



Australian Government
Attorney-General's Department

**AUSTRALIA'S HUMAN
RIGHTS FRAMEWORK**

**CONSOLIDATION
OF COMMONWEALTH
ANTI-DISCRIMINATION LAWS**

NOVEMBER 2012

Human Rights and Anti-Discrimination Bill 2012

EXPOSURE DRAFT LEGISLATION

RESPECT • PROTECT • FULFIL

EXPOSURE-DRAFT

2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Human Rights and Anti-Discrimination Bill 2012

No. , 2012

(Attorney-General)

**A Bill for an Act relating to human rights and
discrimination, and for related purposes**

EXPOSURE-DRAFT

Contents

Chapter 1—Introduction	1
Part 1-1—Preliminary	1
Division 1—Short title and commencement	1
1 Short title.....	1
2 Commencement.....	2
Division 2—Objects of this Act	3
3 Objects of this Act.....	3
Division 3—Guide to this Act	5
4 Guide to this Act.....	5
Part 1-2—Interpretation	8
Division 1—Guide to this Part	8
5 Guide to this Part.....	8
Division 2—Interpretation	9
6 The dictionary.....	9
7 Meaning of <i>connected with</i> an area of public life etc.	23
8 Multiple reasons or purposes for conduct.....	24
Part 1-3—Application of this Act	25
Division 1—Guide to this Part	25
9 Guide to this Part.....	25
Division 2—Geographical application	26
10 Act applies throughout Australia.....	26
Division 3—Constitutional basis	27
11 Main constitutional basis: external affairs.....	27
12 Other constitutional bases.....	27
13 Act not to apply so as to exceed Commonwealth power.....	29
Division 4—Interaction with State and Territory laws	31
14 Interaction with State and Territory anti-discrimination laws.....	31
Division 5—Miscellaneous	32
15 Act binds Crown.....	32

EXPOSURE-DRAFT

Chapter 2—Unlawful conduct and equality before the law	33
Part 2-1—The protected attributes	33
Division 1—Guide to this Part	33
16 Guide to this Part.....	33
Division 2—The protected attributes	34
17 The <i>protected attributes</i>	34
Part 2-2—Unlawful discrimination	35
Division 1—Guide to this Part	35
18 Guide to this Part.....	35
Division 2—Meaning of discrimination	36
19 When a person <i>discriminates</i> against another person, and related concepts	36
20 Proposing to treat a person unfavourably, or to impose a policy.....	37
21 Special measures to achieve equality are not discrimination	38
Division 3—When discrimination is unlawful	39
22 When discrimination is unlawful.....	39
Division 4—Exceptions to unlawful discrimination	40
Subdivision A—Main exceptions	40
23 Exception for justifiable conduct.....	40
24 Exception for inherent requirements of work	41
25 Discrimination on ground of disability: meaning of <i>reasonable adjustment</i>	42
Subdivision B—Exceptions related to other laws, court orders etc.	43
26 Exception for conduct necessary to comply with Commonwealth Acts and instruments subject to disallowance	43
27 Exceptions for discrimination in accordance with certain Commonwealth migration and health laws.....	44
28 Exception for conduct in accordance with Commonwealth laws on ground of nationality or citizenship.....	45
29 Exception for conduct in accordance with laws that treat young people differently because of their vulnerability etc.	45
30 Exception for conduct in accordance with laws prescribed by the regulations	46
31 Exception for court orders, determinations and industrial instruments	46

EXPOSURE-DRAFT

Subdivision C—Exceptions related to religion	47
32 Exception for appointment of priests, ministers etc.....	47
33 Exceptions for religious bodies and educational institutions	48
Subdivision D—Other exceptions	50
34 Exception for registered charities	50
35 Exception for clubs and member-based associations.....	50
36 Exceptions for competitive sporting activities.....	51
37 Exception for single sex or disability educational institutions.....	52
38 Exception for single sex accommodation for students.....	53
39 Exceptions for insurance, superannuation and credit.....	54
40 Exceptions for Defence Force and Australian Federal Police.....	56
41 Exception for accommodation for employees	57
42 Exception for junior rates	58
43 Exception for employment to perform domestic duties	58
44 Exception for shared accommodation.....	59
Subdivision E—Other general provisions relating to exceptions	59
45 Exceptions (other than justifiable conduct) don't apply to discrimination because of attributes of associates, assumptions etc.....	59
46 Exceptions do not limit each other	60
47 Review of exceptions	60
Part 2-3—Other unlawful conduct	61
Division 1—Guide to this Part	61
48 Guide to this Part.....	61
Division 2—Sexual harassment	62
49 When a person <i>sexually harasses</i> another person	62
50 When sexual harassment is unlawful.....	62
Division 3—Racial vilification	63
51 Racial vilification is unlawful.....	63
Division 4—Requesting or requiring information for discriminatory purpose	65
52 Requesting or requiring information for discriminatory purpose	65
Division 5—Publishing etc. intention to engage in unlawful conduct	66
53 Publishing etc. material indicating intention to engage in unlawful conduct.....	66

EXPOSURE-DRAFT

Division 6—Victimisation	67
54 Victimisation of person for making a complaint etc.....	67
Part 2-4—Extensions of liability for unlawful conduct	69
Division 1—Guide to this Part	69
55 Guide to this Part.....	69
Division 2—Extensions of liability for unlawful conduct	70
56 Causing etc. unlawful conduct.....	70
57 Liability for unlawful conduct of directors, officers, employees and agents etc.	70
58 Liability of partnerships, unincorporated associations and trusts for unlawful conduct	71
Part 2-5—Equality before the law	73
Division 1—Guide to this Part	73
59 Guide to this Part.....	73
Division 2—Equality before the law for people of all races	74
60 Equality before the law for people of all races	74
Chapter 3—Measures to assist compliance	75
Part 3-1—Measures to assist compliance	75
Division 1—Guide to this Part	75
61 Guide to this Part.....	75
Division 2—Guidelines to assist compliance	77
62 Commission may prepare guidelines.....	77
63 Effect of guidelines.....	77
Division 3—Review of policies or programs for compliance	78
64 Commission may review policies or programs for compliance	78
65 Review reports not to be published.....	78
66 Effect of review reports	78
Division 4—Action plans	80
67 Development etc. of action plans.....	80
68 Action plans may be given to Commission	80
69 Effect of action plans.....	81
Division 5—Disability standards	82
70 Meaning of <i>disability standard</i>	82
71 Process for making etc. disability standards	82

EXPOSURE-DRAFT

72	Effect of disability standards: conduct in accordance with standard is not unlawful discrimination.....	83
73	Effect of disability standards: unlawful to contravene standard	84
74	Exceptions and exemptions do not apply to disability standards.....	84
Division 6—Compliance codes		85
75	Meaning of <i>compliance code</i>	85
76	Process for making etc. compliance codes	86
77	Duration of compliance code.....	87
78	Effect of compliance codes.....	88
Division 7—Special measure determinations		89
79	Meaning of special measure determination	89
80	Process for making etc. special measure determinations	89
81	Duration of special measure determinations.....	90
82	Effect of special measure determinations	91
Division 8—Temporary exemptions		92
83	Meaning of temporary exemption.....	92
84	Process for granting etc. temporary exemptions.....	92
85	Duration of temporary exemptions	93
86	Effect of temporary exemptions	93
Chapter 4—Complaints		95
Part 4-1—Making a complaint to the Commission		95
Division 1—Guide to this Part		95
87	Guide to this Part.....	95
Division 2—The conduct that may be the subject of a complaint		96
88	The conduct that may be the subject of a complaint.....	96
Division 3—Making etc. a complaint		97
Subdivision A—Who may make a complaint		97
89	Who may make a complaint	97
90	Person must not make complaint if another complaint has already been made	97
Subdivision B—Additional provisions relating to making etc. representative complaints		98
91	Complaint must identify the affected parties	98
92	Withdrawal of affected party	98
93	Replacement of complainant	99

EXPOSURE-DRAFT

94	Directions requiring complainant to notify affected party of a matter.....	99
Subdivision C—Other matters relating to making etc. complaints		99
95	Formal requirements for making a complaint.....	99
96	Preparation of complaints: assistance from the Commission.....	99
97	Preparation of complaints: people in custody.....	100
98	Amending a complaint.....	101
99	Withdrawing a complaint	101
Part 4-2—How the Commission deals with complaints		102
Division 1—Guide to this Part		102
100	Guide to this Part.....	102
Division 2—Duration of Commission’s obligations to deal with complaints		103
101	Duration of Commission’s obligations to deal with complaint.....	103
Division 3—Referral of complaints and instruments to other bodies		104
102	Referral of industrial instruments that authorise or require conduct that would otherwise be unlawful discrimination.....	104
103	Referral of complaints to Inspector-General of Intelligence and Security.....	105
104	Referral of complaints to Information Commissioner	105
Division 4—Investigation and conciliation of complaints		107
Subdivision A—General provisions		107
105	Commission to investigate and/or conciliate complaints.....	107
106	Commission’s general discretion as to how to conduct investigation or conciliation	107
Subdivision B—Additional provisions relating to investigation		107
107	Power to obtain information etc.	107
108	Inspection, retention etc. of documents	108
Subdivision C—Additional provisions relating to conciliation		109
109	Commission may hold conferences	109
110	Proceedings at conferences.....	110
111	Things said in conciliation are not admissible in evidence.....	111
Division 5—Complaints alleging Commonwealth conduct contrary to human rights that cannot be settled by conciliation		112
112	Complaints to which this Division applies	112

EXPOSURE-DRAFT

113	Commission to make a finding	112
114	Report to complainants and respondents	112
115	Report to Minister.....	113
116	Omission of certain material from reports	113
Division 6—Closing complaints		115
117	Closing a complaint.....	115
Part 4-3—Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct		
Division 1—Guide to this Part		118
118	Guide to this Part.....	118
Division 2—Application to court if unlawful conduct complaint closed		119
119	When this Division applies	119
120	Application to court alleging unlawful conduct.....	119
121	Leave required in some circumstances	119
122	Persons who may make an application	120
123	Time limits	120
124	Burden of proof in proceedings under section 120 etc.	120
125	Orders that court may make on application under section 120	121
126	Interim injunctions etc. by court to which application is made under section 120	122
127	Report by Commission to court.....	123
Division 3—General power of court to grant interim injunction etc. if complaint of unlawful conduct has been made		124
128	Interim injunction etc. to maintain status quo.....	124
Division 4—Other general provisions		126
129	Right of representation	126
130	Assistance in proceedings before the court.....	126
131	Court not bound by technicalities	127
132	Discharge or variation of order or injunction under this Part.....	127
133	Costs	127
Chapter 5—Inquiries		129
Part 5-1—Inquiries		129
Division 1—Guide to this Part		129
134	Guide to this Part.....	129

EXPOSURE-DRAFT

Division 2—Commission may conduct inquiries	130
135 Matters in relation to which the Commission may conduct inquiries	130
136 Commission not to inquire into conduct of intelligence agencies	130
137 Main purpose of inquiry is to make recommendations	130
138 Initiating inquiries	131
Division 3—How inquiries are conducted	132
Subdivision A—General matters	132
139 Commission’s general discretion as to how to conduct an inquiry	132
Subdivision B—Additional provisions relating to inquiries about Commonwealth conduct	132
140 Power to obtain information etc.	132
141 Inspection, retention etc. of documents	133
Division 4—Reports to Minister	135
142 Commission to report to Minister on inquiry.....	135
143 Commission to give person opportunity to make submissions about their conduct	135
Chapter 6—Australian Human Rights Commission	136
Part 6-1—Establishment, functions, powers and liabilities of the Commission	136
Division 1—Guide to this Part	136
144 Guide to this Part.....	136
Division 2—Establishment	137
145 Australian Human Rights Commission	137
Division 3—Functions	138
Subdivision A—General provisions	138
146 Functions of the Commission	138
147 The Commission’s functions: reports relating to enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders.....	139
148 The Commission’s functions: reports relating to the enjoyment and exercise of human rights by children in Australia	140
149 The Commission’s functions: arrangements with States	141
150 Reporting to Minister about matters arising in performing functions.....	142

EXPOSURE-DRAFT

151	General matters relating to performance of Commission's functions and powers	143
Subdivision B—Commission functions and powers that are to be performed by certain Commission members 143		
152	Commission functions and powers that are to be performed or exercised by President	143
153	Commission functions and powers that are to be performed or exercised by Aboriginal and Torres Strait Islander Social Justice Commissioner	144
154	Commission functions and powers that are to be performed or exercised by National Children's Commissioner	144
Division 4—Powers 146		
155	The Commission's powers	146
Division 5—Liabilities 147		
156	Commission's liabilities are Commonwealth liabilities.....	147
157	Commission has privileges and immunities of the Crown.....	147
Part 6-2—Constitution and membership 148		
Division 1—Guide to this Part 148		
158	Guide to this Part.....	148
Division 2—Constitution 149		
159	Constitution of the Commission	149
Division 3—Commission members 150		
160	Membership of the Commission.....	150
161	Arrangements for appointment of State judges etc. as Commission members	150
162	Appointment and service not to affect a tenure or rights of judicial office holders	150
163	Appointment of Commission members	151
164	Period of appointment	152
165	Acting members	152
Division 4—Terms and conditions for Commission members 153		
166	Remuneration and allowances	153
167	Leave of absence	153
168	Outside employment.....	153
169	Disclosure of interests to Minister.....	154
170	Disclosure of interests to Commission	154
171	Resignation.....	154
172	Termination of appointment	155
173	Other terms and conditions.....	155

EXPOSURE-DRAFT

Part 6-3—How the Commission operates	157
Division 1—Guide to this Part	157
174 Guide to this Part.....	157
Division 2—Role of President	158
175 Role of the President	158
Division 3—Meetings of the Commission	159
176 Convening meetings	159
177 Presiding at meetings.....	159
178 Quorum.....	159
179 Voting at meetings.....	159
180 Conduct of meetings.....	160
181 Minutes.....	160
182 Decisions without meetings.....	160
Division 4—Delegation	161
183 Delegation of Commission’s functions and powers: general.....	161
184 Delegation of Commission’s functions and powers: functions and powers that are to be performed by the President	161
185 Delegation of Commission’s functions and powers: functions and powers that are to be performed by the Aboriginal and Torres Strait Islander Social Justice Commissioner.....	162
186 Delegation of Commission’s functions and powers: functions and powers that are to be performed by the National Children’s Commissioner	162
187 Delegation of President’s functions and powers.....	163
Part 6-4—Other matters	164
Division 1—Guide to this Part	164
188 Guide to this Part.....	164
Division 2—Staff	165
189 Staff.....	165
Division 3—Planning and reporting obligations	166
190 Corporate plan	166
191 Annual report.....	166
192 Reports given to Minister are to be tabled in Parliament.....	166
Division 4—Confidentiality	167
193 Prohibition of unauthorised disclosure etc. of protected information and documents	167
194 Authorised records and disclosures	168
195 Disclosure to courts or tribunals	168

EXPOSURE-DRAFT

196	Commission may give directions to preserve anonymity	168
197	Commission may give directions to restrict publication.....	169
198	Attorney-General's certificates restricting requirements for information or documents.....	172
199	Information or documents originating from an intelligence agency.....	173
Chapter 7—Miscellaneous		175
Part 7-1—Miscellaneous		175
Division 1—Guide to this Part		175
200	Guide to this Part.....	175
Division 2—Offences related to the administration of the Act		176
201	Failure to comply with notice requiring the provision of information etc.	176
202	Failure to comply with notice requiring attendance at conference	177
Division 3—Other miscellaneous provisions		178
203	Compensation for acquisition of property	178
204	Protection of Commission etc. from civil liability.....	178
205	Protection of persons making complaints etc. from civil liability	178
206	No right of action except as expressly provided.....	179
207	Commission may charge fees for certain matters	179
208	Regulations.....	179

1 **A Bill for an Act relating to human rights and**
2 **discrimination, and for related purposes**

3 The Parliament of Australia enacts:

4 **Chapter 1—Introduction**

5 **Part 1-1—Preliminary**

6 **Division 1—Short title and commencement**

7 **1 Short title**

8 This Act may be cited as the *Human Rights and*
9 *Anti-Discrimination Act 2012*.

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-1 Preliminary

Division 1 Short title and commencement

Section 2

1 **2 Commencement**

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

6

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details

1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
--	---	--

2. Sections 3 to 208	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
----------------------	--	--

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

10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.
13

EXPOSURE-DRAFT

Introduction **Chapter 1**
Preliminary **Part 1-1**
Objects of this Act **Division 2**

Section 3

1 **Division 2—Objects of this Act**

2 **3 Objects of this Act**

- 3 (1) The objects of this Act are as follows:
- 4 (a) to eliminate discrimination, sexual harassment and racial
5 vilification, consistently with Australia’s obligations under
6 the human rights instruments and the ILO instruments (see
7 subsections (2) and (3));
- 8 (b) in conjunction with other laws, to give effect to Australia’s
9 obligations under the human rights instruments and the ILO
10 instruments (see subsections (2) and (3));
- 11 (c) to provide for the continued existence of the Australian
12 Human Rights Commission as Australia’s national human
13 rights institution;
- 14 (d) to promote recognition and respect within the community for:
- 15 (i) the principle of equality (including both formal and
16 substantive equality); and
- 17 (ii) the inherent dignity of all people;
- 18 (e) to recognise that achieving substantive equality may require
19 the taking of special measures or the making of reasonable
20 adjustments;
- 21 (f) to enable complaints alleging unlawful conduct to be
22 resolved in a way that emphasises alternative dispute
23 resolution, promotes just outcomes for all parties and is
24 low-cost and accessible to all;
- 25 (g) to encourage and facilitate compliance with the Act.

26 Note: In interpreting a provision of this Act, the interpretation that would
27 best achieve the objects of this Act is to be preferred to each other
28 interpretation: see section 15AA of the *Acts Interpretation Act 1901*.

- 29 (2) The *human rights instruments* are the following, as amended and
30 in force for Australia from time to time:
- 31 (a) the International Convention on the Elimination of All Forms
32 of Racial Discrimination done at New York on 21 December
33 1965 ([1975] ATS 40);

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-1 Preliminary

Division 2 Objects of this Act

Section 3

- 1 (b) the International Covenant on Economic, Social and Cultural
2 Rights done at New York on 16 December 1966 ([1976] ATS
3 5);
- 4 (c) the International Covenant on Civil and Political Rights done
5 at New York on 16 December 1966 ([1980] ATS 23);
- 6 (d) the Convention on the Elimination of All Forms of
7 Discrimination Against Women done at New York on
8 18 December 1979 ([1983] ATS 9);
- 9 (e) the Convention Against Torture and Other Cruel, Inhuman or
10 Degrading Treatment or Punishment done at New York on
11 10 December 1984 ([1989] ATS 21);
- 12 (f) the Convention on the Rights of the Child done at New York
13 on 20 November 1989 ([1991] ATS 4);
- 14 (g) the Convention on the Rights of Persons with Disabilities
15 done at New York on 13 December 2006 ([2008] ATS 12).
- 16 (3) The *ILO instruments* are the following, as amended and in force
17 for Australia from time to time:
- 18 (a) ILO Convention (No. 100) concerning Equal Remuneration
19 for Men and Women Workers for Work of Equal Value done
20 at Geneva on 29 June 1951 ([1975] ATS 45);
- 21 (b) ILO Convention (No. 111) concerning Discrimination in
22 respect of Employment and Occupation done at Geneva on
23 25 June 1958 ([1974] ATS 12);
- 24 (c) ILO Convention (No. 156) concerning Equal Opportunities
25 and Equal Treatment for Men and Women Workers: Workers
26 with Family Responsibilities done at Geneva on 23 June
27 1981 ([1991] ATS 7);
- 28 (d) ILO Convention (No. 158) concerning Termination of
29 Employment at the Initiative of the Employer done at Geneva
30 on 22 June 1982 ([1994] ATS 4).

31 Note: In 2012, the text of a Convention or Covenant in the Australian Treaty
32 Series was accessible through the Australian Treaties Library on the
33 AustLII website (www.austlii.edu.au).
34

EXPOSURE-DRAFT

Introduction **Chapter 1**
Preliminary **Part 1-1**
Guide to this Act **Division 3**

Section 4

1 **Division 3—Guide to this Act**

2 **4 Guide to this Act**

3 This Act is about discrimination and other matters relating to
4 human rights.

5 This Chapter deals with the following introductory matters:

- 6 (a) the short title, commencement and objects of this
7 Act (Part 1-1);
- 8 (b) the interpretation of this Act (Part 1-2);
- 9 (c) matters related to the application of this Act
10 (Part 1-3).

11 Chapter 2 deals with unlawful conduct and equality before the law.
12 It contains provisions about the following:

- 13 (a) the protected attributes (Part 2-1);
- 14 (b) unlawful discrimination (Part 2-2);
- 15 (c) other kinds of unlawful conduct, including sexual
16 harassment and racial vilification (Part 2-3);
- 17 (d) situations in which one person is liable for the
18 unlawful conduct of another person (Part 2-4);
- 19 (e) equality before the law (Part 2-5).

20 Chapter 3 deals with measures to assist people to comply with this
21 Act. It contains provisions about the following:

- 22 (a) guidelines (Division 2 of Part 3-1);
- 23 (b) review of policies or programs (Division 3 of
24 Part 3-1);

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-1 Preliminary

Division 3 Guide to this Act

Section 4

1

(c) action plans (Division 4 of Part 3-1);

2

(d) disability standards (Division 5 of Part 3-1);

3

(e) compliance codes (Division 6 of Part 3-1);

4

(f) special measure determinations (Division 7 of Part 3-1);

5

6

(g) temporary exemptions (Division 8 of Part 3-1).

7

Chapter 4 deals with complaints to the Commission. It contains provisions about the following:

8

9

(a) making complaints to the Commission about unlawful conduct, or about Commonwealth conduct that is contrary to human rights (Part 4-1);

10

11

12

(b) how the Commission deals with complaints (Part 4-2);

13

14

(c) when an application may be made to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct (Part 4-3).

15

16

17

Chapter 5 deals with inquiries by the Commission.

18

Chapter 6 deals with the Commission. It includes provisions about the following:

19

20

(a) the establishment, functions, powers and liabilities of the Commission (Part 6-1);

21

22

(b) the constitution and membership of the Commission (Part 6-2);

23

24

(c) how the Commission operates (Part 6-3);

25

(d) other matters relating to the Commission (Part 6-4).

26

EXPOSURE-DRAFT

Introduction **Chapter 1**
Preliminary **Part 1-1**
Guide to this Act **Division 3**

Section 4

1
2
3

Chapter 7 deals with miscellaneous matters, including offences related to the administration of this Act.

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-2 Interpretation

Division 1 Guide to this Part

Section 5

1 **Part 1-2—Interpretation**

2 **Division 1—Guide to this Part**

3 **5 Guide to this Part**

4

This Part deals with the interpretation of this Act.

5

Division 2 contains the dictionary of definitions, and other interpretive provisions.

6

7

1 **Division 2—Interpretation**

2 **6 The dictionary**

3 (1) In this Act:

4 *Aboriginal and Torres Strait Islander Social Justice*
5 *Commissioner*: see section 160.

6 *Aboriginal person* means a person of the Aboriginal race of
7 Australia.

8 *accommodation* includes residential or business accommodation.

9 *acquisition of property* has the same meaning as in paragraph
10 51(xxxi) of the Constitution.

11 *action plan*: see subsection 67(1).

12 *affected party*, in relation to a complaint: see section 89.

13 *age* includes age group.

14 *Age Discrimination Commissioner*: see section 160.

15 *areas of public life*: see subsection 22(2).

16 *assistance animal* means a dog or other animal that is:

- 17 (a) accredited under a State law or a Territory law that provides
18 for the accreditation of animals trained to assist people who
19 have a disability to alleviate the effect of the disability; or
20 (b) accredited by an animal training organisation prescribed by
21 the regulations; or
22 (c) trained:
23 (i) to assist a person who has a disability to alleviate the
24 effect of the disability; and
25 (ii) to meet standards of hygiene and behaviour that are
26 appropriate for an animal in a public place.

27 *associate* of a person includes:

- 28 (a) a member of the person's immediate family, or another
29 relative of the person; and

EXPOSURE-DRAFT

Chapter 1 Introduction
Part 1-2 Interpretation
Division 2 Interpretation

Section 6

1 (b) another person with whom the person has a care, business or
2 social relationship.

3 **Australia**, when used in a geographical sense, includes the external
4 Territories.

5 **breastfeeding** includes the act of expressing milk, and also
6 includes:

- 7 (a) an act of breastfeeding; and
8 (b) breastfeeding over a period of time.

9 **charitable benefits** means benefits for purposes that are
10 exclusively charitable according to the law (including the common
11 law) in force in any part of Australia.

12 **child**: without limiting who is a child of a person for the purposes
13 of this section, each of the following is the **child** of a person:

- 14 (a) an adopted child, stepchild or exnuptial child of the person;
15 (b) someone who is a child of the person within the meaning of
16 the *Family Law Act 1975*.

17 **children** means people under the age of 18.

18 Note: This definition is not intended to affect the meaning of **child**.

19 **club or member-based association** means an association (whether
20 incorporated or unincorporated) of people associated together for
21 social, literary, cultural, political, sporting, athletic or other lawful
22 purposes that provides and maintains its facilities, in whole or in
23 part, from the funds of the association.

24 **Commission** means the body corporate continued in existence by
25 section 145 under the name Australian Human Rights Commission.

26 **Commission member** means a member of the Commission
27 (including the President).

28 **Commission offices**: see subsection 163(2).

29 **Commission official** means:

- 30 (a) a Commission member; or
31 (b) a member of the Commission staff; or

EXPOSURE-DRAFT

Introduction **Chapter 1**

Interpretation **Part 1-2**

Interpretation **Division 2**

Section 6

1 (c) a person otherwise acting for or on behalf of the Commission
2 or a Commission member.

