid into the court.

9 Application of amendments

Despite the amendments of Division 2 of Part IIB of the *Australian Human Rights Commission Act 1986* made by this Schedule, that Division continues to apply, as if those amendments had not been made, in relation to:

- (a) any complaint that was terminated under Division 1 of Part IIB of that Act before the commencement of this item; and
- (b) any application made under subsection 46PO(1) of that Act, whether before or after that commencement, if the complaint on which the application is based was terminated under Division 1 of Part IIB of that Act before that commencement.

Schedule 6—Amendment of the Workplace Gender Equality Act 2012

Workplace Gender Equality Act 2012

1 Subsection 3(1) (definition of *authority*)

Repeal the definition.

2 Subsection 3(1)

Insert:

Commonwealth company has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

3 Subsection 3(1) (definition of *governing body*)

Repeal the definition, substitute:

governing body of a relevant employer means the body, or group of members of the employer, with primary responsibility for the governance of the employer.

4 Subsection 3(1) (definition of *relevant employer*)

Repeal the definition, substitute:

relevant employer: see section 4.

5 Subsections 3(2) and (2A)

Repeal the subsections.

6 After section 3

Insert:

4 Meaning of *relevant employer*

(1) A *relevant employer* means:

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- (a) a registered higher education provider that is an employer; or
 - (b) a natural person, or a body or association (whether incorporated or not), that is an employer of 100 or more employees in Australia; or
 - (c) a Commonwealth company that is an employer of 100 or more employees in Australia; or
 - (d) a Commonwealth entity that is an employer of 100 or more employees in Australia.
- (2) However, a **relevant employer** does not include:
- (a) a State; or
 - (b) a Territory; or
 - (c) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory, other than a registered higher education provider; or
 - (d) the holder of an office established for a public purpose by or under a law of a State or Territory; or
 - (e) an incorporated company over which a State, a Territory or a body referred to in paragraph (c) is in a position to exercise control.
- (3) For the purpose of the definition of **relevant employer** in subsection (1):
- (a) if the relevant employer is a corporation:
 - (i) a corporation employs a person where the person is employed by another corporation which is a subsidiary of the first-mentioned corporation; and
 - (ii) the question whether a corporation is a subsidiary of another corporation is to be determined as it would be determined for the purposes of the *Corporations Act 2001*; and
 - (b) if the relevant employer is a Commonwealth company—a Commonwealth company employs a person if the person is employed by another Commonwealth company which is a subsidiary (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of the first-mentioned Commonwealth company; and
 - (c) if the relevant employer is a Commonwealth entity that is a corporate Commonwealth entity (within the meaning of the
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Public Governance, Performance and Accountability Act 2013)—the corporate Commonwealth entity employs a person if the person is employed by another corporate Commonwealth entity which is a subsidiary (within the meaning of that Act) of the first-mentioned corporate Commonwealth entity.

- (4) If, at any time, an employer ceases to be a relevant employer because the number of employees of the employer falls below 100, this Act continues to apply to the employer as if the employer were a relevant employer unless and until the number of employees falls below 80.

7 After subsection 5(11)

Insert:

- (11A) By virtue of this subsection, this Act has the effect it would have if each reference in this Act to a relevant employer were, by express provision, confined to a relevant employer that is a Commonwealth company or a Commonwealth entity.

8 At the end of Part I

Insert:

5B Binding the Crown

This Act binds the Crown in right of the Commonwealth. However, it does not bind the Crown in right of a State, of the Australian Capital Territory or of the Northern Territory.

9 After subsection 13(3)

Insert:

Exclusion of operationally sensitive information etc.

- (3A) Subsection (3B) applies to a relevant employer that is a law enforcement or security agency (within the meaning of the *Independent National Security Legislation Monitor Act 2010*).
- (3B) The relevant employer is not required to include in a public report any information:

- (a) that is operationally sensitive information (within the meaning of the *Independent National Security Legislation Monitor Act 2010*); or
- (b) the publication of which could prejudice the security, defence or international relations of Australia.