3 **Commission staff** means the staff of the Commission referred to in
4 subsection 189(1).

5 **committee of management** of an unincorporated association means
6 the body (however described) that governs, manages or conducts
7 the affairs of the association.

8 **Commonwealth authority** means:

- 9 (a) a body established for a public purpose by or under a
10 Commonwealth law; or
11 (b) an incorporated company over which any of the following is
12 in a position to exercise control:
13 (i) the Commonwealth;
14 (ii) a body referred to in paragraph (a); or
15 (c) a person who holds:
16 (i) an office or position established by or under a
17 Commonwealth law; or
18 (ii) an appointment made under a Commonwealth law; or
19 (iii) an appointment made by the Governor-General, by a
20 Minister, or by any other person on behalf of the
21 Commonwealth Government; or
22 (iv) an office or appointment that is prescribed by the
23 regulations for the purpose of this subparagraph.

24 **Commonwealth conduct** means:

- 25 (a) conduct engaged in by or on behalf of any of the following:
26 (i) the Commonwealth;
27 (ii) a Commonwealth authority;
28 (iii) the Administration of a Territory;
29 (iv) a Territory authority; or
30 (b) conduct engaged in in accordance with a Commonwealth law
31 or a Territory law; or
32 (c) conduct engaged in within a Territory.

33 **Commonwealth-funded aged care** means:

- 34 (a) aged care, within the meaning of the *Aged Care Act 1997*:
-

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-2 Interpretation

Division 2 Interpretation

Section 6

- 1 (i) that is provided by an approved provider, within the
2 meaning of that Act; and
3 (ii) in relation to which the approved provider has
4 responsibilities under that Act; or
5 (b) care or services in relation to which a grant has been paid
6 under Chapter 5 of the *Aged Care Act 1997*; or
7 (c) care or services of a class prescribed by the regulations for
8 the purpose of this paragraph.

9 ***Commonwealth law*** means any of the following (or a provision of
10 any of the following):

- 11 (a) an Act;
12 (b) regulations, or any another instrument, made under an Act;
13 (c) any other legislation that applies as a law of the
14 Commonwealth because of an Act, or because of regulations
15 or an instrument referred to in paragraph (b);

16 but does not include a Territory law.

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

19 ***complainant***, in relation to a complaint: see section 89.

20 ***complaint*** means a complaint under Chapter 4.

21 ***compliance code***: see subsection 75(1).

22 ***conduct*** includes:

- 23 (a) a refusal or failure to act; and
24 (b) a course of conduct.

25 ***connected with*** an area of public life or other activity: see
26 section 7.

27 ***constitutional corporation*** means a corporation to which
28 paragraph 51(xx) of the Constitution applies.

29 ***contrary to human rights***: conduct is ***contrary to human rights*** if:

- 30 (a) the conduct is contrary to, or inconsistent with, any human
31 right; and
32 (b) the conduct is not:

EXPOSURE-DRAFT

Introduction **Chapter 1**

Interpretation **Part 1-2**

Interpretation **Division 2**

Section 6

- 1 (i) a special measure to achieve equality; or
2 (ii) engaged in in accordance with a law, policy or program
3 that is a special measure to achieve equality; or
4 (iii) conduct consisting of the making, amending, revoking
5 or repealing (or refusing or failing to make, amend,
6 revoke or repeal) a law.

7 **custodian**: see subsection 97(2).

8 **de facto partner** has the meaning given by the *Acts Interpretation*
9 *Act 1901*.

10 **Defence combat duties** means duties that require, or are likely to
11 require, a person to commit, or participate directly in the
12 commission of, an act of violence in an armed conflict.

13 **Defence combat-related duties** means:

- 14 (a) duties that require, or are likely to require, a person to
15 undertake training or preparation for, or connected with,
16 Defence combat duties; or
17 (b) duties that require, or are likely to require, a person to work
18 in support of a person performing Defence combat duties.

19 **Defence peacekeeping service** means peacekeeping service, within
20 the meaning of the *Veterans' Entitlements Act 1986*.

21 **director** includes a constituent member of a body corporate
22 incorporated by or under a law.

23 **disability** means any of the following:

- 24 (a) total or partial loss of bodily or mental functions;
25 (b) total or partial loss of a part of the body;
26 (c) the presence in the body of organisms causing disease or
27 illness;
28 (d) the presence in the body of organisms capable of causing
29 disease or illness;
30 (e) the malfunction, malformation or disfigurement of a part of
31 the body;

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-2 Interpretation

Division 2 Interpretation

Section 6

- 1 (f) a disorder or malfunction that results in a person learning
2 differently from a person without the disorder or
3 malfunction;
4 (g) a disorder, illness or disease that affects a person's thought
5 processes, perception of reality, emotions or judgement, or
6 that results in disturbed behaviour;
7 and includes:
8 (h) behaviour that is a symptom or manifestation of a disability
9 referred to in any of the above paragraphs; and
10 (i) having any of the following because of having a disability
11 referred to in any of the above paragraphs:
12 (i) a carer, assistant, interpreter or reader;
13 (ii) an assistance animal or disability aid.

14 **disability aid** means equipment (including a palliative or
15 therapeutic device) that:

- 16 (a) is used by a person who has a disability; and
17 (b) provides assistance to alleviate the effect of the disability.

18 **Disability Discrimination Commissioner**: see section 160.

19 **disability standard**: see subsection 70(1).

20 **discriminates**: see section 19.

21 Note: The words *discriminate* and *discrimination* have corresponding
22 meanings: see section 18A of the *Acts Interpretation Act 1901*.

23 **discriminatory effect**: see subsection 19(6).

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

26 **employment** means:

- 27 (a) work under a contract of employment (within its ordinary
28 meaning); or
29 (b) work that a person is otherwise appointed or engaged to
30 perform; or
31 (c) voluntary or unpaid work;
32 whether the work is on a full-time, part-time, temporary or casual
33 basis.

EXPOSURE-DRAFT

Introduction **Chapter 1**

Interpretation **Part 1-2**

Interpretation **Division 2**

Section 6

1 Note: The words *employee* and *employer* have corresponding meanings (see
2 section 18A of the *Acts Interpretation Act 1901*).

3 ***employment agency*** means any person who, or body that, whether
4 for payment or not:

- 5 (a) assists people to find employment or other work; or
6 (b) assists people to find employees or other workers.

7 ***family responsibilities*** of a person means responsibilities of the
8 person to care for or support:

- 9 (a) a child of the person who is wholly or substantially
10 dependent on the person; or
11 (b) any other member of the person's immediate family who is in
12 need of care and support.

13 ***Federal Court*** means the Federal Court of Australia.

14 ***financial liability***: see subsection 156(2).

15 ***gender identity*** means:

- 16 (a) the identification, on a genuine basis, by a person of one sex
17 as a member of the other sex (whether or not the person is
18 recognised as such):
19 (i) by assuming characteristics of the other sex, whether by
20 means of medical intervention, style of dressing or
21 otherwise; or
22 (ii) by living, or seeking to live, as a member of the other
23 sex; or
24 (b) the identification, on a genuine basis, by a person of
25 indeterminate sex as a member of a particular sex (whether or
26 not the person is recognised as such):
27 (i) by assuming characteristics of that sex, whether by
28 means of medical intervention, style of dressing or
29 otherwise; or
30 (ii) by living, or seeking to live, as a member of that sex.

31 ***ground*** of discrimination: see subsection 19(5).

32 ***human rights*** means the rights and freedoms recognised or
33 declared by the human rights instruments.

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-2 Interpretation

Division 2 Interpretation

Section 6

- 1 **human rights instruments**: see subsection 3(2).
- 2 **ILO** means the International Labour Organization.
- 3 **ILO instruments**: see subsection 3(3).
- 4 **immediate family**: a person's **immediate family** includes:
- 5 (a) a spouse, former spouse, de facto partner or
- 6 former de facto partner of the person; and
- 7 (b) a child, parent, grandparent, grandchild or sibling of the
- 8 person, or of a spouse, former spouse, de facto partner or
- 9 former de facto partner of the person.
- 10 **immigrant status** means the status of being an immigrant.
- 11 **industrial association** has the same meaning as in the *Fair Work*
- 12 *Act 2009*.
- 13 **industrial history** of a person means the person's history of:
- 14 (a) becoming or not becoming, or remaining or ceasing to be, an
- 15 officer or member of an industrial association; or
- 16 (b) doing, or not doing, any of the following:
- 17 (i) becoming involved in establishing an industrial
- 18 association;
- 19 (ii) organising or promoting a lawful activity for, or on
- 20 behalf of, an industrial association;
- 21 (iii) encouraging, or participating in, a lawful activity
- 22 organised or promoted by an industrial association;
- 23 (iv) complying with a lawful request made by, or with a
- 24 requirement of, an industrial association;
- 25 (v) representing or advancing the views, claims or interests
- 26 of an industrial association;
- 27 (vi) paying a fee (however described) to an industrial
- 28 association, or to someone in lieu of an industrial
- 29 association;
- 30 (vii) seeking to be represented by an industrial association.
- 31 **inquiry** means an inquiry under Chapter 5.
- 32 **insurance policy** means any of the following:
-

EXPOSURE-DRAFT

Introduction **Chapter 1**

Interpretation **Part 1-2**

Interpretation **Division 2**

Section 6

- 1 (a) a life insurance policy;
2 (b) a policy of insurance against accident or illness, or any other
3 policy of insurance;
4 (c) an annuity.

5 ***intelligence agency*** has the same meaning as in the
6 *Inspector-General of Intelligence and Security Act 1986*.

7 ***judicial office*** means:

- 8 (a) an office of a judge, magistrate or justice of a court created
9 by the Parliament or of a court of a State; or
10 (b) an office whose holder has, under a law (other than a
11 Territory law), the same status as a judge, magistrate or
12 justice of a court created by the Parliament or of a court of a
13 State.

14 ***junior rates*** means remuneration payable in accordance with
15 minimum wage entitlements, under a Commonwealth law, a State
16 law or a Territory law, for people under the age of 21.

17 ***justifiable***: for when conduct is ***justifiable***, see section 23.

18 ***just terms*** has the same meaning as in paragraph 51(xxxi) of the
19 Constitution.

20 ***law*** means a Commonwealth law, a State law or a Territory law.

21 ***marital or relationship status*** means a person's status of being any
22 of the following:

- 23 (a) single;
24 (b) married;
25 (c) married, but living separately and apart from his or her
26 spouse;
27 (d) divorced;
28 (e) the de facto partner of another person;
29 (f) the de facto partner of another person, but living separately
30 and apart from that other person;
31 (g) the former de facto partner of another person;
32 (h) the surviving spouse or de facto partner of a person who has
33 died.

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-2 Interpretation

Division 2 Interpretation

Section 6

1

medical support person means:

2

(a) a person who is exclusively engaged in the search for, or the collection, transport or treatment of, the wounded or sick, or in the prevention of disease, and whose engagement is connected with the Defence Force; or

3

4

5

6

(b) a person who is exclusively engaged in the administration of medical units and establishments, and whose engagement is connected with the Defence Force.

7

8

9

National Children's Commissioner: see section 160.

10

occupational authority means an authority or body that has power to grant, continue or terminate an occupational qualification.

11

12

occupational qualification means an authorisation or qualification that is needed for, or facilitates:

13

14

(a) practising a profession; or

15

(b) carrying on a trade; or

16

(c) engaging in an occupation.

17

parent: without limiting who is a parent of a person for the purpose of this Act, someone is the ***parent*** of a person if the person is his or her child because of paragraph (b) of the definition of ***child***.

18

19

20

place means any place or premises (whether enclosed or built on or not), and includes a structure, building, aircraft, vehicle or vessel.

21

22

policy (except in the context of a reference to insurance or life insurance) includes a condition, requirement or practice.

23

24

potential pregnancy of a person includes:

25

(a) the fact that the person is or may be capable of bearing children; or

26

27

(b) the fact that the person has expressed a desire to become pregnant; or

28

29

(c) the fact that the person is likely, or is perceived as being likely, to become pregnant.

30

31

prejudice to the security, defence or international relations of Australia includes any such prejudice that might result from the divulging of information or matters communicated in confidence

32

33

EXPOSURE-DRAFT

Introduction **Chapter 1**

Interpretation **Part 1-2**

Interpretation **Division 2**

Section 6

1 by or on behalf of the government of a foreign country, an
2 authority of a government of a foreign country or an international
3 organisation to the Commonwealth Government, a Commonwealth
4 authority or a person receiving the communication on behalf of the
5 Commonwealth Government or a Commonwealth authority.

6 ***President***: see section 160.

7 ***program*** includes a scheme.

8 ***properly made***: for when a complaint is ***properly made***, see
9 subsection 101(3).

10 ***protected attributes***: see section 17.

11 ***protected document***: see subsection 193(3).

12 ***protected information***: see subsection 193(2).

13 ***public place*** means a place, or a part of a place, to which the
14 public, or a section of the public, ordinarily has access, whether or
15 not by payment or by invitation.

16 ***race*** includes:

- 17 (a) colour; and
- 18 (b) descent; and
- 19 (c) national or ethnic origin.

20 ***Race Discrimination Commissioner***: see section 160.

21 ***racial vilification***: see section 51.

22 ***reasonable adjustment***: see section 25.

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

27 ***representative complaint***: see section 89.

28 ***respondent***, in relation to a complaint: see section 89.

29 ***review report***: see subsection 64(3).

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-2 Interpretation

Division 2 Interpretation

Section 6

- 1 **services** means services of any kind, including (for example) the
2 following:
3 (a) services relating to banking, insurance, superannuation and
4 the provision of grants, loans, credit or finance;
5 (b) services relating to entertainment, recreation or refreshment;
6 (c) services relating to transport or travel;
7 (d) services relating to telecommunications;
8 (e) services of the kind provided by the members of any
9 profession or trade;
10 (f) services of the kind provided by a government, a government
11 authority or a local government body.

12 **Sex Discrimination Commissioner**: see section 160.

13 **sexually harasses**: see section 49.

14 Note: The expressions **sexually harass** and **sexual harassment** have
15 corresponding meanings (see section 18A of the *Acts Interpretation*
16 *Act 1901*).

17 **sexual orientation** means a person's sexual orientation towards:

- 18 (a) persons of the same sex; or
19 (b) persons of the opposite sex; or
20 (c) persons of either sex.

21 **special measure determination**: see subsection 79(1).

22 **special measure to achieve equality**: see section 21.

23 Note: See also section 82 (effect of special measure determination).

24 **State**, except in subsections 12(4) and (5), includes the Australian
25 Capital Territory and the Northern Territory.

26 **State authority** means:

- 27 (a) a body established for a public purpose by or under a State
28 law; or
29 (b) an incorporated company over which any of the following is
30 in a position to exercise control:
31 (i) a State;
32 (ii) a body referred to in paragraph (a); or
33 (c) a person who holds:

EXPOSURE-DRAFT

Introduction **Chapter 1**

Interpretation **Part 1-2**

Interpretation **Division 2**

Section 6

- 1 (i) an office or position established by or under a State law;
2 or
3 (ii) an appointment made under a State law; or
4 (iii) an appointment made by the Governor of a State, by a
5 Minister of a State, or by any other person on behalf of
6 the Government of a State; or
7 (iv) an office or appointment that is prescribed by the
8 regulations for the purpose of this subparagraph.

9 **State law** means a law, other than a Commonwealth law, in force
10 in a State (or a provision of such a law).

11 **State or Territory anti-discrimination law**: see subsection 14(3).

12 **stepchild**: without limiting who is a stepchild of a person for the
13 purpose of this Act, someone who is a child of a de facto partner of
14 the person is the **stepchild** of the person, if he or she would be the
15 person's stepchild except that the person is not legally married to
16 the partner.

17 **superannuation fund or scheme** includes a provident fund or
18 scheme.

19 **surviving spouse or de facto partner** of a person who has died
20 means a person who was the person's spouse or de facto partner
21 immediately before the person died.

22 **temporary exemption**: see section 83.

23 **Territory**, except in subsection 12(4), does not include the
24 Australian Capital Territory or the Northern Territory.

25 **Territory authority** means:

- 26 (a) a body established for a public purpose by or under a
27 Territory law; or
28 (b) an incorporated company over which any of the following is
29 in a position to exercise control:
30 (i) the Administration of a Territory;
31 (ii) a body referred to in paragraph (a);
32 (c) a person who holds:

EXPOSURE-DRAFT

Chapter 1 Introduction
Part 1-2 Interpretation
Division 2 Interpretation

Section 6

- 1 (i) an office or position established by or under a Territory
2 law; or
3 (ii) an appointment made under a Territory law; or
4 (iii) an appointment made by a Minister of a Territory, or by
5 any other person on behalf of the Administration of a
6 Territory; or
7 (iv) an office or appointment that is prescribed by the
8 regulations for the purpose of this subparagraph.

9 ***Territory law*** means any of the following (or a provision of any of
10 the following):

- 11 (a) a Territory Act;
12 (b) regulations, or an instrument, made under a Territory Act;
13 (c) any other legislation that applies as a law of a Territory
14 because of:
15 (i) an Act relating to the administration or government of a
16 Territory; or
17 (ii) a Territory Act; or
18 (iii) regulations or an instrument referred to in paragraph (b).

19 ***Territory program*** means a program conducted by or on behalf of
20 the Administration of a Territory.

21 ***Torres Strait Islander*** means a descendant of an Indigenous
22 inhabitant of the Torres Strait Islands.

23 ***unfavourable***: for when treatment of a person is ***unfavourable***, see
24 subsection 19(2).

25 ***unlawful conduct*** means conduct that is unlawful under any of the
26 following:

- 27 (a) Division 3 of Part 2-2 (unlawful discrimination);
28 (b) Division 2 of Part 2-3 (sexual harassment);
29 (c) Division 3 of Part 2-3 (racial vilification);
30 (d) Division 4 of Part 2-3 (requesting or requiring information
31 that could be used to discriminate);
32 (e) Division 5 of Part 2-3 (publishing etc. intention to engage in
33 unlawful conduct);
34 (f) Division 6 of Part 2-3 (victimisation);

EXPOSURE-DRAFT

Introduction **Chapter 1**

Interpretation **Part 1-2**

Interpretation **Division 2**

Section 7

- 1 (g) section 73 (contravention of a disability standard).
- 2 **work and work-related areas** includes:
- 3 (a) employment, including:
- 4 (i) offering or terminating employment; and
- 5 (ii) determining or applying terms and conditions of
- 6 employment, and benefits or opportunities available to
- 7 employees; and
- 8 (iii) performing work as an employee; and
- 9 (b) membership of partnerships, including:
- 10 (i) inviting people to become partners, or removing people
- 11 from partnerships; and
- 12 (ii) determining or applying terms and conditions on which
- 13 people are partners, and benefits or opportunities
- 14 available to partners; and
- 15 (iii) performing work as a partner; and
- 16 (c) membership of industrial associations, including:
- 17 (i) accepting people as members, or terminating their
- 18 membership; and
- 19 (ii) determining or applying terms and conditions of
- 20 membership, and benefits or opportunities available to
- 21 members; and
- 22 (d) the provision of services by employment agencies; and
- 23 (e) the conferral, renewal, extension, revocation or withdrawal of
- 24 qualifications by occupational authorities.
- 25 (2) For the purposes of the definition of *immediate family* in
- 26 subsection (1), if one person is the child of another person because
- 27 of paragraph (b) of the definition of *child* in that subsection,
- 28 relationships traced to or through the person are to be determined
- 29 on the basis that the person is the child of the other person.

30 **7 Meaning of *connected with* an area of public life etc.**

31 Conduct engaged in by a person (the *first person*) in relation to

32 another person is *connected with* a particular area of public life or

33 other activity if the conduct is engaged in:

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-2 Interpretation

Division 2 Interpretation

Section 8

- 1 (a) in the course of, for the purpose of, or in relation to, that area
2 of public life or other activity; or
3 (b) without limiting paragraph (a)—while the first person or the
4 other person (or while each of them) is involved in an activity
5 or undertaking in the course of, for the purpose of, or that is
6 otherwise related to, that area of public life or other activity.

7 **8 Multiple reasons or purposes for conduct**

- 8 (1) For the purposes of this Act, a person or body engages in conduct
9 (however described) for a particular reason, or for a particular
10 purpose, if:
11 (a) that reason is the sole reason, or is one of the reasons, why
12 the person or body engages in the conduct; or
13 (b) that purpose is the sole purpose, or is one of the purposes, for
14 which the person engages in the conduct.
- 15 (2) Subsection (1) has effect subject to any express contrary intention
16 appearing in a provision of this Act.
17

EXPOSURE-DRAFT

Introduction **Chapter 1**
Application of this Act **Part 1-3**
Guide to this Part **Division 1**

Section 9

1 **Part 1-3—Application of this Act**

2 **Division 1—Guide to this Part**

3 **9 Guide to this Part**

4
5
6
7
8
9
10

This Part deals with matters related to the application of this Act.

Division 2 deals with the geographical application of this Act.

Division 3 deals with the constitutional basis of this Act.

Division 4 deals with how this Act interacts with State and Territory laws.

Division 5 deals with other miscellaneous matters.

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-3 Application of this Act

Division 2 Geographical application

Section 10

1 **Division 2—Geographical application**

2 **10 Act applies throughout Australia**

3 (1) This Act applies throughout Australia.

4 (2) This Act applies to conduct engaged in in Australia, even if the
5 conduct involves persons or things, or matters arising, outside
6 Australia.

7

EXPOSURE-DRAFT

Introduction **Chapter 1**
Application of this Act **Part 1-3**
Constitutional basis **Division 3**

Section 11

1 **Division 3—Constitutional basis**

2 **11 Main constitutional basis: external affairs**

3 This Act has effect to the extent that it:

- 4 (a) gives effect to the human rights instruments and the ILO
5 instruments; or
6 (b) relates to:
7 (i) matters of international concern; or
8 (ii) matters external to Australia.

9 **12 Other constitutional bases**

10 *Act also has effect as provided by this section*

- 11 (1) Without limiting its effect as provided by section 11, this Act also
12 has effect as provided by this section.

13 *Constitutional corporations*

- 14 (2) This Act also has the effect it would have if each reference in this
15 Act to a person (the *first person*) engaging in conduct in relation to
16 another person were, by express reference, limited so that it applies
17 only if one or more of the following paragraphs applies:
18 (a) the first person is a constitutional corporation;
19 (b) the first person is an officer, employee or agent of a
20 constitutional corporation, and the conduct is connected with
21 the person's duties as such an officer, employee or agent;
22 (c) the other person is an officer, employee or agent of a
23 constitutional corporation, and the conduct is connected with
24 the person's duties as such an officer, employee or agent.

25 *Commonwealth and Territory matters*

- 26 (3) This Act also has the effect it would have if each reference in this
27 Act to a person (the *first person*) engaging in conduct in relation to
28 another person were, by express reference, limited so that it applies
29 only if one or more of the following paragraphs applies:

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-3 Application of this Act

Division 3 Constitutional basis

Section 12

- 1 (a) the first person is the Commonwealth, a Territory, a
2 Commonwealth authority or a Territory authority;
- 3 (b) the first person is an officer, employee or agent of the
4 Commonwealth, a Territory, a Commonwealth authority or a
5 Territory authority, and the conduct is connected with the
6 person's duties as such an officer, employee or agent;
- 7 (c) the other person is an officer, employee or agent of the
8 Commonwealth, a Territory, a Commonwealth authority or a
9 Territory authority, and the conduct is connected with the
10 person's duties as such an officer, employee or agent;
- 11 (d) the conduct occurs in the course of the first person, or the
12 other person, performing a function or exercising a power
13 under a Commonwealth law or a Territory law;
- 14 (e) the conduct is engaged in within a Territory.

15 *Trade or commerce*

- 16 (4) This Act also has the effect it would have if each reference in this
17 Act to a person (the **first person**) engaging in conduct in relation to
18 another person were, by express reference, confined to conduct
19 engaged in while the first person, or the other person, is acting in
20 the course of, or in relation to, trade or commerce:
- 21 (a) between Australia and places outside Australia; or
22 (b) among the States; or
23 (c) between a State and a Territory; or
24 (d) between 2 Territories.

25 *Banking and insurance*

- 26 (5) This Act also has the effect it would have if each reference in this
27 Act to a person (the **first person**) engaging in conduct in relation to
28 another person were, by express reference, confined to conduct
29 engaged in while the first person, or the other person, is acting in
30 the course of, or in relation to, the carrying on of:
- 31 (a) the business of banking, other than State banking (within the
32 meaning of paragraph 51(xiii) of the Constitution) not
33 extending beyond the limits of the State concerned; or

EXPOSURE-DRAFT

Introduction **Chapter 1**
Application of this Act **Part 1-3**
Constitutional basis **Division 3**

Section 13

- 1 (b) the business of insurance, other than State insurance (within
2 the meaning of paragraph 51(xiv) of the Constitution) not
3 extending beyond the limits of the State concerned.

4 *Telecommunications*

- 5 (6) This Act also has the effect it would have if each reference in this
6 Act to a person engaging in conduct in relation to another person
7 were, by express reference, confined to conduct engaged in by
8 means of a postal, telegraphic, telephonic or other like service
9 within the meaning of paragraph 51(v) of the Constitution.

10 **13 Act not to apply so as to exceed Commonwealth power**

- 11 (1) Unless the contrary intention appears, if a provision of this Act:
12 (a) would, apart from this section, have an application (an
13 *invalid application*) in relation to:
14 (i) one or more particular persons, things, matters, places,
15 circumstances or cases; or
16 (ii) one or more classes (however defined or determined) of
17 persons, things, matters, places, circumstances or cases;
18 because of which the provision exceeds the Commonwealth's
19 legislative power; and
20 (b) also has at least one application (a *valid application*) in
21 relation to:
22 (i) one or more particular persons, things, matters, places,
23 circumstances or cases; or
24 (ii) one or more classes (however defined or determined) of
25 persons, things, matters, places, circumstances or cases;
26 that, if it were the provision's only application, would be
27 within the Commonwealth's legislative power;
28 it is the Parliament's intention that the provision is not to have the
29 invalid application, but is to have every valid application.
- 30 (2) Despite subsection (1), the provision is not to have a particular
31 valid application if:
32 (a) apart from this section, it is clear, taking into account the
33 provision's context and the purpose or object underlying this
34 Act, that the provision was intended to have that valid

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-3 Application of this Act

Division 3 Constitutional basis

Section 13

- 1 application only if every invalid application, or a particular
2 invalid application, of the provision had also been within the
3 Commonwealth's legislative power; or
4 (b) the provision's operation in relation to that valid application
5 would be different in a substantial respect from what would
6 have been its operation in relation to that valid application if
7 every invalid application of the provision had been within the
8 Commonwealth's legislative power.
- 9 (3) Subsection (2) does not limit the cases where a contrary intention
10 may be taken to appear for the purposes of subsection (1).
11

EXPOSURE-DRAFT

Introduction **Chapter 1**
Application of this Act **Part 1-3**
Interaction with State and Territory laws **Division 4**

Section 14

1 **Division 4—Interaction with State and Territory laws**

2 **14 Interaction with State and Territory anti-discrimination laws**

3 (1) This Act is not intended to exclude or limit the operation of a State
4 or Territory anti-discrimination law, to the extent that that law is
5 capable of operating concurrently with this Act.

6 (2) Subsection (1) does not apply in relation to the provisions of this
7 Act relating to disability standards and compliance codes.

8 Note: Disability standards and compliance codes may provide that they are,
9 or are not, intended to affect the operation of State laws or Territory
10 laws: see subsections 70(3) and 75(4).

11 (3) A *State or Territory anti-discrimination law* is a State law, or a
12 Territory law, prescribed by the regulations for the purpose of this
13 subsection.
14

EXPOSURE-DRAFT

Chapter 1 Introduction

Part 1-3 Application of this Act

Division 5 Miscellaneous

Section 15

1 **Division 5—Miscellaneous**

2 **15 Act binds Crown**

3 (1) This Act binds the Crown in each of its capacities.

4 (2) However, this Act does not make the Crown liable to be prosecuted
5 for an offence.
6

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

The protected attributes **Part 2-1**

Guide to this Part **Division 1**

Section 16

1 **Chapter 2—Unlawful conduct and equality**
2 **before the law**

3 **Part 2-1—The protected attributes**

4 **Division 1—Guide to this Part**

5 **16 Guide to this Part**

6 This Part deals with the protected attributes. In broad terms,
7 Parts 2-2 and 2-3 make discrimination and certain other conduct
8 unlawful if it is based on people's protected attributes.

9 Division 2 specifies the protected attributes.

10

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-1 The protected attributes

Division 2 The protected attributes

Section 17

1 **Division 2—The protected attributes**

2 **17 The *protected attributes***

3 (1) The *protected attributes* are as follows:

- 4 (a) age;
- 5 (b) breastfeeding;
- 6 (c) disability;
- 7 (d) family responsibilities;
- 8 (e) gender identity;
- 9 (f) immigrant status;
- 10 (g) industrial history;
- 11 (h) marital or relationship status;
- 12 (i) medical history;
- 13 (j) nationality or citizenship;
- 14 (k) political opinion;
- 15 (l) potential pregnancy;
- 16 (m) pregnancy;
- 17 (n) race;
- 18 (o) religion;
- 19 (p) sex;
- 20 (q) sexual orientation;
- 21 (r) social origin.

22 (2) Each protected attribute is taken to include:

- 23 (a) characteristics that people who have the attribute generally
- 24 have or are generally assumed to have; and
- 25 (b) in relation to a particular person—characteristics that the
- 26 person has because he or she has the attribute.
- 27

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Guide to this Part **Division 1**

Section 18

1 **Part 2-2—Unlawful discrimination**

2 **Division 1—Guide to this Part**

3 **18 Guide to this Part**

4

This Part deals with unlawful discrimination.

5

Division 2 defines what constitutes discrimination.

6

Division 3 describes when discrimination is unlawful. In broad terms, discrimination is unlawful if it occurs in any area of public life.

7

8

9

Division 4 contains exceptions to unlawful discrimination.

10

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 2 Meaning of discrimination

Section 19

Division 2—Meaning of discrimination

19 When a person *discriminates* against another person, and related concepts

Discrimination by unfavourable treatment

- (1) A person (the ***first person***) ***discriminates*** against another person if the first person treats, or proposes to treat, the other person unfavourably because the other person has a particular protected attribute, or a particular combination of 2 or more protected attributes.

Note: This subsection has effect subject to section 21.

- (2) To avoid doubt, ***unfavourable*** treatment of the other person includes (but is not limited to) the following:
- (a) harassing the other person;
 - (b) other conduct that offends, insults or intimidates the other person.

Discrimination by imposition of policies

- (3) A person (the ***first person***) ***discriminates*** against another person if:
- (a) the first person imposes, or proposes to impose, a policy; and
 - (b) the policy has, or is likely to have, the effect of disadvantaging people who have a particular protected attribute, or a particular combination of 2 or more protected attributes; and
 - (c) the other person has that attribute or combination of attributes.

Note: This subsection has effect subject to section 21.

Extended meaning of having a protected attribute

- (4) A reference in subsection (1) or (3) to a person having a particular protected attribute (whether alone, or as part of a combination of 2 or more protected attributes) is taken also to include a reference to each of the following:
- (a) an associate of the person having the protected attribute;

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Meaning of discrimination **Division 2**

Section 20

- 1 (b) the person, or an associate of the person, having in the past
2 had the protected attribute;
3 (c) the possibility that the person, or an associate of the person,
4 may in the future have the protected attribute;
5 (d) the first person referred to in subsection (1) or (3) assuming
6 that the person, or an associate of the person:
7 (i) has the protected attribute; or
8 (ii) has in the past had the protected attribute; or
9 (iii) may in the future have the protected attribute.

10 *The ground of discrimination*

- 11 (5) The **ground** of discrimination is:
12 (a) if subsection (1) applies—the protected attribute, or the
13 combination of protected attributes, referred to in that
14 subsection; or
15 (b) if subsection (3) applies—the protected attribute, or the
16 combination of protected attributes, referred to in
17 paragraph (3)(b).

18 *The discriminatory effect of conduct*

- 19 (6) The **discriminatory effect** of conduct is:
20 (a) if subsection (1) applies—the unfavourable nature of the
21 treatment or proposed treatment of the other person; and
22 (b) if subsection (3) applies—the disadvantageous effect referred
23 to in paragraph (3)(b).

24 *Subsections (1) and (3) do not limit each other*

- 25 (7) Subsections (1) and (3) do not limit each other.

26 **20 Proposing to treat a person unfavourably, or to impose a policy**

- 27 (1) This section applies to conduct of a person (the **first person**) that
28 consists of:
29 (a) proposing to treat another person unfavourably; or
30 (b) proposing to impose a policy.

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 2 Meaning of discrimination

Section 21

- 1 (2) The question whether the conduct is discrimination (or unlawful
2 discrimination) is to be determined in the same way as it would be
3 if the first person had actually treated the other person, or had
4 actually imposed the policy, as proposed.

5 **21 Special measures to achieve equality are not discrimination**

6 *Special measures to achieve equality are not discrimination*

- 7 (1) None of the following is discrimination:
8 (a) conduct that is a special measure to achieve equality;
9 (b) conduct engaged in in accordance with a special measure to
10 achieve equality.

11 *Meaning of special measure to achieve equality*

- 12 (2) Subject to subsections (3) and (4), a law, policy or program made,
13 developed or adopted, or other conduct engaged in, by a person or
14 body is a ***special measure to achieve equality*** if:
15 (a) the person or body makes, develops or adopts the law, policy
16 or program, or engages in the conduct, in good faith for the
17 sole or dominant purpose of advancing or achieving
18 substantive equality for people, or a class of people, who
19 have a particular protected attribute or a particular
20 combination of 2 or more protected attributes; and
21 (b) a reasonable person in the circumstances of the person or
22 body would have considered that making, developing or
23 adopting the law, policy or program, or engaging in the
24 conduct, was necessary in order to advance or achieve
25 substantive equality.
- 26 (3) A law described in subsection 60(3) is not a ***special measure to***
27 ***achieve equality***.
- 28 (4) A law, policy or program, or conduct, ceases to be a ***special***
29 ***measure to achieve equality*** after substantive equality for the
30 people, or class of people, referred to in paragraph (2)(a) has been
31 achieved.
32

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

When discrimination is unlawful **Division 3**

Section 22

1 **Division 3—When discrimination is unlawful**

2 **22 When discrimination is unlawful**

- 3 (1) It is unlawful for a person to discriminate against another person if
4 the discrimination is connected with any area of public life.

5 Note: For exceptions to when discrimination is unlawful, see Division 4.

- 6 (2) The *areas of public life* include (but are not limited to) the
7 following:

- 8 (a) work and work-related areas;
9 (b) education or training;
10 (c) the provision of goods, services or facilities;
11 (d) access to public places;
12 (e) provision of accommodation;
13 (f) dealings in estates or interests in land (otherwise than by, or
14 to give effect to, a will or a gift);
15 (g) membership and activities of clubs or member-based
16 associations;
17 (h) participation in sporting activities (including umpiring,
18 coaching and administration of sporting activities);
19 (i) the administration of Commonwealth laws and Territory
20 laws, and the administration or delivery of Commonwealth
21 programs and Territory programs.

- 22 (3) Discrimination on the ground of any of the following protected
23 attributes (or a combination of protected attributes that includes
24 any of the following protected attributes) is only unlawful if the
25 discrimination is connected with work and work-related areas:

- 26 (a) family responsibilities;
27 (b) industrial history;
28 (c) medical history;
29 (d) nationality or citizenship;
30 (e) political opinion;
31 (f) religion;
32 (g) social origin.
33

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 4 Exceptions to unlawful discrimination

Section 23

1 **Division 4—Exceptions to unlawful discrimination**

2 **Subdivision A—Main exceptions**

3 **23 Exception for justifiable conduct**

4 *Protected attributes to which this exception applies*

- 5 (1) The exception in this section applies in relation to all protected
6 attributes.

7 *Exception for justifiable conduct*

- 8 (2) It is not unlawful for a person to discriminate against another
9 person if the conduct constituting the discrimination is justifiable.

10 *When conduct is justifiable*

- 11 (3) Subject to subsection (6), conduct of a person (the *first person*) is
12 *justifiable* if:

- 13 (a) the first person engaged in the conduct, in good faith, for the
14 purpose of achieving a particular aim; and
15 (b) that aim is a legitimate aim; and
16 (c) the first person considered, and a reasonable person in the
17 circumstances of the first person would have considered, that
18 engaging in the conduct would achieve that aim; and
19 (d) the conduct is a proportionate means of achieving that aim.

- 20 (4) In determining whether subsection (3) is satisfied in relation to
21 conduct, the following matters must be taken into account:

- 22 (a) the objects of this Act;
23 (b) the nature and extent of the discriminatory effect of the
24 conduct;
25 (c) whether the first person could instead have engaged in other
26 conduct that would have had no, or a lesser, discriminatory
27 effect;
28 (d) the cost and feasibility of engaging in other conduct as
29 mentioned in paragraph (c).

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Exceptions to unlawful discrimination **Division 4**

Section 24

- 1 (5) Any other matter that it is reasonable to take into account may also
2 be taken into account.

3 *Disability: conduct not justifiable if a reasonable adjustment could*
4 *have been made*

- 5 (6) In relation to discrimination on the ground of disability (or on the
6 ground of a combination of disability and one or more other
7 protected attributes), conduct of a person is not *justifiable* if:
8 (a) there is a reasonable adjustment that the person could have
9 made; and
10 (b) if the person had made that adjustment:
11 (i) the conduct would have had no, or a lesser,
12 discriminatory effect; or
13 (ii) the person would instead have engaged in other conduct
14 that would have had no, or a lesser, discriminatory
15 effect.

16 Note: The concept of reasonable adjustment is dealt with in section 25.

17 **24 Exception for inherent requirements of work**

18 *Protected attributes to which this exception applies*

- 19 (1) The exception in this section applies in relation to all protected
20 attributes.

21 *Exception for inherent requirements of work*

- 22 (2) Subject to subsection (4), it is not unlawful for a person (the *first*
23 *person*) to discriminate against another person on the ground of a
24 particular protected attribute, or a particular combination of 2 or
25 more protected attributes, if:
26 (a) the discrimination is connected with work and work-related
27 areas; and
28 (b) the other person is unable to carry out the inherent
29 requirements of the particular work because he or she has
30 that protected attribute or combination of protected attributes;
31 and

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 4 Exceptions to unlawful discrimination

Section 25

- 1 (c) the discrimination is necessary because the other person is
2 unable to carry out those inherent requirements.
- 3 (3) In determining whether the other person is unable to carry out the
4 inherent requirements of the particular work, the following matters
5 are to be taken into account:
- 6 (a) the other person's past training, qualifications and experience
7 relevant to the particular work;
- 8 (b) the other person's previous performance (if any) in working
9 for the first person;
- 10 (c) any other factor that it is reasonable to take into account.

11 *Disability: exception does not apply if reasonable adjustment could*
12 *have been made*

- 13 (4) In relation to discrimination on the ground of disability (or on the
14 ground of a combination of disability and one or more other
15 protected attributes), subsection (2) does not apply if:
- 16 (a) there is a reasonable adjustment that the first person could
17 have made; and
- 18 (b) if the first person had made that adjustment, the other person
19 would have been able to carry out the inherent requirements
20 of the particular work.

21 Note: The concept of reasonable adjustment is dealt with in section 25.

22 **25 Discrimination on ground of disability: meaning of *reasonable*** 23 ***adjustment***

- 24 (1) This section applies in relation to discrimination on the ground of
25 disability (or on the ground of a combination of disability and one
26 or more other protected attributes).
- 27 (2) A person (the *first person*) could have made a ***reasonable***
28 ***adjustment*** if the person could have made the adjustment without
29 unjustifiable hardship being caused to the person.
- 30 (3) In determining whether making an adjustment would cause the first
31 person unjustifiable hardship, all relevant matters must be taken
32 into account, including the following:

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Exceptions to unlawful discrimination **Division 4**

Section 26

- 1 (a) the nature of any benefit or detriment likely to accrue to, or to
2 be suffered by, any person concerned;
3 (b) the effect of any disability of any person concerned;
4 (c) the financial circumstances of the first person, and the
5 estimated amount of expenditure that the first person would
6 have to incur in order to make the adjustment;
7 (d) the availability of financial and other assistance to the first
8 person;
9 (e) any relevant guidelines prepared by the Commission under
10 section 62;
11 (f) any relevant action plans given to the Commission under
12 section 68.

13 **Subdivision B—Exceptions related to other laws, court orders**
14 **etc.**

15 **26 Exception for conduct necessary to comply with Commonwealth**
16 **Acts and instruments subject to disallowance**

17 *Protected attributes to which this exception applies*

- 18 (1) The exception in this section applies in relation to all protected
19 attributes, other than race.

20 *Exception for compliance with Commonwealth Acts and*
21 *instruments subject to disallowance*

- 22 (2) It is not unlawful for a person to discriminate against another
23 person if:
24 (a) the conduct constituting the discrimination is necessary to
25 comply with:
26 (i) an Act; or
27 (ii) an instrument made under an Act, being an instrument
28 that could be, or could have been, disallowed by either
29 House of the Parliament; and
30 (b) the discrimination is on the ground of a protected attribute to
31 which this exception applies, or a combination of 2 or more
32 protected attributes to which this section applies.

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 4 Exceptions to unlawful discrimination

Section 27

1 **27 Exceptions for discrimination in accordance with certain**
2 **Commonwealth migration and health laws**

3 *Protected attributes to which these exceptions apply*

- 4 (1) The exceptions in this section apply in relation to the protected
5 attributes specified in the exceptions.

6 *Exception for the Migration Act 1958*

- 7 (2) It is not unlawful for a person to discriminate against another
8 person if:

- 9 (a) the conduct constituting the discrimination is in accordance
10 with the *Migration Act 1958*, or with regulations or another
11 instrument of a legislative character made under that Act; and
12 (b) the discrimination is on the ground of any of the following
13 protected attributes, or a combination of 2 or more of the
14 following protected attributes:
15 (i) age;
16 (ii) disability;
17 (iii) marital or relationship status.

18 *Exception for health laws*

- 19 (3) It is not unlawful for a person to discriminate against another
20 person if:

- 21 (a) the conduct constituting the discrimination is in accordance
22 with any of the following Acts, or with regulations or another
23 instrument of a legislative character made under any of the
24 following Acts:
25 (i) the *Health Insurance Act 1973*;
26 (ii) the *National Health Act 1953*;
27 (iii) the *Private Health Insurance Act 2007*;
28 (iv) the *Therapeutic Goods Act 1989*; and
29 (b) the discrimination is on the ground of any of the following
30 protected attributes, or a combination of 2 or more of the
31 following protected attributes:
32 (i) age;
33 (ii) disability;
-

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Exceptions to unlawful discrimination **Division 4**

Section 28

1 (iii) sex.

2 **28 Exception for conduct in accordance with Commonwealth laws**
3 **on ground of nationality or citizenship**

4 *Protected attribute to which this exception applies*

5 (1) The exception in this section applies in relation to the protected
6 attribute of nationality or citizenship.

7 *Exception for Commonwealth laws and nationality or citizenship*

8 (2) It is not unlawful for a person to discriminate against another
9 person if:

10 (a) the conduct constituting the discrimination is in accordance
11 with a Commonwealth law; and

12 (b) the discrimination is on the ground of nationality or
13 citizenship.

14 **29 Exception for conduct in accordance with laws that treat young**
15 **people differently because of their vulnerability etc.**

16 *Protected attributes to which this exception applies*

17 (1) The exception in this section applies in relation to the protected
18 attribute of age.

19 *Exception for laws that treat young people differently because of*
20 *their vulnerability etc.*

21 (2) It is not unlawful for a person to discriminate against another
22 person, on the ground of the other person's age, if:

23 (a) the conduct constituting the discrimination is in accordance
24 with a law that treats people under a specified age differently
25 from other people; and

26 (b) the law provides for that different treatment because of the
27 vulnerability, or lack of maturity or development, of people
28 under the specified age.

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Exceptions to unlawful discrimination **Division 4**

Section 32

- 1 (b) without limiting paragraph (a)—an order, determination or
2 award of a court or tribunal that has power to fix minimum
3 wages or other terms and conditions of employment;
- 4 (c) an instrument that is:
- 5 (i) a fair work instrument (within the meaning of the *Fair*
6 *Work Act 2009*); or
- 7 (ii) a transitional instrument or Division 2B State
8 instrument (within the meaning of the *Fair Work*
9 *(Transitional Provisions and Consequential*
10 *Amendments) Act 2009*); or
- 11 (iii) a determination made by the Remuneration Tribunal
12 under the *Remuneration Tribunal Act 1973*; or
- 13 (iv) a determination made by the Defence Force
14 Remuneration Tribunal under section 58H of the
15 *Defence Act 1903*.

16 Note: This exception does not apply to compliance with a provision of an
17 instrument referred to in paragraph (2)(c) if the provision has no
18 effect.

19 **Subdivision C—Exceptions related to religion**

20 **32 Exception for appointment of priests, ministers etc.**

21 *Protected attributes to which this exception applies*

- 22 (1) The exception in this section applies in relation to the following
23 protected attributes:
- 24 (a) age;
- 25 (b) breastfeeding;
- 26 (c) family responsibilities;
- 27 (d) gender identity;
- 28 (e) marital or relationship status;
- 29 (f) potential pregnancy;
- 30 (g) pregnancy;
- 31 (h) religion;
- 32 (i) sex;
- 33 (j) sexual orientation.

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 4 Exceptions to unlawful discrimination

Section 33

1

Exception for appointment of priests, ministers etc.

2

(2) It is not unlawful for a person to discriminate against another person if:

3

4

(a) the discrimination is connected with any of the following:

5

(i) the ordination or appointment of priests, ministers of religion or members of any religious order;

6

7

(ii) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of any religious order;

8

9

10

(iii) the selection or appointment of persons to perform duties or functions for the purposes of, or connected with, or otherwise to participate in, any religious observance or practice; and

11

12

13

14

(b) the discrimination is on the ground of a protected attribute to which this exception applies, or a combination of 2 or more protected attributes to which this exception applies.

15

16

17

33 Exceptions for religious bodies and educational institutions

18

Protected attributes to which these exceptions apply

19

(1) The exceptions in this section apply in relation to the following protected attributes:

20

21

(a) gender identity;

22

(b) marital or relationship status;

23

(c) potential pregnancy;

24

(d) pregnancy;

25

(e) religion;

26

(f) sexual orientation.

27

Exception for conduct of body established for religious purposes

28

(2) Subject to subsection (3), it is not unlawful for a person (the **first person**) to discriminate against another person if:

29

30

(a) the first person is a body established for religious purposes, or an officer, employee or agent of such a body; and

31

32

(b) the discrimination consists of conduct, engaged in in good faith, that:

33

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Exceptions to unlawful discrimination **Division 4**

Section 33

- 1 (i) conforms to the doctrines, tenets or beliefs of that
2 religion; or
3 (ii) is necessary to avoid injury to the religious sensitivities
4 of adherents of that religion; and
5 (c) the discrimination is on the ground of a protected attribute to
6 which this exception applies, or a combination of 2 or more
7 protected attributes to which this exception applies.
- 8 (3) The exception in subsection (2) does not apply if:
9 (a) the discrimination is connected with the provision, by the
10 first person, of Commonwealth-funded aged care; and
11 (b) the discrimination is not connected with the employment of
12 persons to provide that aged care.
- 13 *Exception for conduct of educational institution conducted in*
14 *accordance with tenets etc. of a religion*
- 15 (4) It is not unlawful for a person (the *first person*) to discriminate
16 against another person if:
17 (a) the first person is an educational institution that is conducted
18 in accordance with the doctrines, tenets, beliefs or teachings
19 of a particular religion, or an officer, employee or agent of
20 such an institution; and
21 (b) the discrimination is connected with employment by the
22 educational institution, or with the provision of education or
23 training by the institution; and
24 (c) the discrimination consists of conduct, engaged in in good
25 faith, that:
26 (i) conforms to the doctrines, tenets or beliefs of that
27 religion; or
28 (ii) is necessary to avoid injury to the religious sensitivities
29 of adherents of that religion; and
30 (d) the discrimination is on the ground of a protected attribute to
31 which this exception applies, or a combination of 2 or more
32 protected attributes to which this exception applies.

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 4 Exceptions to unlawful discrimination

Section 34

1 **Subdivision D—Other exceptions**

2 **34 Exception for registered charities**

3 *Protected attributes to which this exception applies*

4 (1) The exception in this section applies in relation to all protected
5 attributes.

6 *Exception for registered charities*

7 (2) None of the following is unlawful discrimination:

8 (a) a provision of the governing rules (within the meaning of the
9 *Australian Charities and Not-for-profits Commission Act*
10 2012) of a registered charity, if the provision:

11 (i) confers charitable benefits; or

12 (ii) enables charitable benefits to be conferred;

13 (b) conduct engaged in to give effect to such a provision.

14 **35 Exception for clubs and member-based associations**

15 *Protected attributes to which this exception applies*

16 (1) The exception in this section applies in relation to all protected
17 attributes.

18 *Clubs and member-based associations to which this exception*
19 *applies*

20 (2) The exception in this section applies in relation to a club or
21 member-based association:

22 (a) if membership of the club or association is restricted wholly
23 or primarily to people (the **target group**) who have a
24 particular protected attribute, or a particular combination of 2
25 or more protected attributes; and

26 (b) restricting membership to the target group is consistent with
27 the objects of this Act.

28 (3) If the target group is restricted wholly or primarily to people of one
29 sex, that restriction is taken, for the purpose of paragraph (2)(b), to

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Exceptions to unlawful discrimination **Division 4**

Section 36

1 be consistent with the objects of this Act. However, this does not
2 affect how paragraph (2)(b) applies in relation to any other
3 protected attributes.

4 *Exception for clubs and member-based associations*

5 (4) It is not unlawful to discriminate against a person who is not in the
6 target group if:

7 (a) the discrimination consists of:

8 (i) excluding the person from membership of the club or
9 association; or

10 (ii) restricting (whether wholly or partly) the person's
11 access to benefits or services provided by the club or
12 association; and

13 (b) the discrimination is not on the ground of another protected
14 attribute, or a combination of attributes that includes another
15 protected attribute.

16 **36 Exceptions for competitive sporting activities**

17 *Protected attributes to which these exceptions apply*

18 (1) The exceptions in this section apply in relation to the protected
19 attributes specified in the exceptions.

20 *Exception for competitive sport: sex and gender identity*

21 (2) It is not unlawful to discriminate against a person by excluding the
22 person from participation in a competitive sporting activity if:

23 (a) the discrimination is on the ground of sex or gender identity,
24 or a combination of those attributes; and

25 (b) the sporting activity is an activity in which the strength,
26 stamina or physique of competitors is relevant; and

27 (c) the person is aged 12 or over.

28 *Exception for competitive sport: age or disability*

29 (3) It is not unlawful to discriminate against a person by excluding the
30 person from participation in a competitive sporting activity if the
31 discrimination is on the ground of age or disability, or a

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 4 Exceptions to unlawful discrimination

Section 37

- 1 combination of those attributes, and one or more of the following
2 paragraphs applies:
- 3 (a) the person is not reasonably capable of performing the
4 actions reasonably required in relation to the sporting
5 activity;
- 6 (b) the sporting activity is conducted solely for people (the *target*
7 *group*):
- 8 (i) who are of a particular age; or
9 (ii) who have a particular disability; or
10 (iii) who are of a particular age and who have a particular
11 disability;
- 12 and the person is not in the target group;
- 13 (c) the people who participate, or are to participate, in the
14 sporting activity are selected by a method that is reasonably
15 based on:
- 16 (i) the skills and abilities relevant to the sporting activity;
17 and
18 (ii) the skills and abilities of the people, relative to each
19 other.