10 Subsection 13(5)

Repeal the subsection (not including the heading), substitute:

- (5) The public report must be signed by:
 - (a) if the relevant employer is a Commonwealth entity—the accountable authority (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of the Commonwealth entity; and
 - (b) otherwise—the chief executive officer (however described) of the relevant employer.

11 Subsection 13A(2)

After “relevant employer”, insert “, other than a Commonwealth company or Commonwealth entity,”.

12 After subsection 13A(2)

Insert:

- (2A) A relevant employer that is a Commonwealth company or Commonwealth entity must prepare a public report in respect of the period of 12 months commencing on 1 January 2022 and after that, in respect of each consecutive period of 12 months.

13 Section 13B

Repeal the section, substitute:

13B When public reports are due

Unless a relevant employer has received an extension of time in which to lodge a report under section 17:

- (a) if the relevant employer is a Commonwealth company or Commonwealth entity—the employer must lodge a public report under section 13A within 2 months after the day

determined by the Agency for the purposes of this paragraph;
and

- (b) otherwise—the relevant employer must lodge a public report under section 13A within 2 months after the end of the period to which the report relates.

14 Section 17

Omit “2 months”, substitute “relevant period”.

15 Subsection 19(1)

Omit “Before 1 April 2014, the Minister will”, substitute “The Minister must”.

Schedule 7—Victimisation

Part 1—Amendments

Age Discrimination Act 2004

1 Section 4 (after the paragraph beginning “It is unlawful to discriminate”)

Insert:

- It is also unlawful to commit an act of victimisation against another person (see Division 6 of Part 4).

2 Part 4 (at the end of the heading)

Add “etc.”.

3 At the end of section 17

Add:

- This Part also makes it unlawful to commit an act of victimisation against another person.

4 At the end of Part 4

Add:

Division 6—Victimisation

47A Victimisation

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

Note 1: See also section 51 (offence of victimisation).

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

Victimization—actual detriment

- (2) For the purposes of subsection (1), a person (the **first person**) commits an act of victimisation against another person (the **second person**) if:
- (a) the first person engages in conduct; and
 - (b) the first person's conduct causes detriment to the second person; and
 - (c) the first person intends that the first person's conduct cause detriment to the second person; and
 - (d) the detriment is caused without the consent of the second person; and
 - (e) the first person engages in the first person's conduct because the first person believes that:
 - (i) the second person has made, or proposes to make, a complaint under the *Australian Human Rights Commission Act 1986*; or
 - (ii) the second person has brought, or proposes to bring, proceedings under the *Australian Human Rights Commission Act 1986* against any person; or
 - (iii) the second person has given, or proposes to give, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (iv) the second person has attended, or proposes to attend, a conference held under the *Australian Human Rights Commission Act 1986*; or
 - (v) the second person has appeared, or proposes to appear, as a witness in a proceeding under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (vi) the second person has reasonably asserted, or proposes to assert, any rights of the person or the rights of any other person under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (vii) the second person has made an allegation that a person has done an act that is unlawful by reason of a provision of this Part.
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Victimisation—threat of detriment

- (3) For the purposes of subsection (1), a person (the **first person**) commits an act of victimisation against another person (the **second person**) if:
- (a) the first person makes to the second person a threat to cause detriment to the second person or to a third person; and
 - (b) the first person:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
 - (c) the first person makes the threat because the first person believes in a matter mentioned in paragraph (2)(e).
- (4) For the purposes of subsection (3), a **threat** may be:
- (a) express or implied; or
 - (b) conditional or unconditional.
- (5) In a proceeding for a contravention of subsection (1) constituted by an act of victimisation covered by subsection (3), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

5 Section 49

Omit “Division 2 or 3 of”.

6 Subsections 51(1) and (2) (note)

Repeal the note.

Australian Human Rights Commission Act 1986

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

Before “Part 2”, insert “Division 1, 2, 2A, 3 or 6 of”.

8 Subsection 3(1) (paragraph (ca) of the definition of *unlawful discrimination*)

After “section”, insert “51 or”.

9 Subsection 3(1) (paragraph (d) of the definition of *unlawful discrimination*)

Omit “1992; or”, substitute “1992 (other than section 42).”.

10 Subsection 3(1) (paragraph (e) of the definition of *unlawful discrimination*)

Repeal the paragraph.