20 *Limitations on the exceptions*

- 21 (4) Subsections (2) and (3) do not apply to excluding a person from
22 participation in:
- 23 (a) coaching, umpiring or administration; or
24 (b) a sporting activity prescribed by the regulations for the
25 purpose of this paragraph.

26 **37 Exception for single sex or disability educational institutions**

27 *Protected attributes to which this exception applies*

- 28 (1) The exception in this section applies in relation to the protected
29 attributes of sex and disability.

30 *Educational institutions to which this section applies*

- 31 (2) This section applies to an educational institution that is conducted
32 wholly or primarily for people (the *target group*):

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Exceptions to unlawful discrimination **Division 4**

Section 38

- 1 (a) of one sex; or
2 (b) who have a particular disability; or
3 (c) of one sex who have a particular disability.

4 *Exception for single sex or disability educational institutions*

- 5 (3) It is not unlawful to discriminate against a person who is not in the
6 target group if:
7 (a) the discrimination consists of excluding the person from
8 admission to the institution; and
9 (b) the discrimination is not on the ground of another protected
10 attribute, or a combination of attributes that includes another
11 protected attribute.

12 **38 Exception for single sex accommodation for students**

13 *Protected attributes to which this exception applies*

- 14 (1) The exception in this section applies in relation to the protected
15 attribute of sex.

16 *Accommodation to which this section applies*

- 17 (2) This section applies to accommodation that is provided wholly or
18 primarily for people of one sex who are students at an educational
19 institution.

20 *Exception for single sex accommodation for students*

- 21 (3) It is not unlawful for a person to discriminate against another
22 person who is not of the sex for which the accommodation is
23 wholly or primarily provided, if:
24 (a) the discrimination consists of excluding the person from
25 being provided with accommodation; and
26 (b) the discrimination is not on the ground of another protected
27 attribute, or a combination of attributes that includes another
28 protected attribute.

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 4 Exceptions to unlawful discrimination

Section 39

1 **39 Exceptions for insurance, superannuation and credit**

2 *Protected attributes to which these exceptions apply*

3 (1) The exceptions in this section apply in relation to the protected
4 attributes specified in the exceptions.

5 *Exception for insurance*

6 (2) It is not unlawful for a person (the *first person*) to discriminate
7 against another person if:

8 (a) the discrimination is:

9 (i) in relation to the terms or conditions on which an
10 insurance policy is offered or provided to, or may be
11 obtained by, the other person; or

12 (ii) a refusal to offer an insurance policy to the other person;
13 and

14 (b) the discrimination is on the ground of any of the following
15 protected attributes, or a combination of 2 or more of the
16 following protected attributes:

17 (i) age;

18 (ii) disability;

19 (iii) sex; and

20 (c) the condition specified in subsection (5) is satisfied.

21 *Exception for superannuation*

22 (3) It is not unlawful for a person (the *first person*) to discriminate
23 against another person if:

24 (a) the discrimination is:

25 (i) in relation to the terms or conditions on which
26 membership of a superannuation fund or scheme is
27 offered to, or may be obtained by, the other person; or

28 (ii) a refusal to offer membership of a superannuation fund
29 or scheme to the other person; and

30 (b) the discrimination is on the ground of any of the following
31 protected attributes, or a combination of 2 or more of the
32 following protected attributes:

33 (i) age;

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Exceptions to unlawful discrimination **Division 4**

Section 39

- 1 (ii) disability;
2 (iii) family responsibilities;
3 (iv) marital or relationship status;
4 (v) sex; and
5 (c) the condition specified in subsection (5) is satisfied.

6 *Exception for credit*

- 7 (4) It is not unlawful for a person (the *first person*) to discriminate
8 against another person if:
9 (a) the discrimination is:
10 (i) in relation to the terms or conditions on which credit is
11 offered or provided to, or may be obtained by, the other
12 person; or
13 (ii) a refusal to offer credit to the other person; and
14 (b) the discrimination is on the ground of age; and
15 (c) the condition specified in subsection (5) is satisfied.

16 *Condition to be satisfied for exceptions*

- 17 (5) For the purpose of paragraphs (2)(c), (3)(c) and (4)(c), the
18 condition is that either:
19 (a) the following subparagraphs are satisfied:
20 (i) the discrimination is based upon actuarial or statistical
21 data on which it is reasonable for the first person to rely;
22 (ii) the discrimination is reasonable, having regard to the
23 data and other relevant factors;
24 (iii) if the other person has given the first person a written
25 request for access to the data—the first person has,
26 within a reasonable period after the request is made,
27 provided the other person with a copy of the data, or
28 with reasonable access to the data; or
29 (b) if no such actuarial or statistical data is available and cannot
30 reasonably be obtained—the discrimination is reasonable
31 having regard to any other relevant factors.

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 4 Exceptions to unlawful discrimination

Section 40

1 **40 Exceptions for Defence Force and Australian Federal Police**

2 *Protected attributes to which these exceptions apply*

3 (1) The exceptions in this section apply in relation to the protected
4 attributes specified in the exceptions.

5 *Defence combat duties etc.: exception for disability*

6 (2) It is not unlawful for a person to discriminate against another
7 person if:

8 (a) the discrimination is connected with employment,
9 engagement or appointment in the Defence Force:

10 (i) in a position involving the performance of Defence
11 combat duties, Defence combat-related duties or
12 Defence peacekeeping service; or

13 (ii) in circumstances, prescribed by the regulations for the
14 purpose of this subparagraph, relating to Defence
15 combat duties, Defence combat-related duties or
16 Defence peacekeeping service; or

17 (iii) in a position involving the performance of duties as a
18 chaplain, or a medical support person, in support of
19 forces engaged or likely to be engaged in Defence
20 combat duties, Defence combat-related duties or
21 Defence peacekeeping service; and

22 (b) the discrimination is on the ground of disability.

23 *Australian Federal Police peacekeeping duties: exception for
24 disability*

25 (3) It is not unlawful for a person to discriminate against another
26 person if:

27 (a) the discrimination is connected with selection for duties
28 involved in the provision, by the Australian Federal Police, of
29 police services and police support services referred to in
30 paragraph 8(1)(bg) of the *Australian Federal Police Act*
31 1979; and

32 (b) the discrimination is on the ground of disability.

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Exceptions to unlawful discrimination **Division 4**

Section 41

1 Note: Paragraph 8(1)(bg) of the *Australian Federal Police Act 1979* relates
2 to establishing, developing and monitoring peace, stability and
3 security in foreign countries.

4 *Defence combat duties and combat-related duties: exception for*
5 *excluding women (ends on 1 September 2016)*

- 6 (4) It is not unlawful for a person to discriminate against another
7 person if:
- 8 (a) the discrimination is connected with employment,
9 engagement or appointment in the Defence Force:
 - 10 (i) in a position involving the performance of Defence
11 combat duties or Defence combat-related duties; or
 - 12 (ii) in circumstances, prescribed by the regulations for the
13 purpose of this subparagraph, relating to Defence
14 combat duties or Defence combat-related duties; and
 - 15 (b) the discrimination is against a woman, on the ground of her
16 sex; and
 - 17 (c) the conduct occurs before 1 September 2016.

18 **41 Exception for accommodation for employees**

19 *Protected attributes to which this exception applies*

- 20 (1) The exception in this section applies in relation to the following
21 protected attributes:
- 22 (a) family responsibilities;
 - 23 (b) marital or relationship status;
 - 24 (c) sex.

25 *Accommodation to which this exception applies*

- 26 (2) The exception in this section applies to accommodation that an
27 employer provides to employees if:
- 28 (a) the standard of accommodation that the employer provides to
29 each employee is determined having regard to one or more of
30 the protected attributes to which this exception applies
31 (whether or not it is also determined by reference to other
32 factors); and

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 4 Exceptions to unlawful discrimination

Section 42

- 1 (b) it is not reasonable to expect the employer to provide
2 accommodation of the same standard for all employees.

3 *Exception for accommodation for employees*

- 4 (3) It is not unlawful for the employer to discriminate against an
5 employee on the ground of a protected attribute to which this
6 exception applies, or a combination of 2 or more protected
7 attributes to which this exception applies, if the discrimination
8 consists of providing the person with a standard of accommodation
9 determined as mentioned in paragraph (2)(a).

10 **42 Exception for junior rates**

11 *Protected attributes to which this exception applies*

- 12 (1) The exception in this section applies in relation to the protected
13 attribute of age.

14 *Exception for junior rates*

- 15 (2) It is not unlawful for a person to discriminate against another
16 person, on the ground of age:
17 (a) by paying the person junior rates because the person is under
18 the age of 21; or
19 (b) if the discrimination is connected with determining who
20 should be offered employment, and junior rates are a
21 significant factor in making that determination.

22 **43 Exception for employment to perform domestic duties**

23 *Protected attributes to which this exception applies*

- 24 (1) The exception in this section applies in relation to all protected
25 attributes.

26 *Exception for employment to perform domestic duties*

- 27 (2) It is not unlawful for a person (the *first person*) to discriminate
28 against another person if the discrimination is connected with

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Unlawful discrimination **Part 2-2**

Exceptions to unlawful discrimination **Division 4**

Section 44

1 determining who should be offered employment to perform
2 domestic duties on premises in which the first person resides.

3 **44 Exception for shared accommodation**

4 *Protected attributes to which this exception applies*

5 (1) The exception in this section applies in relation to all protected
6 attributes.

7 *Exception for shared accommodation*

8 (2) It is not unlawful for a person to discriminate against another
9 person if:

- 10 (a) the discrimination is connected with the provision, to the
11 other person, of accommodation in particular premises; and
12 (b) the person who provides or would provide the
13 accommodation (the *accommodation provider*), or a member
14 of the accommodation provider's immediate family, resides,
15 and intends to continue to reside on the premises.

16 (3) Subsection (2) does not apply if:

- 17 (a) the total number of persons (other than persons residing as
18 mentioned in subsection (2) and immediate family members
19 of such persons) for whom accommodation is regularly
20 provided in the premises is more than 3; or
21 (b) the accommodation provider intends that that total should be
22 more than 3.

23 **Subdivision E—Other general provisions relating to exceptions**

24 **45 Exceptions (other than justifiable conduct) don't apply to** 25 **discrimination because of attributes of associates,** 26 **assumptions etc.**

27 Other than the exception in section 23 (justifiable conduct), the
28 exceptions in this Division do not apply in relation to conduct that
29 is discrimination because of subsection 19(4).

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-2 Unlawful discrimination

Division 4 Exceptions to unlawful discrimination

Section 46

1 **46 Exceptions do not limit each other**

2 The exceptions in this Division do not limit each other. In
3 particular, the exception in section 23 (justifiable conduct) is not
4 limited by any of the other exceptions.

5 **47 Review of exceptions**

- 6 (1) The Minister must arrange for a review of the exceptions in this
7 Division to be conducted, and for a written report on that review to
8 be given to the Minister.
- 9 (2) The review must be commenced within 3 years of the
10 commencement of this section.
- 11 (3) The Minister must cause a copy of the report on the review to be
12 laid before each House of the Parliament within 15 sitting days of
13 that House after the Minister receives the report.
- 14 (4) The report on the review is not a legislative instrument.
15

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Other unlawful conduct **Part 2-3**

Guide to this Part **Division 1**

Section 48

1 **Part 2-3—Other unlawful conduct**

2 **Division 1—Guide to this Part**

3 **48 Guide to this Part**

4
5
6
7
8
9
10
11
12
13

This Part deals with other kinds of unlawful conduct.

Division 2 deals with sexual harassment.

Division 3 deals with racial vilification.

Division 4 deals with requesting or requiring information for a discriminatory purpose.

Division 5 deals with publishing etc. material indicating an intention to engage in unlawful conduct.

Division 6 deals with victimisation of people because they have made complaints or have had other dealings with the Commission.

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-3 Other unlawful conduct

Division 2 Sexual harassment

Section 49

1 **Division 2—Sexual harassment**

2 **49 When a person *sexually harasses* another person**

- 3 (1) A person (the *first person*) *sexually harasses* another person if:
- 4 (a) the first person:
- 5 (i) makes an unwelcome sexual advance, or an unwelcome
- 6 request for sexual favours, to the other person; or
- 7 (ii) engages in other unwelcome conduct of a sexual nature
- 8 (including making a statement of a sexual nature to, or
- 9 in the presence of, the other person) in relation to the
- 10 other person; and
- 11 (b) a reasonable person, having regard to all the circumstances,
- 12 would have anticipated the possibility that the other person
- 13 would be offended, insulted, humiliated or intimidated by the
- 14 first person's conduct.
- 15 (2) For the purposes of paragraph (1)(b), the circumstances to be taken
- 16 into account include (but are not limited to) the following:
- 17 (a) the other person's sex, age, marital or relationship status,
- 18 sexual orientation, religion or race;
- 19 (b) any disability of the other person;
- 20 (c) any other relevant protected attribute of the other person;
- 21 (d) the relationship between the first person and the other person.

22 **50 When sexual harassment is unlawful**

23 It is unlawful for a person (the *first person*) to sexually harass

24 another person if the harassment is connected with any area of

25 public life.

26 Note: The areas of public life include (but are not limited to) the areas

27 specified in subsection 22(2).

28

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Other unlawful conduct **Part 2-3**

Racial vilification **Division 3**

Section 51

1 **Division 3—Racial vilification**

2 **51 Racial vilification is unlawful**

3 *When racial vilification is unlawful*

- 4 (1) It is unlawful for a person (the *first person*) to engage in racial
5 vilification.
- 6 (2) Conduct of a person is *racial vilification* if:
- 7 (a) the conduct is reasonably likely, in all the circumstances, to
8 offend, insult, humiliate or intimidate another person or a
9 group of people; and
- 10 (b) the first person engages in the conduct:
- 11 (i) because the other person, or one or more members of
12 the group, is of a particular race, or because the first
13 person assumes that to be the case; or
- 14 (ii) because the other person, or one or more members of
15 the group, has an associate who is of a particular race, or
16 because the first person assumes that to be the case; and
- 17 (c) the conduct is engaged in otherwise than in private.
- 18 (3) For the purpose of subsection (2), conduct is engaged in otherwise
19 than in private if:
- 20 (a) it causes words, sounds, images or writing to be
21 communicated to the public; or
- 22 (b) it is engaged in:
- 23 (i) in a public place; or
- 24 (ii) in the sight or hearing of people who are in a public
25 place.

26 This subsection does not limit the circumstances that may
27 constitute engaging in conduct otherwise than in private.

28 *Exception*

- 29 (4) Subsection (1) does not make it unlawful for a person to say or do
30 something, reasonably and in good faith:
- 31 (a) in the performance, exhibition or distribution of an artistic
32 work; or

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-3 Other unlawful conduct

Division 3 Racial vilification

Section 51

- 1 (b) in the course of any statement, publication, discussion or
2 debate made or held for any genuine academic, artistic or
3 scientific purpose or any other genuine purpose in the public
4 interest; or
5 (c) in making or publishing:
6 (i) a fair and accurate report of any event or matter of
7 public interest; or
8 (ii) a fair comment on any event or matter of public interest
9 if the comment is an expression of a genuine belief held
10 by the person making the comment.
11

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Other unlawful conduct **Part 2-3**

Requesting or requiring information for discriminatory purpose **Division 4**

Section 52

1 **Division 4—Requesting or requiring information for**
2 **discriminatory purpose**

3 **52 Requesting or requiring information for discriminatory purpose**

4 It is unlawful for a person (the *first person*) to request or require
5 another person to provide information if the first person requests or
6 requires the information:

- 7 (a) for the purpose of engaging in conduct in relation to the other
8 person that would constitute unlawful discrimination; or
9 (b) for the purpose of deciding whether to engage in such
10 conduct.
11

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-3 Other unlawful conduct

Division 5 Publishing etc. intention to engage in unlawful conduct

Section 53

1 **Division 5—Publishing etc. intention to engage in unlawful**
2 **conduct**

3 **53 Publishing etc. material indicating intention to engage in**
4 **unlawful conduct**

5 *When publishing etc. material is unlawful*

- 6 (1) It is unlawful for a person to publish or display material if:
7 (a) the material indicates, or could reasonably be understood as
8 indicating, that the person, or one or more other persons,
9 intends to engage in conduct; and
10 (b) the conduct would be unlawful conduct.

11 *Exception*

- 12 (2) Subsection (1) does not make it unlawful for a person, reasonably
13 and in good faith, to publish or display material:
14 (a) for the purpose of discouraging unlawful conduct; or
15 (b) in making or publishing:
16 (i) a fair and accurate report of any event or matter of
17 public interest; or
18 (ii) a fair comment on any event or matter of public interest
19 if the comment is an expression of a genuine belief held
20 by the person making the comment.
21

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Other unlawful conduct **Part 2-3**

Victimisation **Division 6**

Section 54

1 **Division 6—Victimisation**

2 **54 Victimisation of person for making a complaint etc.**

3 *When victimisation is unlawful*

4 (1) It is unlawful for a person (the *first person*) to treat, or propose or
5 threaten to treat, another person unfavourably:

6 (a) because the other person or an associate of the other person
7 (or a person acting on behalf of the other person or an
8 associate of the other person):

9 (i) has made a complaint to the Commission; or

10 (ii) has brought proceedings in a court under this Act; or

11 (iii) has produced a document, provided information, made a
12 submission or given evidence to the Commission or a
13 Commission official, or to a court in which proceedings
14 under this Act have been brought; or

15 (iv) has attended or participated in a conference held under
16 section 109; or

17 (v) has asserted any right that he or she has under this Act;
18 or

19 (vi) has made an allegation that a person has engaged in
20 unlawful conduct; or

21 (b) because the other person or an associate of the other person
22 (or a person acting on behalf of the other person or an
23 associate of the other person) is proposing to engage in
24 conduct as mentioned in any of the subparagraphs of
25 paragraph (a); or

26 (c) because the first person believes that the other person or an
27 associate of the other person (or a person acting on behalf of
28 the other person or an associate of the other person) has
29 engaged, or is proposing to engage, in conduct as mentioned
30 in any of the subparagraphs of paragraph (a).

31 *Exception*

32 (2) Subsection (1) does not make it unlawful for a person to treat, or
33 propose or threaten to treat, another person unfavourably if:

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-3 Other unlawful conduct

Division 6 Victimisation

Section 54

- 1 (a) the unfavourable treatment is, or would be, because the other
2 person or an associate of the other person (or a person acting
3 on behalf of the other person or an associate of the other
4 person) has engaged in conduct as mentioned in a
5 subparagraph of paragraph (1)(a); and
6 (b) that conduct was not engaged in in good faith.
7

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Extensions of liability for unlawful conduct **Part 2-4**

Guide to this Part **Division 1**

Section 55

1 **Part 2-4—Extensions of liability for unlawful**
2 **conduct**

3 **Division 1—Guide to this Part**

4 **55 Guide to this Part**

5 This Part deals with situations in which one person is liable for the
6 unlawful conduct of another person.

7 Division 2 deals with liability for causing etc. unlawful conduct,
8 liability for unlawful conduct of directors, officers, employees and
9 agents, and liability of partnerships, unincorporated associations
10 and trusts.

11

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-4 Extensions of liability for unlawful conduct

Division 2 Extensions of liability for unlawful conduct

Section 56

1 **Division 2—Extensions of liability for unlawful conduct**

2 **56 Causing etc. unlawful conduct**

3 A person who causes, instructs, induces, aids or permits another
4 person to engage in conduct is, for the purposes of the provisions
5 of this Act relating to unlawful conduct, taken also to have engaged
6 in the conduct, and to have engaged in it for the same reasons, or
7 for the same purposes, as it was engaged in by the other person.

8 **57 Liability for unlawful conduct of directors, officers, employees
9 and agents etc.**

10 *Principal taken to have engaged in conduct of directors, officers,
11 employees or agents*

12 (1) This section applies if a person (the *first person*) who is a director,
13 officer, employee or agent of another person (the *principal*)
14 engages in conduct connected with the first person's duties as a
15 director, officer or agent, or connected with the first person's
16 employment.

17 (2) The principal is, for the purposes of the provisions of this Act
18 relating to unlawful conduct, taken also to have engaged in the
19 conduct, and to have engaged in it for the same reasons, or for the
20 same purposes, as it was engaged in by the first person.

21 *Exception for principal who took reasonable precautions*

22 (3) However, the principal is not taken to have engaged in the conduct
23 if the principal took reasonable precautions, and exercised due
24 diligence, to avoid the conduct.

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Extensions of liability for unlawful conduct **Part 2-4**

Extensions of liability for unlawful conduct **Division 2**

Section 58

1 **58 Liability of partnerships, unincorporated associations and trusts**
2 **for unlawful conduct**

3 *Act applies to partnerships etc. as if they were persons*

- 4 (1) The provisions of this Act relating to unlawful conduct (including
5 the other provisions of this Division) apply in relation to a
6 partnership as if:
7 (a) the partnership were a person; and
8 (b) a partner in the partnership were an agent of the partnership
9 for the purpose of section 57.
- 10 (2) The provisions of this Act relating to unlawful conduct (including
11 the other provisions of this Division) apply in relation to an
12 unincorporated association as if:
13 (a) the association were a person; and
14 (b) a member of the committee of management of the association
15 were an agent of the association for the purpose of
16 section 57.
- 17 (3) The provisions of this Act relating to unlawful conduct (including
18 the other provisions of this Division) apply in relation to a trust that
19 has 2 or more trustees as if:
20 (a) the trust were a person; and
21 (b) a trustee of the trust were an agent of the trust for the purpose
22 of section 57.

23 *Liability of partners etc.*

- 24 (4) The following provisions apply to any liability imposed, by an
25 order of a court under this Act, on a partnership, unincorporated
26 association or trust in relation to unlawful conduct, unless the court
27 orders otherwise:
28 (a) in the case of a partnership—the liability is a liability of each
29 member of the partnership, but may be discharged by any of
30 them;
31 (b) in the case of an unincorporated association—the liability is a
32 liability of each member of the committee of management of
33 the association, but may be discharged by any of them;
-

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-4 Extensions of liability for unlawful conduct

Division 2 Extensions of liability for unlawful conduct

Section 58

1 (c) in the case of a trust—the liability is a liability of each of the
2 trustees, but may be discharged by any of them.

3 *Exception for partner etc. who took reasonable precautions*

4 (5) However, a partner, a member of a committee of management, or a
5 trustee, does not have a liability in relation to unlawful conduct
6 because of subsection (4) if the partner, member or trustee took
7 reasonable precautions, and exercised due diligence, to avoid the
8 conduct.
9

EXPOSURE-DRAFT

Unlawful conduct and equality before the law **Chapter 2**

Equality before the law **Part 2-5**

Guide to this Part **Division 1**

Section 59

1 **Part 2-5—Equality before the law**

2 **Division 1—Guide to this Part**

3 **59 Guide to this Part**

4

This Part deals with equality before the law.

5

Division 2 provides for equality before the law for people of all
6 races.

6

7

EXPOSURE-DRAFT

Chapter 2 Unlawful conduct and equality before the law

Part 2-5 Equality before the law

Division 2 Equality before the law for people of all races

Section 60

1 **Division 2—Equality before the law for people of all races**

2 **60 Equality before the law for people of all races**

3 (1) If, because of a law, persons of a particular race:
4 (a) do not enjoy a right (whether a human right or some other
5 right) that is enjoyed by persons of another race; or
6 (b) enjoy a right (whether a human right or some other right) to a
7 more limited extent than persons of another race;
8 then, by force of this section (and despite anything in that law),
9 persons of the first-mentioned race enjoy that right to the same
10 extent as persons of that other race.

11 (2) Subsection (1) does not apply to a law that is a special measure to
12 achieve equality.

13 (3) If:

14 (a) a law:

15 (i) authorises property owned by an Aboriginal person or a
16 Torres Strait Islander to be managed by another person
17 without the consent of the Aboriginal person or the
18 Torres Strait Islander; or

19 (ii) prevents or restricts an Aboriginal person or a Torres
20 Strait Islander from terminating the management by
21 another person of property owned by the Aboriginal
22 person or the Torres Strait Islander; and

23 (b) the law does not apply to persons generally, regardless of
24 their race;

25 then:

26 (c) subsection (1) applies to the law; and

27 (d) for the purpose of subsection (1) as so applying, a reference
28 to a right includes a reference to a right of a person to
29 manage property he or she owns.

30 Note: A law described in subsection (3) is not a special measure to achieve
31 equality: see subsection 21(3).
32

EXPOSURE-DRAFT

Measures to assist compliance **Chapter 3**

Measures to assist compliance **Part 3-1**

Guide to this Part **Division 1**

Section 61

1 **Chapter 3—Measures to assist compliance**

2 **Part 3-1—Measures to assist compliance**

3 **Division 1—Guide to this Part**

4 **61 Guide to this Part**

5 This Part deals with various measures to assist people to comply
6 with this Act.

7 Division 2 provides for the Commission to make guidelines to
8 assist people to avoid engaging in unlawful conduct, or in
9 Commonwealth conduct that is contrary to human rights.

10 Division 3 provides for the Commission (on application) to review
11 people's policies or programs to determine whether they constitute,
12 or may give rise to, unlawful conduct, or Commonwealth conduct
13 that is contrary to human rights.

14 Division 4 provides for people to develop action plans to assist
15 them and their employees etc. to avoid engaging in unlawful
16 conduct.

17 Division 5 provides for the Minister to make disability standards.
18 In broad terms, conduct in accordance with a disability standard is
19 not unlawful discrimination. It is unlawful to contravene a
20 disability standard.

21 Division 6 provides for the Commission to make compliance
22 codes. In broad terms, conduct in accordance with a compliance
23 code is not unlawful conduct.

24 Division 7 provides for the Commission to make special measure
25 determinations. The measure identified in a determination is taken
26 to be a special measure to achieve equality. For the significance of
27 a measure being a special measure to achieve equality, see
28 section 21.

EXPOSURE-DRAFT

Chapter 3 Measures to assist compliance

Part 3-1 Measures to assist compliance

Division 1 Guide to this Part

Section 61

1

2

3

Division 8 provides for the Commission to grant temporary exemptions from conduct being unlawful discrimination.

EXPOSURE-DRAFT

Measures to assist compliance **Chapter 3**

Measures to assist compliance **Part 3-1**

Guidelines to assist compliance **Division 2**

Section 62

1 **Division 2—Guidelines to assist compliance**

2 **62 Commission may prepare guidelines**

- 3 (1) The Commission may:
- 4 (a) prepare written guidelines to assist people to avoid engaging
- 5 in conduct that would be:
- 6 (i) unlawful conduct; or
- 7 (ii) Commonwealth conduct that is contrary to human
- 8 rights; and
- 9 (b) amend or revoke guidelines.
- 10 (2) The Commission may publish guidelines in any manner that it
- 11 considers appropriate.
- 12 (3) Guidelines (and amendments or revocations of guidelines) are not
- 13 legislative instruments.

14 **63 Effect of guidelines**

- 15 (1) Nothing in this Act:
- 16 (a) makes guidelines prepared under section 62 binding; or
- 17 (b) causes guidelines to give rise to any right, defence,
- 18 expectation, duty or obligation.
- 19 (2) A court hearing proceedings under this Act, or the Commission
- 20 when dealing with a complaint, may have regard to a person's
- 21 compliance with guidelines prepared under section 62 if the court,
- 22 or the Commission, considers it appropriate to do so.
- 23

EXPOSURE-DRAFT

Chapter 3 Measures to assist compliance

Part 3-1 Measures to assist compliance

Division 3 Review of policies or programs for compliance

Section 64

1 **Division 3—Review of policies or programs for compliance**

2 **64 Commission may review policies or programs for compliance**

- 3 (1) A person or body may apply to the Commission for a review, by
4 the Commission, of whether particular policies or programs of the
5 person or body constitute, or may give rise to:
6 (a) unlawful conduct; or
7 (b) Commonwealth conduct that is contrary to human rights.
- 8 (2) The Commission may (but is not required to) conduct the review.
9 If the Commission decides not to conduct the review, it does not
10 have to provide reasons for that decision.
- 11 (3) If the Commission conducts the review, it must provide the person
12 or body that applied for the review with a written report (a *review*
13 *report*) on the outcomes of the review. The report may also include
14 any advice that the Commission considers appropriate.
- 15 (4) A review report is not a legislative instrument.

16 **65 Review reports not to be published**

- 17 The Commission must not publish (whether in its annual report or
18 otherwise):
19 (a) a review report; or
20 (b) any findings or outcomes of a review;
21 unless the person or body that applied for the review consents to
22 the publication.

23 **66 Effect of review reports**

- 24 (1) Nothing in this Act:
25 (a) makes a review report binding; or
26 (b) causes a review report to give rise to any right, defence,
27 expectation, duty or obligation.
- 28 (2) A court hearing proceedings under this Act, or the Commission
29 when dealing with a complaint, may have regard to a review report
30 if the court, or the Commission, considers it appropriate to do so.

EXPOSURE-DRAFT

Measures to assist compliance **Chapter 3**

Measures to assist compliance **Part 3-1**

Review of policies or programs for compliance **Division 3**

Section 66

1

EXPOSURE-DRAFT

Chapter 3 Measures to assist compliance

Part 3-1 Measures to assist compliance

Division 4 Action plans

Section 67

1 **Division 4—Action plans**

2 **67 Development etc. of action plans**

- 3 (1) A person or body may develop and implement a written plan (an
4 *action plan*) to assist the person or body (and officers, employees,
5 members or agents of the person or body) to avoid engaging in
6 unlawful conduct.
- 7 (2) An action plan must include provisions relating to:
- 8 (a) the review of policies and programs of the person or body,
9 with a view to determining whether they constitute, or may
10 give rise to, unlawful conduct; and
- 11 (b) the development of policies or programs to assist the person
12 or body (and officers, employees, members or agents of the
13 person or body) as mentioned in subsection (1); and
- 14 (c) the communication of policies or programs so developed to
15 appropriate officers, employees, members or agents of the
16 person or body; and
- 17 (d) the evaluation of the success of policies or programs so
18 developed, and of the plan (whether by reference to goals or
19 targets specified in the plan, or otherwise); and
- 20 (e) the appointment of people to implement the provisions
21 referred to in paragraphs (a) to (d).
- 22 (3) An action plan may also include other provisions that are
23 consistent with the objects of this Act.
- 24 (4) A person or body that develops an action plan may, at any time,
25 amend or revoke the plan.
- 26 (5) An action plan (or an amendment or revocation of an action plan)
27 is not a legislative instrument.

28 **68 Action plans may be given to Commission**

- 29 (1) A person or body that develops an action plan may give a copy of
30 the plan (and any subsequent amendments of the plan) to the
31 Commission.

EXPOSURE-DRAFT

Measures to assist compliance **Chapter 3**

Measures to assist compliance **Part 3-1**

Action plans **Division 4**

Section 69

1 (2) The Commission must publish action plans (and amendments of
2 action plans) that are given to it in such manner as the Commission
3 considers appropriate.

4 Note: The Commission is not required to continue to publish an action plan
5 if the Commission becomes aware that the action plan has been
6 revoked.

7 **69 Effect of action plans**

8 (1) Nothing in this Act:

9 (a) makes an action plan binding; or

10 (b) causes an action plan to give rise to any right, defence,
11 expectation, duty or obligation.

12 (2) A court hearing proceedings under this Act, or the Commission
13 when dealing with a complaint, may have regard to an action plan
14 if the court, or the Commission, considers it appropriate to do so.

15 Note: Subsection (2) applies whether or not the action plan has been given to
16 the Commission.
17

EXPOSURE-DRAFT

Chapter 3 Measures to assist compliance

Part 3-1 Measures to assist compliance

Division 5 Disability standards

Section 70

1 **Division 5—Disability standards**

2 **70 Meaning of *disability standard***

- 3 (1) A *disability standard* is a standard, made by the Minister in
4 accordance with this Division, the purpose of which is to specify
5 requirements to be complied with in relation to disability and one
6 or more areas of public life.
- 7 (2) A disability standard must make the following clear in relation to
8 each requirement specified in the standard:
9 (a) the persons who are covered by the requirement;
10 (b) whether the requirement covers all kinds of disability, or
11 whether it only covers specified kinds of disability.
- 12 (3) A disability standard may also:
13 (a) provide for exceptions, or for the Commission to grant
14 exemptions, from requirements specified in the standard; or
15 (b) provide that the standard, in whole or in part, is or is not
16 intended to affect the operation of State laws or Territory
17 laws, or particular State laws or Territory laws; or
18 (c) provide for enforcement mechanisms, or dispute resolution
19 mechanisms, in relation to the requirements of the standard.
- 20 (4) A disability standard must provide for the standard to be reviewed
21 every 5 years.
- 22 (5) Nothing in this Act requires a person to comply with, or participate
23 in, mechanisms included in a disability standard under
24 paragraph (3)(c).

25 **71 Process for making etc. disability standards**

26 *Minister may make etc. disability standards*

- 27 (1) The Minister may, in writing:
28 (a) make one or more disability standards; and
29 (b) amend or revoke disability standards.

EXPOSURE-DRAFT

Measures to assist compliance **Chapter 3**

Measures to assist compliance **Part 3-1**

Disability standards **Division 5**

Section 72

- 1 (2) The Minister must not make (or amend) a disability standard unless
2 the Minister is satisfied that the standard (or the standard as
3 amended):
4 (a) complies with section 70; and
5 (b) is consistent with the objects of this Act.

6 *Consultation*

- 7 (3) The Minister must not make (or amend) a disability standard unless
8 the Minister has (in addition to the requirements of Part 3 of the
9 *Legislative Instruments Act 2003*) consulted the Ministers of the
10 States who have responsibility for matters related to discrimination
11 about the proposed standard (or amendment).
12 (4) A failure to comply with subsection (3) does not invalidate a
13 disability standard (or an amendment).

14 *Disability standards are legislative instruments*

- 15 (5) A disability standard (or an amendment or revocation of a
16 disability standard) is a legislative instrument.
17 (6) The *Legislative Instruments Act 2003* applies in relation to a
18 disability standard (or an amendment of a disability standard)
19 subject to the following paragraphs:
20 (a) despite subsection 12(1) of that Act, a disability standard (or
21 an amendment) does not take effect before the end of the
22 period in which it could be disallowed in either House of the
23 Parliament;
24 (b) Part 6 (sunsetting) of that Act does not apply to a disability
25 standard (or an amendment).

26 **72 Effect of disability standards: conduct in accordance with** 27 **standard is not unlawful discrimination**

28 If, while a disability standard has effect, a person who is covered
29 by a requirement in the standard engages in conduct in accordance
30 with the requirement, then the conduct is taken not to be unlawful
31 discrimination on the ground of a disability that is covered by the
32 requirement.

EXPOSURE-DRAFT

Chapter 3 Measures to assist compliance

Part 3-1 Measures to assist compliance

Division 5 Disability standards

Section 73

1 **73 Effect of disability standards: unlawful to contravene standard**

2 It is unlawful for a person to contravene a requirement in a
3 disability standard.

4 **74 Exceptions and exemptions do not apply to disability standards**

5 Unless a disability standard provides otherwise, the exceptions in
6 Part 2-2, and exemptions under Division 8 of this Part, do not
7 apply in relation to requirements in a disability standard.
8

EXPOSURE-DRAFT

Measures to assist compliance **Chapter 3**

Measures to assist compliance **Part 3-1**

Compliance codes **Division 6**

Section 75

1 **Division 6—Compliance codes**

2 **75 Meaning of *compliance code***

- 3 (1) A ***compliance code*** is a code, made by the Commission in
4 accordance with this Division, that includes provisions of either or
5 both of the following kinds:
- 6 (a) provisions to the effect that if specified persons or bodies
7 engage in specified conduct (whether or not the provisions
8 require the persons or bodies to engage in the conduct), that
9 conduct is taken, for the purposes of this Act, not to be
10 unlawful conduct of one or more specified kinds;
- 11 (b) provisions to the effect that if specified persons take specified
12 steps or measures (whether or not the provisions require the
13 persons to take the steps or measures), those steps or
14 measures are taken, for the purpose of subsection 57(3) or
15 58(5), to constitute taking reasonable precautions, and
16 exercising due diligence, to avoid specified other persons
17 engaging in unlawful conduct of one or more specified kinds.
- 18 (2) For a provision that is to apply in relation to discrimination, the
19 code must make it clear whether the provision applies to
20 discrimination on the ground of any protected attribute or
21 combination of protected attributes, or whether it only applies to
22 discrimination on the ground of a particular protected attribute or a
23 particular combination of 2 or more protected attributes.
- 24 (3) A compliance code must be expressed to have effect for the period
25 specified in the code.
- 26 Note: There is no limit on the period that may be specified.
- 27 (4) A compliance code may also do any of the following:
- 28 (a) provide that the code, in whole or in part, is or is not intended
29 to affect the operation of State laws or Territory laws, or
30 particular State laws or Territory laws;
- 31 (b) provide for enforcement mechanisms, or dispute resolution
32 mechanisms, in relation to the requirements of the code;
- 33 (c) subject to subsection (5)—provide for the code to be
34 reviewed from time to time.

EXPOSURE-DRAFT

Chapter 3 Measures to assist compliance

Part 3-1 Measures to assist compliance

Division 6 Compliance codes

Section 76

- 1 (5) If the period specified in a compliance code under subsection (3) is
2 more than 5 years, the code must provide for the code to be
3 reviewed at least once in every 5 year period while the code
4 continues to have effect.
- 5 (6) Nothing in this Act requires a person to comply with, or participate
6 in, mechanisms included in a compliance code under
7 paragraph (4)(b).

8 **76 Process for making etc. compliance codes**

9 *Commission may make etc. compliance codes*

- 10 (1) The Commission may, in writing:
11 (a) make one or more compliance codes; and
12 (b) amend or revoke compliance codes.
- 13 (2) The Commission must not make (or amend) a compliance code
14 unless the Commission is satisfied that the code (or the code as
15 amended):
16 (a) complies with section 75; and
17 (b) is consistent with the objects of this Act.

18 Note: The Commission must comply with the consultation requirements of
19 Part 3 of the *Legislative Instruments Act 2003*.

20 *Compliance codes may be made etc. on Commission's own*
21 *initiative or on application*

- 22 (3) Subject to subsection (2), the Commission may make a compliance
23 code on its own initiative and may, on its own initiative, amend or
24 revoke that compliance code.
- 25 (4) Subject to subsection (2), the Commission may make a compliance
26 code on application by one or more persons or bodies (each of
27 whom is an **original applicant**) and may:
28 (a) amend the code on application by one or more original
29 applicants; or
30 (b) revoke the code:
31 (i) on application by one or more original applicants; or

EXPOSURE-DRAFT

Measures to assist compliance **Chapter 3**

Measures to assist compliance **Part 3-1**

Compliance codes **Division 6**

Section 77

- 1 (ii) on its own initiative, if the Commission is no longer
2 satisfied as mentioned in subsection (2), and has
3 consulted each original applicant about the proposed
4 revocation.
- 5 (5) An application to make (or amend) a compliance code must be
6 accompanied by a draft of the code (or amendment) that it is
7 proposed should be made by the Commission.
- 8 (6) A compliance code (or an amendment of a compliance code) made
9 pursuant to an application must be in the same terms as the draft
10 code (or the draft amendment) that accompanied the application,
11 subject to:
- 12 (a) any changes that have been agreed to by the persons or
13 bodies that made the application; and
- 14 (b) any changes that the Commission considers appropriate to
15 ensure that the code (or the code as amended) complies with
16 subsections 75(3) and (5).

17 *Consultation*

- 18 (7) The Commission must not make (or amend) a compliance code
19 that is expressed to affect the operation of State laws, or particular
20 State laws, unless the Minister has (in addition to the requirements
21 of Part 3 of the *Legislative Instruments Act 2003*) consulted the
22 Ministers of the relevant States who have responsibility for matters
23 related to discrimination about the proposed code (or amendment).

24 *Compliance codes are legislative instruments*

- 25 (8) A compliance code (or an amendment or revocation of a
26 compliance code) is a legislative instrument. However, Part 6
27 (sunsetting) of the *Legislative Instruments Act 2003* does not apply
28 to a compliance code (or an amendment).

29 **77 Duration of compliance code**

- 30 (1) A compliance code continues to have effect (unless revoked
31 earlier) until the end of the period specified in the code in
32 accordance with subsection 75(3).

EXPOSURE-DRAFT

Chapter 3 Measures to assist compliance

Part 3-1 Measures to assist compliance

Division 6 Compliance codes

Section 78

- 1 (2) Immediately after the end of the specified period, the code is taken
2 to be revoked by the Commission (with effect from that time)
3 under subsection 76(1).

4 **78 Effect of compliance codes**

5 While a compliance code has effect, provisions in the code of the
6 kind mentioned in paragraph 75(1)(a) or (b) have effect, for the
7 purpose of this Act, in accordance with their terms.
8

EXPOSURE-DRAFT

Measures to assist compliance **Chapter 3**

Measures to assist compliance **Part 3-1**

Special measure determinations **Division 7**

Section 79

1 **Division 7—Special measure determinations**

2 **79 Meaning of special measure determination**

3 (1) A *special measure determination* is a determination, made by the
4 Commission in accordance with this Division, that a policy or
5 program made, developed or adopted (or proposed to be made,
6 developed or adopted), or other conduct engaged in (or proposed to
7 be engaged in), by a person or body (the *measure taker*) is a
8 special measure to achieve equality for people, or a class of people,
9 who have a particular protected attribute or a particular
10 combination of 2 or more protected attributes (the *target attribute*
11 *or combination of attributes*).

12 Note 1: For the significance of a special measure to achieve equality, see
13 section 21.

14 Note 2: A special measure determination cannot be made in relation to a law.

15 (2) A special measure determination must:

- 16 (a) identify the measure covered by the determination, and the
17 measure taker; and
18 (b) specify the target attribute or combination of attributes; and
19 (c) be expressed to have effect for the period specified in the
20 determination.

21 The period specified under paragraph (c) must not exceed 5 years
22 (starting from when the determination takes effect).

23 Note: This does not prevent one or more subsequent determinations being
24 made, on application, in relation to the same measure.

25 **80 Process for making etc. special measure determinations**

26 *Applying for a special measure determination*

27 (1) One or more persons or bodies (each of whom is an *original*
28 *applicant*) may apply to the Commission for the making of a
29 special measure determination in relation to a particular policy or
30 program, or particular conduct.

EXPOSURE-DRAFT

Chapter 3 Measures to assist compliance

Part 3-1 Measures to assist compliance

Division 7 Special measure determinations

Section 81

1 *Commission may make etc. special measure determination*

2 (2) The Commission may, in writing, make the special measure
3 determination if the Commission is satisfied that the policy,
4 program or conduct is a special measure to achieve equality (as
5 defined in section 21) for people who have the target attribute or
6 combination of attributes.

7 Note: The Commission must comply with the consultation requirements of
8 Part 3 of the *Legislative Instruments Act 2003*.

9 (3) The Commission may, in writing, amend the special measure
10 determination if:
11 (a) one or more original applicants apply for the amendment of
12 the determination; and
13 (b) the Commission is satisfied as mentioned in subsection (2) in
14 relation to the policy, program or conduct, as proposed to be
15 amended.

16 (4) The Commission may, in writing, revoke the special measure
17 determination if:
18 (a) one or more original applicants apply for the revocation of
19 the determination; or
20 (b) the Commission is no longer satisfied as mentioned in
21 subsection (2), and the Commission has consulted each
22 original applicant about the proposed revocation.

23 *Special measure determinations are legislative instruments*

24 (5) A special measure determination (or an amendment or revocation
25 of a special measure determination) is a legislative instrument.

81 Duration of special measure determinations

27 (1) A special measure determination continues to have effect (unless
28 revoked earlier) until the end of the period specified in the
29 determination in accordance with paragraph 79(2)(c).

30 (2) Immediately after the end of the specified period, the determination
31 is taken to be revoked (with effect from that time) by the
32 Commission under subsection 80(4).

EXPOSURE-DRAFT

Measures to assist compliance **Chapter 3**
Measures to assist compliance **Part 3-1**
Special measure determinations **Division 7**

Section 82

1 **82 Effect of special measure determinations**

- 2 (1) While a special measure determination has effect, the measure
3 identified in the determination is taken to be a special measure to
4 achieve equality (taken by the measure taker identified in the
5 determination) for people who have the target attribute or
6 combination of attributes specified in the determination.
- 7 (2) Subsection 21(4) (cessation of special measure when substantive
8 equality has been achieved) does not apply in relation to a special
9 measure determination, except that the Commission must take that
10 subsection into account in deciding whether to revoke the
11 determination.
12

EXPOSURE-DRAFT

Chapter 3 Measures to assist compliance

Part 3-1 Measures to assist compliance

Division 8 Temporary exemptions

Section 83

1 **Division 8—Temporary exemptions**

2 **83 Meaning of temporary exemption**

3 (1) A *temporary exemption* is an exemption, granted by the
4 Commission in accordance with this Division, that exempts
5 particular conduct of one or more persons or bodies (or classes of
6 persons or bodies) from being unlawful discrimination.

7 (2) A temporary exemption must:

8 (a) specify:

9 (i) the conduct that is covered by the exemption; and

10 (ii) the persons or bodies (or classes of persons or bodies)
11 covered by the exemption; and

12 (b) be expressed to have effect for the period specified in the
13 exemption.

14 The period specified under paragraph (b) must not exceed 5 years
15 (starting from when the exemption takes effect).

16 Note: This does not prevent one or more subsequent temporary exemptions
17 being granted, on application, in relation to the same conduct.

18 (3) A temporary exemption must make it clear whether the exemption
19 covers discrimination on the ground of any protected attribute or
20 combination of protected attributes, or whether it only covers
21 discrimination on the ground of a particular protected attribute or a
22 particular combination of 2 or more protected attributes.

23 (4) A temporary exemption may be granted subject to terms and
24 conditions that are specified in the exemption.

25 **84 Process for granting etc. temporary exemptions**

26 *Applying for a temporary exemption*

27 (1) One or more persons or bodies (each of whom is an *original*
28 *applicant*) may apply to the Commission for the granting of a
29 temporary exemption in relation to particular conduct of particular
30 persons or bodies (or classes of persons or bodies).

EXPOSURE-DRAFT

Measures to assist compliance **Chapter 3**

Measures to assist compliance **Part 3-1**

Temporary exemptions **Division 8**

Section 85

1

Commission may grant etc. temporary exemption

2

- (2) The Commission may, in writing, grant the temporary exemption if the Commission is satisfied that the exemption is consistent with the objects of this Act.

3

4

5

Note: The Commission must comply with the consultation requirements of Part 3 of the *Legislative Instruments Act 2003*.

6

7

- (3) The Commission may, in writing, amend the temporary exemption if:

8

9

(a) one or more original applicants apply for the amendment of the exemption; and

10

11

(b) the Commission is satisfied as mentioned in subsection (2) in relation to the exemption, as proposed to be amended.

12

13

- (4) The Commission may, in writing, revoke the temporary exemption if:

14

15

(a) one or more original applicants apply for the revocation of the exemption; or

16

17

(b) the Commission is no longer satisfied as mentioned in subsection (2), and the Commission has consulted each original applicant about the proposed revocation.

18

19

20

Temporary exemptions are legislative instruments

21

- (5) A temporary exemption (or an amendment or revocation of a temporary exemption) is a legislative instrument.

22

23

85 Duration of temporary exemptions

24

- (1) A temporary exemption continues to have effect (unless revoked earlier) until the end of the period specified in the exemption in accordance with paragraph 83(2)(b).

25

26

27

- (2) Immediately after the end of the specified period, the exemption is taken to be revoked (with effect from that time) by the Commission under subsection 84(4).

28

29

30

86 Effect of temporary exemptions

31

If, while a temporary exemption has effect:

EXPOSURE-DRAFT

Chapter 3 Measures to assist compliance

Part 3-1 Measures to assist compliance

Division 8 Temporary exemptions

Section 86

- 1 (a) a person or body that is covered by the exemption engages in
2 conduct that is covered by the exemption; and
3 (b) the terms and conditions (if any) of the exemption have been
4 complied with;
5 that conduct is taken not to be unlawful discrimination on the
6 ground of a protected attribute, or a combination of 2 or more
7 protected attributes, covered by the exemption.
8

EXPOSURE-DRAFT

Complaints **Chapter 4**
Making a complaint to the Commission **Part 4-1**
Guide to this Part **Division 1**

Section 87

1 **Chapter 4—Complaints**

2 **Part 4-1—Making a complaint to the Commission**

3 **Division 1—Guide to this Part**

4 **87 Guide to this Part**

5 This Part deals with making complaints to the Commission about
6 unlawful conduct, or about Commonwealth conduct that is
7 contrary to human rights.

8 Division 2 deals with the kinds of conduct that may be the subject
9 of a complaint.

10 Division 3 deals with how to make a complaint.

11

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-1 Making a complaint to the Commission

Division 2 The conduct that may be the subject of a complaint

Section 88

1 **Division 2—The conduct that may be the subject of a**
2 **complaint**

3 **88 The conduct that may be the subject of a complaint**

4 *Categories of conduct that may be the subject of a complaint*

5 (1) Subject to subsection (2), a complaint may be made to the
6 Commission alleging that:

- 7 (a) a person has engaged in particular conduct; and
8 (b) the conduct is either or both of the following:
9 (i) unlawful conduct;
10 (ii) Commonwealth conduct that is contrary to human
11 rights.

12 Note 1: The functions and powers conferred on the Commission by this
13 Chapter are to be performed or exercised, on behalf of the
14 Commission, by the President: see section 152.

15 Note 2: A complaint may be made in respect of conduct that another person is
16 taken, by section 56, 57 or 58, to have engaged in.

17 (2) A complaint cannot be made in relation to Commonwealth conduct
18 that is contrary to rights or freedoms that are human rights only
19 because of the International Covenant on Economic, Social and
20 Cultural Rights done at New York on 16 December 1966 ([1976]
21 ATS 5).

22 *Certain complaints to be treated as if they were 2 separate*
23 *complaints*

24 (3) If a complaint alleges that the conduct to which it relates falls into
25 both of the categories specified in paragraph (1)(b), this Chapter
26 applies in relation to the complaint as if it were a separate
27 complaint in relation to each of the alleged categories of conduct.

28 Note: A single investigation or conciliation may be held in relation to the
29 separate complaints: see subsection 105(2).
30

EXPOSURE-DRAFT

1 **Division 3—Making etc. a complaint**

2 **Subdivision A—Who may make a complaint**

3 **89 Who may make a complaint**

- 4 (1) A complaint relating to particular conduct may be made:
- 5 (a) by one or more persons who are aggrieved by the conduct:
- 6 (i) solely on their own behalf; or
- 7 (ii) on their own behalf, and on behalf of one or more other
- 8 persons who are also aggrieved by the conduct; or
- 9 (b) by another person, or by an industrial association, on behalf
- 10 of one or more persons who are aggrieved by the conduct.
- 11 (2) A person or industrial association that makes a complaint is a
- 12 *complainant* in relation to the complaint.
- 13 (3) A person who is alleged in a complaint to have engaged in the
- 14 conduct to which the complaint relates is a *respondent* in relation
- 15 to the complaint.
- 16 (4) A person on whose behalf a complaint is made is an *affected party*
- 17 in relation to the complaint (including a complainant who makes a
- 18 complaint on his or her own behalf).
- 19 (5) A complaint is a *representative complaint* if it is made on behalf of
- 20 at least one person who is not a complainant.
- 21 Note: Subdivision B contains additional provisions relating to making etc.
- 22 representative complaints.
- 23 (6) Subsections (2) to (5) have effect subject to other provisions of this
- 24 Division under which people can become, or cease to be,
- 25 complainants, respondents or affected parties.