Disability Discrimination Act 1992

11 Part 2 (at the end of the heading)

Add “etc.”.

12 At the end of Part 2

Add:

Division 6—Victimisation

58A Victimisation

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

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

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

- (2) For the purposes of subsection (1), a person (the *first person*) commits an act of victimisation against another person if the first person subjects, or threatens to subject, the other person to any detriment on the ground that the other person:
- (a) has made, or proposes to make, a complaint under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (b) has brought, or proposes to bring, proceedings under this Act or the *Australian Human Rights Commission Act 1986* against any person; or
 - (c) has given, or proposes to give, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this

Act or the *Australian Human Rights Commission Act 1986*;
or

- (d) has attended, or proposes to attend, a conference held under this Act or the *Australian Human Rights Commission Act 1986*; or
- (e) has appeared, or proposes to appear, as a witness in a proceeding under this Act or the *Australian Human Rights Commission Act 1986*; or
- (f) has reasonably asserted, or proposes to assert, any rights of the person or the rights of any other person under this Act or the *Australian Human Rights Commission Act 1986*; or
- (g) has made an allegation that a person has done an act that is unlawful by reason of a provision of this Part;

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

13 Section 122

Omit “2A or 3”, substitute “2A, 3 or 6”.

Racial Discrimination Act 1975

14 Part II (at the end of the heading)

Add “etc.”.

15 At the end of Part II

Add:

18AA Victimisation

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

Note 1: See also subsection 27(2) (offences relating to administration of this Act).

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

- (2) For the purposes of subsection (1), a person (the *first person*) commits an act of victimisation against another person if the first person:
- (a) refuses to employ the other person; or
 - (b) dismisses, or threatens to dismiss, the other person from the other person's employment; or
 - (c) prejudices, or threatens to prejudice, the other person in the other person's employment; or
 - (d) intimidates or coerces, or imposes any pecuniary or other penalty upon, the other person;
- by reason that the other person:
- (e) has made, or proposes to make, a complaint under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (f) has given, or proposes to give, any information or documents to a person exercising or performing any powers or functions under this Act or the *Australian Human Rights Commission Act 1986*; or
 - (g) has attended, or proposes to attend, a conference held under this Act or the *Australian Human Rights Commission Act 1986*.

Sex Discrimination Act 1984

16 Section 105

Omit "2 or 3", substitute "2, 3 or 5".

Part 2—Application and transitional provisions

17 Application—pre-commencement acts of victimisation

- (1) For the purposes of subsection 47A(1) of the *Age Discrimination Act 2004* (as added by this Schedule):
 - (a) it is immaterial whether the act was committed before, at or after the commencement of this item; and
 - (b) so far as that subsection relates to an act committed before the commencement of this item, that subsection is modified by inserting “, and is taken to have been unlawful,” after “unlawful”.
- (2) For the purposes of subsection 58A(1) of the *Disability Discrimination Act 1992* (as added by this Schedule):
 - (a) it is immaterial whether the act was committed before, at or after the commencement of this item; and
 - (b) so far as that subsection relates to an act committed before the commencement of this item, that subsection is modified by inserting “, and is taken to have been unlawful,” after “unlawful”.
- (3) For the purposes of subsection 18AA(1) of the *Racial Discrimination Act 1975* (as added by this Schedule):
 - (a) it is immaterial whether the act was committed before, at or after the commencement of this item; and
 - (b) so far as that subsection relates to an act committed before the commencement of this item, that subsection is modified by inserting “, and is taken to have been unlawful,” after “unlawful”.

18 Transitional—pre-commencement acts of victimisation

- (1) Despite the amendments of the definition of ***unlawful discrimination*** in subsection 3(1) of the *Australian Human Rights Commission Act 1986* made by this Schedule, paragraphs (ca), (d) and (e) of that definition continue to apply, in relation to conduct that was engaged in before the commencement of this item, as if those amendments had not been made.