26 **90 Person must not make complaint if another complaint has**

27 **already been made**

- 28 (1) Subject to subsection (2), a person must not make a complaint to
- 29 the Commission in relation to conduct if:

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-1 Making a complaint to the Commission

Division 3 Making etc. a complaint

Section 91

- 1 (a) a complaint or application has already been made by, or on
2 behalf of, the person in relation to the conduct under:
3 (i) this Act; or
4 (ii) the *Australian Human Rights Commission Act 1986* (as
5 in force before the commencement of this Part); or
6 (iii) Part 3-1 of the *Fair Work Act 2009*; or
7 (iv) a State or Territory anti-discrimination law; and
8 (b) the complaint or application has not failed for want of
9 jurisdiction.
- 10 (2) The Commission may, despite subsection (1), permit a person to
11 make a complaint if the Commission is satisfied that there are
12 exceptional circumstances that warrant permitting the person to
13 make the complaint.

Subdivision B—Additional provisions relating to making etc. representative complaints

91 Complaint must identify the affected parties

- 16 (1) A representative complaint must describe or otherwise identify the
17 affected parties.
18
19 (2) In describing or otherwise identifying the affected parties, it is not
20 necessary to name them or specify how many there are.

92 Withdrawal of affected party

- 22 (1) A person (other than a claimant) ceases to be an affected party in
23 relation to a representative complaint if the person withdraws from
24 the complaint, by notice in writing to the Commission.
- 25 (2) However, a person cannot withdraw under subsection (1) after the
26 complaint has been closed by the Commission under section 117,
27 unless the closure has been revoked under that section.
- 28 (3) If a person (other than a claimant) ceases, under subsection (1), to
29 be an affected party in relation to a representative complaint,
30 section 90 does not prevent the person from making a complaint to
31 the Commission in relation to the same conduct.

EXPOSURE-DRAFT

Complaints **Chapter 4**
Making a complaint to the Commission **Part 4-1**
Making etc. a complaint **Division 3**

Section 93

1 **93 Replacement of complainant**

- 2 (1) The Commission may, in relation to a representative complaint,
3 replace any complainant with another person as a complainant on
4 application in writing by any affected party.
- 5 (2) However, the Commission can only do so if the other person
6 consents to becoming a complainant.

7 **94 Directions requiring complainant to notify affected party of a**
8 **matter**

- 9 (1) The Commission may, in relation to a representative complaint, at
10 any stage direct a complainant to give notice of any matter to one
11 or more affected parties.
- 12 (2) A direction under subsection (1) that is made in writing is not a
13 legislative instrument.

14 **Subdivision C—Other matters relating to making etc.**
15 **complaints**

16 **95 Formal requirements for making a complaint**

17 A complaint must be in writing, and be given or sent to the
18 Commission.

19 **96 Preparation of complaints: assistance from the Commission**

20 If the Commission is aware that:
21 (a) a person wishes to make a complaint; and
22 (b) the person needs assistance to put the complaint in writing;
23 the Commission must take reasonable steps to provide appropriate
24 assistance to the person.

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-1 Making a complaint to the Commission

Division 3 Making etc. a complaint

Section 97

1 **97 Preparation of complaints: people in custody**

2 *When this section applies*

3 (1) This section applies if a person (the *detainee*) is being detained in
4 custody.

5 (2) A *custodian* is:

6 (a) a person in whose custody the detainee is being detained; or

7 (b) any other person performing duties connected with the
8 detainee's detention.

9 *Entitlements of detainee relating to communications with*
10 *Commission*

11 (3) The detainee has the following entitlements:

12 (a) the detainee is, on request made to a custodian, entitled to be
13 provided with facilities for:

14 (i) preparing a written complaint; or

15 (ii) giving information to the Commission in relation to a
16 complaint that has been made to the Commission; or

17 (iii) enclosing a complaint, or such information, in a sealed
18 envelope for the Commission;

19 (b) the detainee is, on request made to a custodian, entitled to
20 have sent to the Commission, without undue delay, a sealed
21 envelope that is:

22 (i) delivered by the detainee to the custodian; and

23 (ii) addressed to the Commission;

24 (c) the detainee is entitled to have delivered to the detainee,
25 without undue delay, any sealed envelope that:

26 (i) is addressed to the detainee and sent by the
27 Commission; and

28 (ii) comes into the possession, or under the control, of a
29 custodian.

30 *Privacy*

31 (4) A custodian is not entitled to open, or inspect any document
32 enclosed in, a sealed envelope that:

EXPOSURE-DRAFT

Complaints **Chapter 4**
Making a complaint to the Commission **Part 4-1**
Making etc. a complaint **Division 3**

Section 98

- 1 (a) is addressed to the Commission and delivered by the detainee
2 to a custodian for sending to the Commission; or
3 (b) is addressed to the detainee and sent by the Commission.

4 *Arrangements with State and Territory authorities*

- 5 (5) For the purposes of this section, the Commission may make
6 arrangements, with the appropriate authority of a State or a
7 Territory, for the identification and delivery of sealed envelopes
8 sent by the Commission to people detained in custody in that State
9 or Territory.

10 **98 Amending a complaint**

- 11 (1) With the leave of the Commission, a complaint may be amended
12 by any complainant in any respect.

13 Note: For example, a complaint may be amended to add another person as a
14 respondent.

- 15 (2) However, a complaint cannot be amended after it is closed by the
16 Commission under section 117 unless the closure has been revoked
17 under that section.

- 18 (3) An amendment of a complaint must be in writing.

19 **99 Withdrawing a complaint**

- 20 (1) With the leave of the Commission, a complaint may be withdrawn
21 by any complainant.

- 22 (2) The Commission:

23 (a) must grant leave if it is satisfied that all the affected parties
24 agree to the withdrawal of the complaint; and

25 (b) must not grant leave unless it is so satisfied.
26

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-2 How the Commission deals with complaints

Division 1 Guide to this Part

Section 100

1 **Part 4-2—How the Commission deals with**
2 **complaints**

3 **Division 1—Guide to this Part**

4 **100 Guide to this Part**

5 This Part deals with how the Commission deals with complaints.

6 Division 2 deals with the duration of the Commission's obligations
7 to deal with a complaint.

8 Division 3 deals with the Commission referring complaints and
9 instruments to other bodies.

10 Division 4 deals with the investigation and conciliation of
11 complaints.

12 Division 5 deals with complaints that allege that Commonwealth
13 conduct is contrary to human rights and that cannot be settled by
14 conciliation.

15 Division 6 deals with the closure of complaints by the
16 Commission.

17

EXPOSURE-DRAFT

Complaints **Chapter 4**

How the Commission deals with complaints **Part 4-2**

Duration of Commission's obligations to deal with complaints **Division 2**

Section 101

1 **Division 2—Duration of Commission's obligations to deal**
2 **with complaints**

3 **101 Duration of Commission's obligations to deal with complaint**

- 4 (1) The Commission's obligations to deal with a complaint under this
5 Part continue until:
- 6 (a) the complaint is withdrawn under section 99; or
 - 7 (b) because of the complaint, the Commission refers an
8 instrument to another body under section 102; or
 - 9 (c) the Commission refers the complaint to the Inspector-General
10 of Intelligence and Security under section 103; or
 - 11 (d) the Commission refers the complaint to the Information
12 Commissioner under section 104; or
 - 13 (e) the Commission has complied with Division 5 in relation to
14 the complaint; or
 - 15 (f) the Commission closes the complaint under section 117 and
16 the closure has not been revoked under that section.

17 Note: See also subsection 88(3) (certain complaints to be treated as if they
18 were 2 separate complaints).

- 19 (2) Unless otherwise expressly stated, the Commission is not obliged
20 to deal in any way with a purported complaint that is not properly
21 made.
- 22 (3) A complaint is *properly made* if it is made in accordance with the
23 requirements of Part 4-1.
24

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-2 How the Commission deals with complaints

Division 3 Referral of complaints and instruments to other bodies

Section 102

1 **Division 3—Referral of complaints and instruments to**
2 **other bodies**

3 **102 Referral of industrial instruments that authorise or require**
4 **conduct that would otherwise be unlawful discrimination**

5 *Referral of instrument in connection with a complaint*

6 (1) If the Commission considers that the conduct to which a complaint
7 (whether or not properly made) relates would be unlawful
8 discrimination, but for the fact that the conduct is necessary to
9 comply with an instrument of a kind referred to in paragraph
10 31(2)(c), the Commission must refer the instrument as follows:

- 11 (a) if the instrument is of a kind referred to in subparagraph
12 31(2)(c)(i) or (ii)—the Commission must refer the instrument
13 to Fair Work Australia;
14 (b) if the instrument is of a kind referred to in subparagraph
15 31(2)(c)(iii)—the Commission must refer the instrument to
16 the Remuneration Tribunal;
17 (c) if the instrument is of a kind referred to in subparagraph
18 31(2)(c)(iv)—the Commission must refer the instrument to
19 the Defence Force Remuneration Tribunal.

20 Note: Referral of the instrument under this subsection ends the
21 Commission's obligations to deal with the complaint under this Part:
22 see subsection 101(1).

- 23 (2) If the Commission refers an instrument under subsection (1), the
24 Commission must:
25 (a) give the body to which the instrument is referred a statement
26 of the reasons why the instrument is referred; and
27 (b) notify each complainant:
28 (i) of the referral, and the reasons for the referral; and
29 (ii) that the Commission will not be dealing further with the
30 complaint.

31 *Referral of instrument in other circumstances*

- 32 (3) If the Commission otherwise becomes aware that an instrument of
33 a kind referred to in paragraph 31(2)(c) requires a person to engage

EXPOSURE-DRAFT

Complaints **Chapter 4**

How the Commission deals with complaints **Part 4-2**

Referral of complaints and instruments to other bodies **Division 3**

Section 103

1 in conduct that would be unlawful discrimination, but for the fact
2 that the conduct is necessary to comply with that instrument, the
3 Commission may refer the instrument in accordance with the
4 appropriate paragraph of subsection (1).

5 *Determining whether conduct would be unlawful discrimination*

6 (4) In determining whether conduct would be unlawful discrimination
7 as mentioned in subsection (1) or (3), the fact that the conduct is
8 engaged in in accordance with an instrument mentioned in that
9 subsection does not of itself mean that the conduct is justifiable.

10 **103 Referral of complaints to Inspector-General of Intelligence and** 11 **Security**

12 (1) If the conduct to which a complaint relates is conduct engaged in
13 by an intelligence agency, or that is otherwise related to the
14 activities of an intelligence agency, the Commission must refer the
15 complaint to the Inspector-General of Intelligence and Security.

16 Note: Referral of the complaint under this subsection ends the
17 Commission's obligations to deal with the complaint under this Part:
18 see subsection 101(1).

19 (2) If the Commission refers a complaint to the Inspector-General of
20 Intelligence and Security, the Commission must:
21 (a) give the Inspector-General:
22 (i) a statement of the reasons why the complaint is referred;
23 and
24 (ii) any information or documents that relate to the
25 complaint and are in the possession, or under the
26 control, of the Commission; and
27 (b) notify each complainant:
28 (i) of the referral, and the reasons for the referral; and
29 (ii) that the Commission will not be dealing further with the
30 complaint.

31 **104 Referral of complaints to Information Commissioner**

32 (1) This section applies to a complaint that alleges that
33 Commonwealth conduct is contrary to human rights.

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-2 How the Commission deals with complaints

Division 3 Referral of complaints and instruments to other bodies

Section 104

- 1 (2) The Commission may refer the complaint to the Information
2 Commissioner if the Commission considers that the alleged
3 conduct could be more effectively or conveniently dealt with by
4 the Information Commissioner in the performance of the functions
5 referred to in paragraph 27(1)(a) or 28(1)(b) or (c) of the *Privacy*
6 *Act 1988*.
- 7 (3) A complaint referred under subsection (2) is taken to be a
8 complaint made to the Information Commissioner under Part V of
9 the *Privacy Act 1988*.
- 10 (4) If the Commission refers a complaint to the Information
11 Commissioner, the Commission must:
- 12 (a) give the Information Commissioner:
- 13 (i) a statement of the reasons why the complaint is referred;
14 and
15 (ii) any information or documents that relate to the
16 complaint and are in the possession, or under the
17 control, of the Commission; and
- 18 (b) notify each complainant:
- 19 (i) of the referral, and the reasons for the referral; and
20 (ii) that the Commission will not be dealing further with the
21 complaint.
22

EXPOSURE-DRAFT

Complaints **Chapter 4**

How the Commission deals with complaints **Part 4-2**

Investigation and conciliation of complaints **Division 4**

Section 105

1 **Division 4—Investigation and conciliation of complaints**

2 **Subdivision A—General provisions**

3 **105 Commission to investigate and/or conciliate complaints**

- 4 (1) The Commission must do whichever of the following the
5 Commission considers appropriate in relation to a complaint that
6 has been made to the Commission:
- 7 (a) investigate the complaint;
8 (b) attempt to conciliate the complaint;
9 (c) both investigate, and attempt to conciliate, the complaint.
- 10 (2) If the Commission considers that 2 or more complaints arise out of
11 the same (or substantially the same) circumstances or subject, the
12 Commission may conduct a single investigation or conciliation in
13 relation to those complaints.

14 **106 Commission's general discretion as to how to conduct**
15 **investigation or conciliation**

- 16 (1) The Commission may conduct the investigation or conciliation of a
17 complaint in any way that the Commission considers to be
18 appropriate.
- 19 (2) The Commission is not bound by the rules of evidence when
20 investigating or conciliating a complaint.

21 **Subdivision B—Additional provisions relating to investigation**

22 **107 Power to obtain information etc.**

23 *When this section applies*

- 24 (1) This section applies if the Commission reasonably believes that a
25 person is capable of giving information or producing a document
26 that is relevant to the investigation of a complaint.

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-2 How the Commission deals with complaints

Division 4 Investigation and conciliation of complaints

Section 108

- 1 *Notice requiring provision of information or production of*
2 *documents*
- 3 (2) The Commission may, by written notice given to the person,
4 require the person:
- 5 (a) to give the Commission the information by the time, and in
6 the manner, specified in the notice; or
7 (b) to produce the document to the Commission by the time, and
8 in the manner, specified in the notice.
- 9 Note 1: Failure to comply with a notice is an offence: see section 201.
- 10 Note 2: Requirements under this subsection have effect subject to any
11 certificate given to the Commission by the Attorney-General under
12 section 198.
- 13 Note 3: If a person is required to provide information or produce a document
14 relating to an intelligence agency, the person must notify that agency:
15 see section 199.
- 16 Note 4: Sections 137.1 and 137.2 of the *Criminal Code* create offences for
17 providing false or misleading information or documents.
- 18 (3) A notice under subsection (2):
19 (a) must not specify a time that is less than 14 days after the
20 notice is given; and
21 (b) must set out the effect of section 201.

108 Inspection, retention etc. of documents

- 22
- 23 (1) This section applies to a document produced by a person pursuant
24 to a requirement made under section 107.
- 25 (2) The Commission may:
26 (a) inspect the document; and
27 (b) make and retain copies of the whole or a part of the
28 document.
- 29 (3) The Commission may take possession of the document and retain it
30 for as long as is necessary.
- 31 (4) The person otherwise entitled to possession of the document is
32 entitled to be supplied, as soon as practicable, with a copy of the

EXPOSURE-DRAFT

Complaints **Chapter 4**

How the Commission deals with complaints **Part 4-2**

Investigation and conciliation of complaints **Division 4**

Section 109

1 document that is certified by a Commission official to be a true
2 copy.

3 (5) The certified copy must be received in all courts and tribunals as
4 evidence as if it were the original.

5 (6) Until the certified copy is supplied, the Commission must, at such
6 times and places as the Commission considers appropriate, permit
7 the person otherwise entitled to possession of the document, or a
8 person authorised by that person, to inspect and make copies of, or
9 take extracts from, the document.

10 **Subdivision C—Additional provisions relating to conciliation**

11 **109 Commission may hold conferences**

12 *Commission may decide to hold a conference*

13 (1) For the purpose of attempting to conciliate a complaint, the
14 Commission may decide to hold a conference, to be presided over
15 by:

- 16 (a) the Commission; or
17 (b) a suitable person (other than a Commission member)
18 determined by the Commission.

19 *Commission may invite people to attend*

- 20 (2) The Commission may:
- 21 (a) invite any or all of the complainants or respondents to attend
22 the conference; and
23 (b) invite any other person to attend the conference, if:
- 24 (i) the Commission reasonably believes that the person is
25 capable of giving information that is relevant to the
26 conciliation of the complaint; or
27 (ii) the Commission considers that the person's presence at
28 the conference is likely to be conducive to the
29 conciliation of the complaint.

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-2 How the Commission deals with complaints

Division 4 Investigation and conciliation of complaints

Section 110

- 1 *Commission may require people to attend*
- 2 (3) The Commission may, by written notice given to a person referred
- 3 to in subsection (2), require the person to attend the conference
- 4 (whether or not the person has already been invited to attend the
- 5 conference).
- 6 Note: Failure to comply with a notice is an offence: see section 202.
- 7 (4) A notice under subsection (3):
- 8 (a) must specify the place and time of the conference, not being
- 9 a time that is less than 14 days after the notice is given; and
- 10 (b) must set out the effect of section 202.
- 11 (5) A person who is required to attend the conference is entitled to be
- 12 paid, by the Commonwealth, a reasonable sum for the person's
- 13 expenses of attendance.

14 **110 Proceedings at conferences**

- 15 (1) Subject to this section, a conference is to be conducted in such
- 16 manner as the person presiding at the conference considers
- 17 appropriate.
- 18 (2) The conference is to be conducted in private.
- 19 (3) The person presiding at the conference must take all reasonable
- 20 steps to ensure that the conduct of the conference does not
- 21 disadvantage any complainant or respondent.
- 22 (4) Unless the person presiding at the conference consents:
- 23 (a) an individual is not entitled to be represented at the
- 24 conference by another person; and
- 25 (b) a body (whether or not incorporated) is not entitled to be
- 26 represented at the conference otherwise than by a person who
- 27 is an officer or employee of that body.
- 28 (5) Despite paragraph (4)(a), an individual who is unable to attend the
- 29 conference because the individual has a disability is entitled to
- 30 nominate another person to attend instead on his or her behalf.

EXPOSURE-DRAFT

Complaints **Chapter 4**

How the Commission deals with complaints **Part 4-2**

Investigation and conciliation of complaints **Division 4**

Section 111

- 1 (6) If the person presiding at the compulsory conference considers that
2 an individual is unable to participate fully in the conference
3 because the individual has a disability, the individual is entitled to
4 nominate another person to assist him or her at the conference.

5 **111 Things said in conciliation are not admissible in evidence**

6 Evidence of anything said or done by a person in the course of the
7 conciliation of a complaint is not admissible:

- 8 (a) in any court (whether or not exercising federal jurisdiction);
9 or
10 (b) in any proceedings before a person authorised to hear
11 evidence (whether the person is authorised by a law, or by
12 the consent of the parties).
13

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-2 How the Commission deals with complaints

Division 5 Complaints alleging Commonwealth conduct contrary to human rights that cannot be settled by conciliation

Section 112

1 **Division 5—Complaints alleging Commonwealth conduct**
2 **contrary to human rights that cannot be settled**
3 **by conciliation**

4 **112 Complaints to which this Division applies**

5 This Division applies to a complaint that alleges Commonwealth
6 conduct is contrary to human rights if:

- 7 (a) the Commission is satisfied that there is no reasonable
8 prospect of the complaint being settled by conciliation; and
9 (b) the Commission's obligations to deal with the complaint
10 have not already ended under section 101.

11 **113 Commission to make a finding**

- 12 (1) The Commission must make a finding on the question whether the
13 conduct is Commonwealth conduct that is contrary to human
14 rights. For this purpose, the Commission may conduct any
15 investigation (or further investigation) of the complaint that the
16 Commission considers appropriate.
- 17 (2) The Commission must not make a finding that the conduct is
18 Commonwealth conduct that is contrary to human rights unless the
19 Commission has given each respondent a reasonable opportunity to
20 make submissions on the matter to the Commission.

21 **114 Report to complainants and respondents**

- 22 (1) The Commission must give a written report to each complainant
23 and each respondent. The report:
24 (a) must set out the Commission's finding on the question
25 referred to in subsection 113(1), and the reasons for that
26 finding; and
27 (b) may set out any recommendations that the Commission
28 considers it appropriate to make to any respondent.

29 Note: The Commission may (for example) recommend that a respondent
30 should:

- 31 (a) compensate affected parties for loss or damage they have
32 suffered; or

EXPOSURE-DRAFT

Complaints **Chapter 4**

How the Commission deals with complaints **Part 4-2**

Complaints alleging Commonwealth conduct contrary to human rights that cannot be
settled by conciliation **Division 5**

Section 115

- 1 (b) take some other action to remedy or reduce loss or damage
2 suffered by affected parties; or
3 (c) take particular measures to ensure that similar conduct does not
4 occur in the future.

5 (2) A report under subsection (1) is not a legislative instrument.

6 **115 Report to Minister**

7 (1) If the Commission finds that the conduct is Commonwealth
8 conduct that is contrary to human rights, the Commission may give
9 the Minister a report.

10 Note: Reports given to the Minister under this subsection must be tabled in
11 Parliament: see section 192.

- 12 (2) A report under subsection (1) must be in writing, and include:
13 (a) the finding that the Commission has made, and the reasons
14 for that finding; and
15 (b) any recommendations that the Commission has made in a
16 report under paragraph 114(b); and
17 (c) a statement whether, to the Commission's knowledge, any
18 respondent has taken or is taking any action as a result of the
19 finding or recommendations, and information about the
20 nature of any action that has been or is being so taken.
- 21 (3) If the Commission gives the Minister a report under subsection (1),
22 the Commission:
23 (a) must give a copy of the report to each respondent who has
24 been found by the Commission to have engaged in
25 Commonwealth conduct that is contrary to human rights; and
26 (b) must give a copy of the report to each complainant who is an
27 affected party; and
28 (c) may give a copy of the report to any other complainant.
- 29 (4) A report under subsection (1) is not a legislative instrument.

30 **116 Omission of certain material from reports**

31 (1) The Commission may exclude material from a report under
32 section 114 or 115 if the Commission considers it desirable to do
33 so having regard to any of the matters mentioned in subsection

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-2 How the Commission deals with complaints

Division 5 Complaints alleging Commonwealth conduct contrary to human rights that cannot be settled by conciliation

Section 116

1 197(3) and to the obligations of the Commission under subsection
2 197(4).

3 (2) If, under subsection (1), the Commission excludes material from a
4 report under section 115, the Commission must give the Minister a
5 written report setting out the excluded material and the reasons for
6 excluding the material.

7 Note: Reports under subsection (2) do not have to be tabled: see section 192.

8 (3) A report under subsection (2) is not a legislative instrument.
9

EXPOSURE-DRAFT

Complaints **Chapter 4**

How the Commission deals with complaints **Part 4-2**

Closing complaints **Division 6**

Section 117

1 **Division 6—Closing complaints**

2 **117 Closing a complaint**

3 *Complaints requiring no further action*

- 4 (1) The Commission may close a complaint if:
- 5 (a) the Commission is satisfied that the complaint has been
- 6 settled; or
- 7 (b) the Commission is satisfied that the affected parties do not
- 8 want the Commission to deal with the complaint, or to
- 9 continue to deal with it.

10 *Other circumstances in which Commission may close complaints*

- 11 (2) The Commission may close a complaint if:
- 12 (a) the Commission is satisfied that the conduct to which the
- 13 complaint relates is not unlawful conduct, or is not
- 14 Commonwealth conduct that is contrary to human rights; or
- 15 (b) the complaint was made more than 12 months after the
- 16 alleged conduct occurred (or most recently occurred); or
- 17 (c) the Commission is satisfied that the complaint is frivolous,
- 18 vexatious, misconceived or lacking in substance; or
- 19 (d) if some other remedy has been sought in relation to the
- 20 subject matter of the complaint—the Commission is satisfied
- 21 that the subject matter of the complaint has been adequately
- 22 dealt with; or
- 23 (e) the Commission is satisfied that some other more appropriate
- 24 remedy in relation to the subject matter of the complaint is
- 25 reasonably available to the affected parties; or
- 26 (f) if the complaint alleges unlawful conduct—the Commission
- 27 is satisfied that the subject matter of the complaint involves
- 28 an issue of public importance that should be considered by
- 29 the Federal Court or the Federal Magistrates Court; or
- 30 (g) if the complaint alleges unlawful conduct—the Commission
- 31 is satisfied that there is no reasonable prospect of the
- 32 complaint being settled by conciliation; or

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-2 How the Commission deals with complaints

Division 6 Closing complaints

Section 117

- 1 (h) if the complaint alleges that Commonwealth conduct is
2 contrary to human rights—the Commission is satisfied that:
3 (i) there is no reasonable prospect of the complaint being
4 settled by conciliation; and
5 (ii) having regard to all the circumstances, no action, or
6 further action, is warranted in relation to the complaint.

7 Note: If a complaint alleging unlawful conduct is closed under this
8 subsection, application may (subject to leave of the court, if the
9 complaint is closed under any of paragraphs (a) to (e)) be made to the
10 Federal Court or the Federal Magistrates Court in relation to the
11 conduct to which the complaint relates: see Division 2 of Part 4-3.

12 *Complainant may request closure of unlawful conduct complaint*
13 *made against President, Commission or other Commission member*

- 14 (3) The Commission must close a complaint if:
15 (a) the complaint alleges unlawful conduct; and
16 (b) any of the respondents to the complaint is:
17 (i) the Commission; or
18 (ii) the President; or
19 (iii) another Commission member; and
20 (c) a complainant has made a written request to the Commission
21 for closure of the complaint; and
22 (d) the Commission is satisfied that all the affected parties agree
23 to the complaint being closed.

24 Note: If a complaint alleging unlawful conduct is closed under this
25 subsection, application may be made to the Federal Court or the
26 Federal Magistrates Court in relation to the conduct to which the
27 complaint relates: see Division 2 of Part 4-3.

28 *Obligation to give notice of closure of complaint*

- 29 (4) If the Commission closes a complaint under subsection (1), (2) or
30 (3), the Commission must give each complainant written notice of
31 the closure and of the reasons for the closure.
32 (5) On request by an affected party who is not a complainant, the
33 Commission must give the affected party a copy of the notice
34 given under subsection (4).

EXPOSURE-DRAFT

Complaints **Chapter 4**

How the Commission deals with complaints **Part 4-2**

Closing complaints **Division 6**

Section 117

1

Revocation of closure of complaint

2

- (6) The Commission may revoke the closure of a complaint, but not after an application is made to the Federal Court or the Federal Magistrates Court under section 120.

3

4

5

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-3 Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct

Division 1 Guide to this Part

Section 118

1 **Part 4-3—Applying to the Federal Court or the**
2 **Federal Magistrates Court in relation to**
3 **unlawful conduct**

4 **Division 1—Guide to this Part**

5 **118 Guide to this Part**

6 This Part deals with when an application may be made to the
7 Federal Court or the Federal Magistrates Court in relation to
8 unlawful conduct.

9 Division 2 deals with making an application after a complaint
10 alleging unlawful conduct has been closed.

11 Division 3 deals with the general power to grant an interim
12 injunction etc.

13 Division 4 deals with other general provisions relating to
14 proceedings brought in a court under this Part.

15

EXPOSURE-DRAFT

Complaints **Chapter 4**

Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful
conduct **Part 4-3**

Application to court if unlawful conduct complaint closed **Division 2**

Section 119

Division 2—Application to court if unlawful conduct complaint closed

119 When this Division applies

This Division applies if a complaint alleging unlawful conduct has
been closed under subsection 117(2) or (3).

120 Application to court alleging unlawful conduct

- (1) Subject to sections 121, 122 and 123, a person may make an
application to the Federal Court, or the Federal Magistrates Court,
alleging unlawful conduct by one or more of the respondents to the
complaint.

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

- (2) The unlawful conduct alleged in the application:

- (a) must be the same as (or the same in substance as) the
unlawful conduct to which the complaint related; or
(b) must arise out of the same (or substantially the same) conduct
to which the complaint related.

121 Leave required in some circumstances

- (1) If the complaint was closed under subsection 117(2) on the ground
specified in any of paragraphs (a) to (e) of that subsection, an
application cannot be made to the Federal Court, or the Federal
Magistrates Court, unless that court grants leave to make the
application.

- (2) The court to which an application for leave is made may deal with
the application without a hearing. This does not limit how the court
may decide to deal with the application.

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-3 Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct

Division 2 Application to court if unlawful conduct complaint closed

Section 122

1 **122 Persons who may make an application**

2 An application under section 120, or for leave under section 121,
3 may be made by a person who is an affected party in relation to the
4 complaint.

5 **123 Time limits**

- 6 (1) An application under section 120 (other than an application to
7 which section 121 applies) must be made within 60 days after the
8 day (or the last day) on which notice was given as required by
9 subsection 117(4), or within such further time as the court
10 concerned allows.
- 11 (2) An application for leave under section 121 must be made within 60
12 days after the day (or the last day) on which notice was given as
13 required by subsection 117(4), or within such further time as the
14 court concerned allows.
- 15 (3) The court concerned may allow further time either before or after
16 the end of the period of 60 days referred to in subsection (1) or (2).

17 **124 Burden of proof in proceedings under section 120 etc.**

18 *Burden of proof for reason or purpose for conduct*

- 19 (1) If, in proceedings against a person under section 120, the applicant:
20 (a) alleges that another person engaged, or proposed to engage,
21 in conduct for a particular reason or purpose (the ***alleged***
22 ***reason or purpose***); and
23 (b) adduces evidence from which the court could decide, in the
24 absence of any other explanation, that the alleged reason or
25 purpose is the reason or purpose (or one of the reasons or
26 purposes) why or for which the other person engaged, or
27 proposed to engage, in the conduct;
28 it is to be presumed in the proceedings that the alleged reason or
29 purpose is the reason or purpose (or one of the reasons or purposes)
30 why or for which the other person engaged, or proposed to engage,
31 in the conduct, unless the contrary is proved.

32 Note: See also section 8 (multiple reasons or purposes for conduct).

EXPOSURE-DRAFT

Complaints **Chapter 4**

Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful
conduct **Part 4-3**

Application to court if unlawful conduct complaint closed **Division 2**

Section 125

1

Burden of proof for exceptions etc.

2

(2) In proceedings against a person under section 120, the burden of
proving that conduct is not unlawful conduct because of any of the
following provisions lies on that person:

3

4

5

(a) subsection 21(1) (special measures to achieve equality are
not discrimination);

6

7

(b) an exception in Part 2-2 or 2-3;

8

(c) section 72 (effect of disability standards);

9

(d) section 78 (effect of compliance codes);

10

(e) section 82 (effect of special measure determinations);

11

(f) section 86 (effect of temporary exemptions).

12

(3) In proceedings against a person under section 120, the burden of
proving that the person is not taken to have engaged in conduct
because of either of the following provisions lies on that person:

13

14

15

(a) subsection 57(3) (exception for principal who took
reasonable precautions);

16

17

(b) section 78 (effect of compliance codes).

18

(4) In any proceedings against a person, the burden of proving that the
person does not have a liability for conduct because of either of the
following provisions lies on that person:

19

20

21

(a) subsection 58(5) (exception for partner etc. who took
reasonable precautions);

22

23

(b) section 78 (effect of compliance codes).

24

125 Orders that court may make on application under section 120

25

(1) If the court to which an application is made under section 120 is
satisfied that there has been unlawful conduct by a respondent to
the complaint, the court may make such orders (including a
declaration of right) as it considers appropriate.

26

27

28

29

(2) Without limiting subsection (1), the orders that the court may make
include any of the following orders, or any orders to a similar
effect:

30

31

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-3 Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct

Division 2 Application to court if unlawful conduct complaint closed

Section 126

- 1 (a) an order declaring that a respondent has engaged in unlawful
2 conduct, and directing the respondent not to repeat or
3 continue such conduct;
- 4 (b) an order requiring a respondent to perform any reasonable act
5 or course of conduct aimed at ensuring that the respondent
6 does not again engage in the same or similar unlawful
7 conduct;
- 8 (c) an order requiring a respondent to perform any reasonable act
9 or course of conduct to redress any loss or damage suffered
10 by an affected party;
- 11 (d) an order requiring a respondent to employ or re-employ an
12 affected party;
- 13 (e) an order requiring a respondent to pay damages to an affected
14 party;
- 15 (f) an order requiring a respondent to vary the termination of a
16 contract or agreement to redress any loss or damage suffered
17 by an affected party;
- 18 (g) an order declaring that it would be inappropriate for any
19 further action to be taken in the matter.
- 20 (3) In the case of a representative proceeding under Part IVA of the
21 *Federal Court of Australia Act 1976*, subsections (1) and (2) of this
22 section apply as if a reference to an affected party included a
23 reference to each person who is a group member (within the
24 meaning of Part IVA of the *Federal Court of Australia Act 1976*).

126 Interim injunctions etc. by court to which application is made under section 120

- 25 (1) The court to which an application is made under section 120 may,
26 if the court considers it appropriate to do so, grant an interim
27 injunction, or other interim order, pending the determination of the
28 proceedings.
29
30 (2) The court cannot, as a condition of granting an interim injunction
31 or other interim order, require a person to give an undertaking as to
32 damages.
33

EXPOSURE-DRAFT

Complaints **Chapter 4**

Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful
conduct **Part 4-3**

Application to court if unlawful conduct complaint closed **Division 2**

Section 127

127 Report by Commission to court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

- (1) If an application for an order or injunction has been made under this Division to the Federal Court or the Federal Magistrates Court, that court may request the Commission to give the court a written report on the complaint. The Commission must comply with the request.
- (2) The report must not set out or describe anything said or done in the course of the conciliation of the complaint.
- (3) The Commission may exclude material from the report if the Commission considers it desirable to do so having regard to any of the matters mentioned in subsection 197(3) and to the obligations of the Commission under subsection 197(4).
- (4) The Commission may give a copy of the report to any party to the proceedings on the application.
- (5) A report under this section is not a legislative instrument.

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-3 Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct

Division 3 General power of court to grant interim injunction etc. if complaint of unlawful conduct has been made

Section 128

1 **Division 3—General power of court to grant interim**
2 **injunction etc. if complaint of unlawful conduct**
3 **has been made**

4 **128 Interim injunction etc. to maintain status quo**

- 5 (1) Subject to this section, if a complaint alleging unlawful conduct
6 has been made to the Commission, the Federal Court or the Federal
7 Magistrates Court may grant or make an interim injunction, or
8 other interim order:
- 9 (a) to maintain, or re-establish, the status quo as it existed
10 immediately before:
- 11 (i) the conduct to which the complaint relates was engaged
12 in; or
13 (ii) the complaint was made; or
- 14 (b) to maintain, or re-establish, the rights of any complainant,
15 respondent or affected party as they existed immediately
16 before:
- 17 (i) the conduct to which the complaint relates was engaged
18 in; or
19 (ii) the complaint was made.
- 20 (2) An application for an interim injunction or other order under
21 subsection (1) may be made by a complainant, a respondent or an
22 affected party.
- 23 (3) An interim injunction or other order cannot be granted or made
24 under subsection (1) after any of the following has occurred:
- 25 (a) the complaint has been withdrawn under section 99;
26 (b) because of the complaint, the Commission has referred an
27 instrument to another body under section 102;
28 (c) the Commission has referred the complaint to the
29 Inspector-General of Intelligence and Security under
30 section 103;
31 (d) the Commission has referred the complaint to the
32 Information Commissioner under section 104;
33 (e) the complaint has been closed under section 117.

EXPOSURE-DRAFT

Complaints **Chapter 4**

Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful
conduct **Part 4-3**

General power of court to grant interim injunction etc. if complaint of unlawful conduct
has been made **Division 3**

Section 128

1
2
3
4

(4) The court cannot, as a condition of granting an interim injunction
or other order under subsection (1), require a person to give an
undertaking as to damages.

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-3 Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct

Division 4 Other general provisions

Section 129

1 **Division 4—Other general provisions**

2 **129 Right of representation**

- 3 (1) A party in proceedings under this Part:
- 4 (a) may appear in person; or
- 5 (b) may be represented by a legal practitioner; or
- 6 (c) may be represented by another person who is not a legal
- 7 practitioner, unless the court concerned is of the opinion that
- 8 it is inappropriate in the circumstances for the other person to
- 9 appear.
- 10 (2) A person, other than a legal practitioner, is not entitled to demand
- 11 or receive any fee or reward, or any payment for expenses, for
- 12 representing a party in proceedings under this Part.

13 **130 Assistance in proceedings before the court**

- 14 (1) A person who:
- 15 (a) has commenced or proposes to commence proceedings in the
- 16 Federal Court or the Federal Magistrates Court under this
- 17 Part; or
- 18 (b) is a respondent in proceedings in the Federal Court or the
- 19 Federal Magistrates Court under this Part;
- 20 may apply to the Attorney-General for the provision of assistance
- 21 under this section in respect of the proceedings.
- 22 (2) If:
- 23 (a) a person makes an application for assistance; and
- 24 (b) the Attorney-General is satisfied that:
- 25 (i) it will involve hardship to that person to refuse the
- 26 application; and
- 27 (ii) in all the circumstances, it is reasonable to grant the
- 28 application;
- 29 the Attorney-General may authorise the provision by the
- 30 Commonwealth to that person, on such conditions (if any) as the
- 31 Attorney-General determines, of such legal or financial assistance
- 32 in respect of the proceedings as the Attorney-General determines.

EXPOSURE-DRAFT

Complaints **Chapter 4**

Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful
conduct **Part 4-3**

Other general provisions **Division 4**

Section 131

- 1 (3) If an authorisation or determination under subsection (2) is made in
2 writing, the authorisation or determination is not a legislative
3 instrument.

4 **131 Court not bound by technicalities**

- 5 (1) In proceedings under this Part, the Federal Court and the Federal
6 Magistrates Court are not bound by technicalities or legal forms.
7 (2) This section has effect subject to Chapter III of the Constitution.

8 **132 Discharge or variation of order or injunction under this Part**

9 A court that grants or makes an order or injunction under this Part
10 may discharge or vary the order or injunction.

11 **133 Costs**

- 12 (1) Subject to subsection (2), in proceedings under this Part in the
13 Federal Court or the Federal Magistrates Court, each party is to
14 bear that party's own costs.
- 15 (2) If the court concerned considers that there are circumstances that
16 justify it in doing so, the court may make such order as to costs,
17 and security for costs, whether by way of interlocutory order or
18 otherwise, as the court considers just.
- 19 (3) In considering whether there are circumstances justifying the
20 making of an order under subsection (2), the court must have
21 regard to the following matters:
- 22 (a) the financial circumstances of each of the parties to the
23 proceedings;
 - 24 (b) whether any party to the proceedings is receiving assistance
25 under section 130, or is receiving assistance by way of legal
26 aid (and, if a party is receiving any such assistance, the nature
27 and terms of that assistance);
 - 28 (c) the conduct of the parties to the proceedings (including any
29 conduct of the parties in dealings with the Commission);
 - 30 (d) whether any party to the proceedings has been wholly
31 unsuccessful in the proceedings;

EXPOSURE-DRAFT

Chapter 4 Complaints

Part 4-3 Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct

Division 4 Other general provisions

Section 133

1
2
3
4
5

- (e) whether any party to the proceedings has made an offer in writing to another party to the proceedings to settle the proceedings and the terms of any such offer;
- (f) any other matters that the court considers relevant.

EXPOSURE-DRAFT

Inquiries **Chapter 5**
Inquiries **Part 5-1**
Guide to this Part **Division 1**

Section 134

1 **Chapter 5—Inquiries**

2 **Part 5-1—Inquiries**

3 **Division 1—Guide to this Part**

4 **134 Guide to this Part**

5

This Part deals with inquires by the Commission.

6

Division 2 deals with the matters in relation to which the Commission may conduct inquiries, and the initiation etc. of inquiries.

7

8

9

Division 3 deals with how inquiries are conducted.

10

Division 4 deals with reporting to the Minister on inquiries.

11

EXPOSURE-DRAFT

Chapter 5 Inquiries

Part 5-1 Inquiries

Division 2 Commission may conduct inquiries

Section 135

1 **Division 2—Commission may conduct inquiries**

2 **135 Matters in relation to which the Commission may conduct**
3 **inquiries**

4 Subject to section 136, the Commission may conduct inquiries into
5 any of the following matters:

- 6 (a) whether Commonwealth conduct is unlawful conduct or is
7 contrary to human rights;
- 8 (b) the laws that should be made by the Commonwealth
9 Parliament:
- 10 (i) in relation to a matter covered by the objects of this Act;
11 or
12 (ii) to better respect or promote human rights;
- 13 (c) any action that should be taken by the Commonwealth, or by
14 the Administration of a Territory:
- 15 (i) in relation to a matter covered by the objects of this Act;
16 or
17 (ii) to better respect or promote human rights;
- 18 (d) any other action that should be taken by Australia to better
19 comply with the human rights instruments or the ILO
20 instruments.

21 **136 Commission not to inquire into conduct of intelligence agencies**

22 The Commission must not conduct an inquiry into conduct:

- 23 (a) engaged in by an intelligence agency; or
24 (b) that is otherwise related to the activities of an intelligence
25 agency.

26 Note: The functions of the Inspector-General of Intelligence and Security
27 include inquiring into conduct of intelligence agencies that is
28 inconsistent with, or contrary to, any human right: see section 8 of the
29 *Inspector-General of Intelligence and Security Act 1986*.

30 **137 Main purpose of inquiry is to make recommendations**

31 The main purpose of an inquiry is for the Commission:

EXPOSURE-DRAFT

Inquiries **Chapter 5**

Inquiries **Part 5-1**

Commission may conduct inquiries **Division 2**

Section 138

- 1 (a) to consider whether any recommendations should be made in
2 relation to the matter that is the subject of the inquiry; and
3 (b) if the Commission considers that recommendations should be
4 made—to include those recommendations in a report to the
5 Minister under section 142.

6 **138 Initiating inquiries**

7 *Commission may initiate inquiries*

- 8 (1) The Commission may, on its own initiative, conduct an inquiry
9 into a particular matter covered by section 135 if the Commission
10 considers that conducting the inquiry:
11 (a) will or may advance the objects of this Act; and
12 (b) is in the public interest.

13 *Minister may initiate inquiries*

- 14 (2) The Minister may, in writing, request the Commission to conduct
15 an inquiry into a particular matter covered by section 135 if the
16 Minister considers that conducting the inquiry:
17 (a) will or may advance the objects of this Act; and
18 (b) is in the public interest.
19 The Commission must comply with the request.

20 (3) If:

- 21 (a) the Minister makes a request under subsection (2) for the
22 Commission to conduct an inquiry into a particular matter;
23 and
24 (b) the Minister, in writing, requests that the inquiry be
25 conducted by a particular Commission member or particular
26 Commission members;

27 the Commission must, under section 183, delegate the function of
28 conducting the inquiry, and associated powers, to that Commission
29 member or those Commission members.

- 30 (4) A request under subsection (2) or paragraph (3)(b) is not a
31 legislative instrument.
32

EXPOSURE-DRAFT

Chapter 5 Inquiries

Part 5-1 Inquiries

Division 3 How inquiries are conducted

Section 139

1 **Division 3—How inquiries are conducted**

2 **Subdivision A—General matters**

3 **139 Commission’s general discretion as to how to conduct an**
4 **inquiry**

- 5 (1) The Commission may conduct an inquiry in any way that the
6 Commission considers appropriate.
- 7 (2) The Commission is not bound by the rules of evidence when
8 conducting an inquiry.

9 **Subdivision B—Additional provisions relating to inquiries**
10 **about Commonwealth conduct**

11 **140 Power to obtain information etc.**

12 *When this section applies*

- 13 (1) This section applies if the Commission reasonably believes that a
14 person is capable of:
- 15 (a) giving information or producing a document that is relevant
16 to an inquiry conducted under paragraph 135(a); or
17 (b) answering questions relevant to such an inquiry.

18 *Notice requiring provision of information, production of*
19 *documents or attendance to answer questions*

- 20 (2) The Commission may, by written notice given to the person,
21 require the person:
- 22 (a) to give the Commission the information by the time, and in
23 the manner, specified in the notice; or
24 (b) to produce the document to the Commission by the time, and
25 in the manner, specified in the notice; or
26 (c) to attend before the Commission at the time and place
27 specified in the notice, and answer questions relevant to the
28 inquiry.

29 Note 1: Failure to comply with a notice is an offence: see section 201.

EXPOSURE-DRAFT

Inquiries **Chapter 5**

Inquiries **Part 5-1**

How inquiries are conducted **Division 3**

Section 141

- 1 Note 2: Requirements under this subsection have effect subject to any
2 certificate given to the Commission by the Attorney-General under
3 section 198.
- 4 Note 3: If a person is required to provide information, produce a document or
5 answer questions relating to an intelligence agency, the person must
6 notify that agency: see section 199.
- 7 Note 4: Sections 137.1 and 137.2 of the *Criminal Code* create offences for
8 providing false or misleading information or documents.
- 9 (3) A notice under subsection (2):
10 (a) must not specify a time that is less than 14 days after the
11 notice is given; and
12 (b) must set out the effect of section 201.
- 13 (4) A person who is required under this section to attend before the
14 Commission is entitled to be paid, by the Commonwealth, a
15 reasonable sum for the person's expenses of attendance.

141 Inspection, retention etc. of documents

- 16
- 17 (1) This section applies to a document produced by a person pursuant
18 to a requirement made under section 140.
- 19 (2) The Commission may:
20 (a) inspect the document; and
21 (b) make and retain copies of the whole or a part of the
22 document.
- 23 (3) The Commission may take possession of the document and retain it
24 for as long as is necessary.
- 25 (4) The person otherwise entitled to possession of the document is
26 entitled to be supplied, as soon as practicable, with a copy of the
27 document that is certified by a Commission official to be a true
28 copy.
- 29 (5) The certified copy must be received in all courts and tribunals as
30 evidence as if it were the original.
- 31 (6) Until the certified copy is supplied, the Commission must, at such
32 times and places as the Commission considers appropriate, permit
33 the person otherwise entitled to possession of the document, or a

EXPOSURE-DRAFT

Chapter 5 Inquiries

Part 5-1 Inquiries

Division 3 How inquiries are conducted

Section 141

1 person authorised by that person, to inspect and make copies of, or
2 take extracts from, the document.
3

1 **Division 4—Reports to Minister**

2 **142 Commission to report to Minister on inquiry**

3 (1) As soon as practicable after completing an inquiry, the
4 Commission must give the Minister a written report on the inquiry.

5 (2) Without limiting the generality of subsection (1), the report must
6 include any recommendations that the Commission considers
7 should be made in relation to the matter that was the subject of the
8 inquiry.

9 (3) The Commission may exclude material from the report if the
10 Commission considers it desirable to do so having regard to any of
11 the matters mentioned in subsection 197(3) and to the obligations
12 of the Commission under subsection 197(4).

13 (4) If, under subsection (3), the Commission excludes material from
14 the report, the Commission must give the Minister a written report
15 setting out the excluded material and the reasons for excluding the
16 material.

17 Note: Reports under subsection (1) have to be tabled in Parliament, but
18 reports under subsection (4) do not have to be tabled: see section 192.

19 (5) A report under subsection (1) or (4) is not a legislative instrument.

20 **143 Commission to give person opportunity to make submissions**
21 **about their conduct**

22 The Commission must not give the Minister a report under
23 section 142 that states or suggests that a person has engaged in
24 Commonwealth conduct that is:

- 25 (a) unlawful conduct; or
26 (b) contrary to human rights;

27 unless the Commission has given the person a copy of a draft of
28 the report, and allowed the person a reasonable opportunity to
29 make submissions to the Commission in relation to the conduct.
30

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-1 Establishment, functions, powers and liabilities of the Commission

Division 1 Guide to this Part

Section 144

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

Chapter 6—Australian Human Rights Commission

Part 6-1—Establishment, functions, powers and liabilities of the Commission

Division 1—Guide to this Part

144 Guide to this Part

This Part deals with the establishment, functions, powers and liabilities of the Commission.

Division 2 deals with the establishment of the Commission (by continuing the existence of the Australian Human Rights Commission).

Division 3 deals with the functions of the Commission.

Division 4 deals with the powers of the Commission.

Division 5 deals with the liabilities of the Commission.

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**
Establishment, functions, powers and liabilities of the Commission **Part 6-1**
Establishment **Division 2**

Section 145

1 **Division 2—Establishment**

2 **145 Australian Human Rights Commission**

3 (1) This section applies to the body corporate that was established by
4 section 7 of the *Australian Human Rights Commission Act 1986* (as
5 in force before the commencement of this Part).

6 (2) That body corporate continues in existence by force of this section
7 as a body corporate, under and subject to the provisions of this Act,
8 under the name Australian Human Rights Commission.

9 Note: See also section 25B of the *Acts Interpretation Act 1901*.
10

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-1 Establishment, functions, powers and liabilities of the Commission

Division 3 Functions

Section 146

1 **Division 3—Functions**

2 **Subdivision A—General provisions**

3 **146 Functions of the Commission**

4 The Commission has the following functions:

- 5 (a) the functions conferred on the Commission by Chapter 3 in
6 relation to measures to assist compliance;
- 7 (b) the functions conferred on the Commission by Chapter 4 in
8 relation to complaints;
- 9 (c) the functions conferred on the Commission by Chapter 5 in
10 relation to inquiries;
- 11 (d) to promote an understanding of, and compliance with, this
12 Act;
- 13 (e) to undertake education, and research, for the purpose of
14 promoting human rights;
- 15 (f) to intervene in:
- 16 (i) any proceedings before a court under this Act (including
17 an appeal from a decision made in such proceedings); or
- 18 (ii) any other proceedings before a court that involve human
19 rights issues (including an appeal that involves such
20 issues);
- 21 if:
- 22 (iii) the Commission considers it appropriate to intervene;
23 and
- 24 (iv) the intervention is with the leave of the court;
- 25 (g) to report to the Minister, in accordance with section 147, on
26 the enjoyment and exercise of human rights by Aboriginal
27 persons and Torres Strait Islanders;
- 28 (h) to report to the Minister, in accordance with section 148, on
29 the enjoyment and exercise of human rights by children in
30 Australia;
- 31 (i) the other functions conferred on the Commission by or under:
- 32 (i) other provisions of this Act; or
- 33 (ii) any other Commonwealth law;
- 34 (j) any other functions prescribed by the regulations;

EXPOSURE-DRAFT

1 (k) to do anything incidental or conducive to the performance of
2 any of the preceding functions.

3 Note 1: The functions of the Commission referred to in paragraph (b) are to be
4 performed, on behalf of the Commission, by the President: see
5 section 152.