- (2) After the commencement of this item, a person is not entitled to lodge a complaint with the Australian Human Rights Commission under section 46P of the *Australian Human Rights Commission Act 1986* alleging that one or more acts committed before the commencement of this item are unlawful discrimination because they amount to conduct that is an offence under any of the following provisions:
- (a) section 51 of the *Age Discrimination Act 2004*;
 - (b) section 42 of the *Disability Discrimination Act 1992*;
 - (c) subsection 27(2) of the *Racial Discrimination Act 1975*.
- (3) If:
- (a) before the commencement of this item, a person lodged a complaint with the Australian Human Rights Commission under section 46P of the *Australian Human Rights Commission Act 1986* alleging that one or more acts are unlawful discrimination because they amount to conduct that is an offence under section 51 of the *Age Discrimination Act 2004*; and
 - (b) the complaint has not been terminated under section 46PH of the *Australian Human Rights Commission Act 1986*;
- then:
- (c) the President of the Australian Human Rights Commission may, by writing, declare that the *Australian Human Rights Commission Act 1986* has effect, after the commencement of this item, as if the complaint had alleged that those acts are unlawful under section 47A of the *Age Discrimination Act 2004* (as added by this Schedule); and
 - (d) if such a declaration is made—the President:
 - (i) may amend the complaint for the purposes of giving effect to the declaration; and
 - (ii) must give a copy of the declaration to the person; and
 - (e) if the President amends the complaint—the President must give a copy of the amended complaint to the person.
- (4) If:
- (a) before the commencement of this item, a person lodged a complaint with the Australian Human Rights Commission under section 46P of the *Australian Human Rights Commission Act 1986* alleging that one or more acts are
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unlawful discrimination because they amount to conduct that is an offence under section 42 of the *Disability Discrimination Act 1992*; and

- (b) the complaint has not been terminated under section 46PH of the *Australian Human Rights Commission Act 1986*;

then:

- (c) the President of the Australian Human Rights Commission may, by writing, declare that the *Australian Human Rights Commission Act 1986* has effect, after the commencement of this item, as if the complaint had alleged that those acts are unlawful under section 58A of the *Disability Discrimination Act 1992* (as added by this Schedule); and
- (d) if such a declaration is made—the President:
- (i) may amend the complaint for the purposes of giving effect to the declaration; and
 - (ii) must give a copy of the declaration to the person; and
- (e) if the President amends the complaint—the President must give a copy of the amended complaint to the person.

(5) If:

- (a) before the commencement of this item, a person lodged a complaint with the Australian Human Rights Commission under section 46P of the *Australian Human Rights Commission Act 1986* alleging that one or more acts are unlawful discrimination because they amount to conduct that is an offence under subsection 27(2) of the *Racial Discrimination Act 1975*; and
- (b) the complaint has not been terminated under section 46PH of the *Australian Human Rights Commission Act 1986*;

then:

- (c) the President of the Australian Human Rights Commission may, by writing, declare that the *Australian Human Rights Commission Act 1986* has effect, after the commencement of this item, as if the complaint had alleged that those acts are unlawful under section 18AA of the *Racial Discrimination Act 1975* (as added by this Schedule); and
- (d) if such a declaration is made—the President:

Schedule 7 Victimisation

Part 2 Application and transitional provisions

- (i) may amend the complaint for the purposes of giving effect to the declaration; and
 - (ii) must give a copy of the declaration to the person; and
 - (e) if the President amends the complaint—the President must give a copy of the amended complaint to the person.
- (6) A declaration under subitem (3), (4) or (5) is not a legislative instrument.
- (7) Subsections 19(2), (2A) and (2C) of the *Australian Human Rights Commission Act 1986* (which deal with delegation) have effect as if this item were a provision of Part IIB of that Act.

Schedule 8—Other amendments

Australian Human Rights Commission Act 1986

1 Paragraph 46PH(1)(b)

Repeal the paragraph, substitute:

- (b) the complaint was lodged more than 24 months after the alleged acts, omissions or practices took place;

Sex Discrimination Act 1984

2 Paragraph 3(e)

Omit “equality of opportunity”, substitute “substantive equality”.

3 Paragraph 28AA(1)(a)

Omit “seriously”.

[*Minister’s second reading speech made in—
House of Representatives on 27 September 2022
Senate on 21 November 2022*]

(93/22)