6 Note 2: The functions of the Commission referred to in paragraph (g) are to be
7 performed, on behalf of the Commission, by the Aboriginal and
8 Torres Strait Islander Social Justice Commissioner: see section 153.

9 Note 3: The functions of the Commission referred to in paragraph (h) are to be
10 performed, on behalf of the Commission, by the National Children's
11 Commissioner: see section 154.

12 **147 The Commission's functions: reports relating to enjoyment and** 13 **exercise of human rights by Aboriginal persons and** 14 **Torres Strait Islanders**

15 (1) The Commission may at any time give the Minister a written report
16 on the enjoyment and exercise of human rights by Aboriginal
17 persons and Torres Strait Islanders (either generally or in relation
18 to a particular matter or matters).

19 Note 1: The functions of the Commission under this section are to be
20 performed, on behalf of the Commission, by the Aboriginal and
21 Torres Strait Islander Social Justice Commissioner: see section 153.

22 Note 2: A report given to the Minister under this subsection or subsection (2)
23 must be tabled in Parliament: see section 192.

24 (2) The Minister may at any time, in writing, request the Commission
25 to give the Minister a written report on the enjoyment and exercise
26 of human rights by Aboriginal persons and Torres Strait Islanders
27 (either generally or in relation to a particular matter or matters).
28 The Commission must comply with the request.

29 (3) A report under subsection (1) or (2) may include recommendations
30 about actions that the Commission considers should be taken to
31 ensure the enjoyment and exercise of human rights by Aboriginal
32 persons and Torres Strait Islanders.

33 (4) For the purpose of reporting under subsection (1) or (2), the
34 Commission may consult any of the following:

35 (a) organisations established by Aboriginal or Torres Strait
36 Islander communities;

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-1 Establishment, functions, powers and liabilities of the Commission

Division 3 Functions

Section 148

- 1 (b) organisations of indigenous peoples in other countries;
2 (c) Departments and authorities of the Commonwealth, and of
3 the States and Territories;
4 (d) non-governmental organisations;
5 (e) international organisations and agencies;
6 (f) any other organisations, agencies or persons that the
7 Commission considers appropriate.
- 8 (5) The Minister must cause a copy of each report given to the
9 Minister under this section to be sent to the Attorney-General of
10 each State and Territory within 7 days after a copy of the report is
11 first laid before a House of the Parliament under section 192.
- 12 (6) None of the following is a legislative instrument:
13 (a) a report under subsection (1) or (2);
14 (b) a request under subsection (2).

148 The Commission's functions: reports relating to the enjoyment and exercise of human rights by children in Australia

- 15 (1) The Commission may at any time give the Minister a written report
16 on the enjoyment and exercise of human rights by children in
17 Australia (either generally or in relation to a particular matter or
18 matters).
19
20
- 21 Note 1: The functions of the Commission under this section are to be
22 performed, on behalf of the Commission, by the National Children's
23 Commissioner: see section 154.
- 24 Note 2: In performing functions under this section, the National Children's
25 Commissioner may give particular attention to children who are at risk
26 or vulnerable.
- 27 Note 3: A report given to the Minister under this subsection or subsection (2)
28 must be tabled in Parliament: see section 192.
- 29 (2) The Minister may at any time, in writing, request the Commission
30 to give the Minister a written report on the enjoyment and exercise
31 of human rights by children in Australia (either generally or in
32 relation to a particular matter or matters). The Commission must
33 comply with the request.

EXPOSURE-DRAFT

- 1 (3) A report under subsection (1) or (2) may include recommendations
2 about actions that the Commission considers should be taken to
3 ensure the enjoyment and exercise of human rights by children in
4 Australia.
- 5 (4) For the purpose of reporting under subsection (1) or (2), the
6 Commission may consult any of the following:
7 (a) children;
8 (b) Departments and authorities of the Commonwealth, and of
9 the States and Territories;
10 (c) non-governmental organisations;
11 (d) international organisations and agencies;
12 (e) any other organisations, agencies or persons that the
13 Commission considers appropriate.
- 14 (5) None of the following is a legislative instrument:
15 (a) a report under subsection (1) or (2);
16 (b) a request under subsection (2).

17 **149 The Commission's functions: arrangements with States**

18 *Minister may make arrangements*

- 19 (1) The Minister may make an arrangement, in writing, with a Minister
20 of a State for or in relation to any of the following:
21 (a) the performance of functions of the Commission by the State
22 or a State authority;
23 (b) the performance by the Commission, on behalf of the State or
24 a State authority, of functions relating to human rights;
25 (c) the performance of functions of the Commission on a joint
26 basis by the Commission and by the State or a State
27 authority.
- 28 Note: This subsection applies to any functions of the Commission under this
29 Act, including the following:
30 (a) functions that are to be performed, on behalf of the Commission,
31 by the President: see section 152;
32 (b) functions that are to be performed, on behalf of the Commission,
33 by the Aboriginal and Torres Strait Islander Social Justice
34 Commissioner: see section 153;

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-1 Establishment, functions, powers and liabilities of the Commission

Division 3 Functions

Section 150

1 (c) functions that are to be performed, on behalf of the Commission,
2 by the National Children's Commissioner: see section 154.

3 *Conduct by State or State authority taken to be by the Commission*

4 (2) Conduct engaged in by or in relation to a State, or a State authority,
5 in the performance of functions under an arrangement as
6 mentioned in paragraph (1)(a) or (c) is taken, for the purposes of
7 this Act, to have been engaged in by, or in relation to, the
8 Commission.

9 *Arrangements may be varied or revoked*

10 (3) The Minister may arrange with a Minister of a State for the
11 variation or revocation of an arrangement made under
12 subsection (1).

13 *Commission's functions include functions under arrangements*

14 (4) The Commission's functions include any functions that are to be
15 performed by the Commission pursuant to an arrangement in force
16 under subsection (1). However, the Commission is not under a duty
17 to perform such functions.

18 *Arrangements are legislative instruments*

19 (5) An arrangement under subsection (1) or (3):
20 (a) is a legislative instrument; and
21 (b) is taken to be made by the Minister on the day on which the
22 Minister makes the arrangement with the Minister of the
23 State;
24 but neither section 42 (disallowance) nor Part 6 (sunsetting) of the
25 *Legislative Instruments Act 2003* applies to the arrangement.

26 **150 Reporting to Minister about matters arising in performing** 27 **functions**

28 (1) The Commission may, at any time, give the Minister a written
29 report on any matter arising in the course of the performance of its
30 functions.

EXPOSURE-DRAFT

Section 151

1 Note: Reports given to the Minister under this subsection or subsection (2)
2 must be tabled in Parliament: see section 192.

3 (2) The Minister may at any time, in writing, request the Commission
4 to give the Minister a written report on any matter relating to the
5 Commission's functions. The Commission must comply with the
6 request.

7 (3) This section does not limit, and is not limited by, any other
8 provisions of this Act that require or permit the Commission to
9 give reports to the Minister.

10 (4) None of the following is a legislative instrument:
11 (a) a report under subsection (1) or (2);
12 (b) a request under subsection (2).

13 **151 General matters relating to performance of Commission's** 14 **functions and powers**

15 (1) In performing its functions and exercising its powers, the
16 Commission must have regard to the following:

- 17 (a) the objects of this Act;
18 (b) the indivisibility and universality of human rights;
19 (c) the principle that every person is free and equal in dignity
20 and rights.

21 (2) For the purpose of performing its functions, the Commission may
22 work with and consult any other organisations, agencies or persons
23 that the Commission considers appropriate.

24 **Subdivision B—Commission functions and powers that are to** 25 **be performed by certain Commission members**

26 **152 Commission functions and powers that are to be performed or** 27 **exercised by President**

28 (1) The functions and powers conferred on the Commission by
29 Chapter 4 (complaints) are to be performed or exercised, on behalf
30 of the Commission, by the President.

31 Note: The President may delegate these functions: see section 184.

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-1 Establishment, functions, powers and liabilities of the Commission

Division 3 Functions

Section 153

- 1 (2) Without limiting subsection (1), provisions of this Act, as applying
2 in relation to functions or powers to which subsection (1) applies,
3 have effect as if references to the Commission were references to
4 the President, acting on behalf of the Commission.

153 Commission functions and powers that are to be performed or exercised by Aboriginal and Torres Strait Islander Social Justice Commissioner

- 8 (1) The functions and powers conferred on the Commission by the
9 following provisions are to be performed or exercised, on behalf of
10 the Commission, by the Aboriginal and Torres Strait Islander
11 Social Justice Commissioner:
12 (a) section 147 of this Act (reports relating to enjoyment and
13 exercise of human rights by Aboriginal persons and Torres
14 Strait Islanders);
15 (b) section 209 of the *Native Title Act 1993*.

16 Note: The Aboriginal and Torres Strait Islander Social Justice
17 Commissioner may delegate these functions: see section 185.

- 18 (2) Without limiting subsection (1), provisions of this Act and the
19 *Native Title Act 1993*, as applying in relation to functions or
20 powers to which subsection (1) applies, have effect as if references
21 to the Commission were references to the Aboriginal and Torres
22 Strait Islander Social Justice Commissioner, acting on behalf of the
23 Commission.

154 Commission functions and powers that are to be performed or exercised by National Children's Commissioner

- 26 (1) The functions and powers conferred on the Commission by
27 section 148 of this Act (reports relating to enjoyment and exercise
28 of human rights by children in Australia) are to be performed or
29 exercised, on behalf of the Commission, by the National Children's
30 Commissioner.

31 Note: The National Children's Commissioner may delegate these functions:
32 see section 186.

- 33 (2) Without limiting subsection (1), provisions of this Act, as applying
34 in relation to functions or powers to which subsection (1) applies,
-

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**
Establishment, functions, powers and liabilities of the Commission **Part 6-1**
Functions **Division 3**

Section 154

1 have effect as if references to the Commission were references to
2 the National Children’s Commissioner, acting on behalf of the
3 Commission.
4

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-1 Establishment, functions, powers and liabilities of the Commission

Division 4 Powers

Section 155

1 **Division 4—Powers**

2 **155 The Commission's powers**

3 (1) The Commission has power to do all things necessary or
4 convenient to be done for or in connection with the performance of
5 its functions.

6 (2) The Commission's powers include, but are not limited to, the
7 power to enter into contracts.

8 (3) Any contract entered into by the Commission is to be entered into
9 on behalf of the Commonwealth.

10 (4) Any real or personal property held by the Commission is held for
11 and on behalf of the Commonwealth.

12 (5) Any money received by the Commission is received for and on
13 behalf of the Commonwealth.

14 (6) The Commission cannot hold real or personal property or money
15 on trust.

16 Note: The Commonwealth may hold real or personal property or money on
17 trust.

18 (7) To avoid doubt, a right to sue is taken not to be personal property
19 for the purposes of subsection (4).
20

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**
Establishment, functions, powers and liabilities of the Commission **Part 6-1**
Liabilities **Division 5**

Section 156

1 **Division 5—Liabilities**

2 **156 Commission’s liabilities are Commonwealth liabilities**

3 (1) Any financial liabilities of the Commission are taken to be
4 liabilities of the Commonwealth.

5 (2) A *financial liability* is a liability to pay a person an amount, where
6 the amount, or the method for working out the amount, has been
7 determined.

8 **157 Commission has privileges and immunities of the Crown**

9 The Commission has the privileges and immunities of the Crown.
10

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-2 Constitution and membership

Division 1 Guide to this Part

Section 158

1 **Part 6-2—Constitution and membership**

2 **Division 1—Guide to this Part**

3 **158 Guide to this Part**

4

This Part deals with the constitution and membership of the Commission.

5

6

Division 2 deals with the constitution of the Commission.

7

Division 3 deals with the membership of the Commission.

8

Division 4 deals with the terms and conditions on which Commission members hold office.

9

10

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**

Constitution and membership **Part 6-2**

Constitution **Division 2**

Section 159

1 **Division 2—Constitution**

2 **159 Constitution of the Commission**

3 The Commission:

4 (a) is a body corporate with perpetual succession; and

5 (b) must have a seal; and

6 (c) may acquire, hold and dispose of real and personal property;

7 and

8 (d) may sue and be sued in its corporate name.

9

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-2 Constitution and membership

Division 3 Commission members

Section 160

1 **Division 3—Commission members**

2 **160 Membership of the Commission**

3 The Commission consists of the following members:

- 4 (a) the *President*;
- 5 (b) the *Aboriginal and Torres Strait Islander Social Justice*
- 6 *Commissioner*;
- 7 (c) the *Age Discrimination Commissioner*;
- 8 (d) the *Disability Discrimination Commissioner*;
- 9 (e) the *National Children's Commissioner*;
- 10 (f) the *Race Discrimination Commissioner*;
- 11 (g) the *Sex Discrimination Commissioner*.

12 **161 Arrangements for appointment of State judges etc. as**

13 **Commission members**

- 14 (1) For the purposes of appointing a judge, magistrate or justice of a
- 15 court of a State (other than the Australian Capital Territory or the
- 16 Northern Territory) as a Commission member, the
- 17 Governor-General may enter into any necessary arrangement with
- 18 the Governor of the State.
- 19 (2) For the purposes of appointing a judge, magistrate or justice of a
- 20 court of the Australian Capital Territory or of the Northern
- 21 Territory as a Commission member, the Governor-General may
- 22 enter into any necessary arrangement with the Chief Minister of
- 23 that Territory.
- 24 (3) An arrangement under subsection (1) or (2) may provide, amongst
- 25 other things, for the Commonwealth to reimburse the State or
- 26 Territory with respect to the services of the person to be appointed.

27 **162 Appointment and service not to affect a tenure or rights of**

28 **judicial office holders**

- 29 (1) If a person who holds a judicial office is appointed as a
- 30 Commission member, the appointment does not affect, and is taken
- 31 never to have affected:

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**

Constitution and membership **Part 6-2**

Commission members **Division 3**

Section 163

- 1 (a) the person's tenure of that office; or
2 (b) the person's rights or privileges as the holder of that office.
- 3 (2) If a person who holds a judicial office serves as a Commission
4 member, that service does not affect, and is taken never to have
5 affected:
6 (a) the person's tenure of that office; or
7 (b) the person's rights or privileges as the holder of that office.
- 8 (3) Any service as a Commission member by the holder of a judicial
9 office is taken for all purposes to be, or to have been, service as the
10 holder of that office.
- 11 (4) For the purposes of this section, a person's rights and privileges as
12 the holder of a judicial office are taken to include his or her rank,
13 title, status, precedence, salary and allowances, as the holder of that
14 office.

15 **163 Appointment of Commission members**

- 16 (1) The Commission members are to be appointed by the
17 Governor-General by written instrument.
- 18 (2) An instrument of appointment of a person as a Commission
19 member must state the Commission office to which the person is
20 appointed. The *Commission offices* are the offices listed in
21 paragraphs 160(a) to (g).
- 22 (3) The President must be appointed on a full-time basis. The other
23 Commission members may be appointed on a full-time or a
24 part-time basis.
- 25 (4) A person must not be appointed as a Commission member unless
26 the Minister is satisfied that the person has appropriate
27 qualifications, knowledge or experience.
- 28 (5) A person must not be appointed as the Aboriginal and Torres Strait
29 Islander Social Justice Commissioner unless the Minister is
30 satisfied that the person has significant experience in community
31 life of Aboriginal persons or Torres Strait Islanders. This
32 subsection applies in addition to subsection (4).

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-2 Constitution and membership

Division 3 Commission members

Section 164

1 **164 Period of appointment**

2 A Commission member holds office for the period specified in the
3 instrument of appointment. The period must not exceed 7 years.

4 Note: For reappointment, see section 33AA of the *Acts Interpretation Act*
5 *1901*.

6 **165 Acting members**

7 The Minister may, by written instrument, appoint a person to act as
8 a Commission member:

9 (a) during a vacancy in the office of the member (whether or not
10 an appointment has previously been made to the office); or

11 (b) during any period, or during all periods, when the member:

12 (i) is absent from duty or from Australia; or

13 (ii) is, for any reason, unable to perform the duties of the
14 office.

15 Note: See also sections 20, 33AB and 33A of the *Acts Interpretation Act*
16 *1901*.

17

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**
Constitution and membership **Part 6-2**
Terms and conditions for Commission members **Division 4**

Section 166

1 **Division 4—Terms and conditions for Commission**
2 **members**

3 **166 Remuneration and allowances**

- 4 (1) A Commission member is to be paid the remuneration that is
5 determined by the Remuneration Tribunal. If no determination of
6 that remuneration by the Tribunal is in operation, the member is to
7 be paid the remuneration that is prescribed by the regulations.
- 8 (2) A Commission member is to be paid the allowances that are
9 prescribed by the regulations.
- 10 (3) This section has effect subject to the *Remuneration Tribunal Act*
11 *1973*.
- 12 (4) This section does not apply to a Commission member who holds a
13 judicial office.

14 **167 Leave of absence**

- 15 (1) A full-time Commission member has the recreation leave
16 entitlements that are determined by the Remuneration Tribunal.
- 17 (2) The Minister may grant a full-time Commission member leave of
18 absence, other than recreation leave, on the terms and conditions as
19 to remuneration or otherwise that the Minister determines.
- 20 (3) The Minister may grant leave of absence to a part-time
21 Commission member on the terms and conditions that the Minister
22 determines.

23 **168 Outside employment**

- 24 (1) A full-time Commission member must not engage in paid
25 employment outside the duties of his or her office without the
26 approval of the Minister.
- 27 (2) A part-time Commission member must not engage in any paid
28 employment that, in the Minister's opinion, conflicts or may
29 conflict with the proper performance of the member's duties.

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-2 Constitution and membership

Division 4 Terms and conditions for Commission members

Section 169

1 **169 Disclosure of interests to Minister**

2 A Commission member must give written notice to the Minister of
3 all interests, pecuniary or otherwise, that the member has or
4 acquires and that conflict or could conflict with the proper
5 performance of the member's duties.

6 **170 Disclosure of interests to Commission**

- 7 (1) A Commission member who has an interest, pecuniary or
8 otherwise, in a matter being considered or about to be considered
9 by the Commission must disclose the nature of the interest to a
10 meeting of the Commission.
- 11 (2) The disclosure must be made as soon as possible after the relevant
12 facts have come to the member's knowledge.
- 13 (3) The disclosure must be recorded in the minutes of the meeting of
14 the Commission.
- 15 (4) Unless the Commission otherwise determines, the Commission
16 member:
17 (a) must not be present during any deliberation by the
18 Commission on the matter; and
19 (b) must not take part in any decision of the Commission with
20 respect to the matter.
- 21 (5) For the purposes of making a determination under subsection (4),
22 the Commission member:
23 (a) must not be present during any deliberation of the
24 Commission for the purpose of making the determination;
25 and
26 (b) must not take part in making the determination.
- 27 (6) A determination under subsection (4) must be recorded in the
28 minutes of the meeting of the Commission.

29 **171 Resignation**

- 30 (1) A Commission member may resign his or her appointment by
31 giving the Governor-General a written resignation.

EXPOSURE-DRAFT

- 1 (2) The resignation takes effect on the day it is received by the
2 Governor-General or, if a later day is specified in the resignation,
3 on that later day.

4 **172 Termination of appointment**

- 5 (1) The Governor-General may terminate the appointment of a
6 Commission member:
7 (a) for misbehaviour; or
8 (b) if the member is unable to perform the duties of his or her
9 office because of physical or mental incapacity; or
10 (c) if the member:
11 (i) becomes bankrupt; or
12 (ii) applies to take the benefit of any law for the relief of
13 bankrupt or insolvent debtors; or
14 (iii) compounds with his or her creditors; or
15 (iv) makes an assignment of remuneration for the benefit of
16 his or her creditors; or
17 (d) if the member is absent, except on leave of absence, for 14
18 consecutive days or for 28 days in any 12 months; or
19 (e) if the member engages in paid employment contrary to
20 section 168; or
21 (f) if the member fails, without reasonable excuse, to comply
22 with section 169 or 170 (which deal with disclosure of
23 interests).
- 24 (2) Subsection (1) does not apply to a Commission member who holds
25 a judicial office.
- 26 (3) If a Commission member who holds a judicial office stops holding
27 that office, the Governor-General may terminate the member's
28 appointment.

29 **173 Other terms and conditions**

- 30 (1) A Commission member holds office on the terms and conditions (if
31 any) in relation to matters not covered by this Act that are
32 determined by the Governor-General.

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-2 Constitution and membership

Division 4 Terms and conditions for Commission members

Section 173

- 1 (2) This section does not apply to a Commission member who holds a
2 judicial office.
3

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**

How the Commission operates **Part 6-3**

Guide to this Part **Division 1**

Section 174

1 **Part 6-3—How the Commission operates**

2 **Division 1—Guide to this Part**

3 **174 Guide to this Part**

4
5
6
7
8
9
10
11
12

This Part deals with how the Commission operates. Other significant provisions about how the Commission operates are contained in Subdivision B of Division 3 of Part 6-1 (Commission functions and powers that are to be performed by certain Commission members).

Division 2 deals with the role of the President.

Division 3 deals with meetings of the Commission.

Division 4 deals with delegation.

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-3 How the Commission operates

Division 2 Role of President

Section 175

1 **Division 2—Role of President**

2 **175 Role of the President**

3 The President is the senior member of the Commission and is
4 responsible for managing the administrative affairs of the
5 Commission.
6

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**

How the Commission operates **Part 6-3**

Meetings of the Commission **Division 3**

Section 176

1 **Division 3—Meetings of the Commission**

2 **176 Convening meetings**

- 3 (1) The President may, at any time, convene a meeting of the
4 Commission.
- 5 (2) The President must convene such meetings of the Commission as,
6 in the President's opinion, are necessary for the efficient
7 performance of its functions.
- 8 (3) The President must convene a meeting of the Commission if
9 requested to do so by the Minister.
- 10 (4) The President must convene a meeting of the Commission if
11 requested to do so by a majority of the current Commission
12 members.
- 13 (5) Each Commission member is entitled to receive reasonable notice
14 of the Commission's meetings.

15 **177 Presiding at meetings**

- 16 (1) The President is to preside at all meetings of the Commission at
17 which he or she is present.
- 18 (2) If the President is not present at a meeting of the Commission, the
19 Commission members present are to appoint one of themselves to
20 preside.

21 **178 Quorum**

22 At a meeting of the Commission, a quorum is constituted by a
23 majority of the current Commission members.

24 **179 Voting at meetings**

- 25 (1) At a meeting of the Commission, a question is decided by a
26 majority of the votes of the Commission members present and
27 voting.

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-3 How the Commission operates

Division 3 Meetings of the Commission

Section 180

- 1 (2) The person presiding at a meeting has a deliberative vote, and, in
2 the event of an equality of votes, also has a casting vote.

3 **180 Conduct of meetings**

4 The Commission may, subject to this Division, regulate
5 proceedings at its meetings as it considers appropriate.

6 Note: Section 33B of the *Acts Interpretation Act 1901* provides for
7 participation in meetings by telephone etc.

8 **181 Minutes**

9 The Commission must keep minutes of its meetings.

10 **182 Decisions without meetings**

- 11 (1) The Commission is taken to have made a decision at a meeting if:
12 (a) without meeting, a majority of the Commission members
13 entitled to vote on the proposed decision indicate agreement
14 with the decision; and
15 (b) that agreement is indicated in accordance with the method
16 determined by the Commission under subsection (2); and
17 (c) all the Commission members were informed of the proposed
18 decision, or reasonable efforts were made to inform all the
19 members of the proposed decision.
- 20 (2) Subsection (1) applies only if the Commission:
21 (a) has determined that it may make decisions of that kind
22 without meeting; and
23 (b) has determined the method by which Commission members
24 are to indicate agreement with proposed decisions.
- 25 (3) For the purposes of paragraph (1)(a), a Commission member is not
26 entitled to vote on a proposed decision if the member would not
27 have been entitled to vote on that proposal if the matter had been
28 considered at a meeting of the Commission.
- 29 (4) The Commission must keep a record of decisions made in
30 accordance with this section.
31

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**

How the Commission operates **Part 6-3**

Delegation **Division 4**

Section 183

Division 4—Delegation

183 Delegation of Commission’s functions and powers: general

- (1) This section applies to all of the Commission’s functions and powers, other than the functions and powers to which sections 152, 153 and 154 apply.
- (2) The Commission may, in writing, delegate any of the functions and powers to which this section applies to any of the following:
 - (a) a Commission member;
 - (b) a member of the Commission staff;
 - (c) any other person who the Commission is satisfied is suitably qualified.
- (3) In exercising any powers or performing any functions under a delegation under this section, the delegate must comply with any directions of the Commission.

184 Delegation of Commission’s functions and powers: functions and powers that are to be performed by the President

- (1) This section applies to the functions and powers of the Commission to which section 152 applies.
- (2) Subject to subsection (3), the President may, in writing, delegate any of the functions and powers to which this section applies to any of the following persons:
 - (a) a member of the Commission staff;
 - (b) any other person who the President is satisfied is suitably qualified.
- (3) Functions or powers that relate to a complaint made against the Commission, the President, or another Commission member, can only be delegated to a person referred to in paragraph (2)(b).
- (4) In exercising any powers or performing any functions under a delegation under this section, the delegate must comply with any directions of the President.

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-3 How the Commission operates

Division 4 Delegation

Section 185

1 **185 Delegation of Commission's functions and powers: functions**
2 **and powers that are to be performed by the Aboriginal**
3 **and Torres Strait Islander Social Justice Commissioner**

- 4 (1) This section applies to the functions and powers of the
5 Commission to which section 153 applies.
- 6 (2) The Aboriginal and Torres Strait Islander Social Justice
7 Commissioner may, in writing, delegate any of the functions and
8 powers to which this section applies to any of the following
9 persons:
- 10 (a) another Commission member;
11 (b) a member of the Commission staff;
12 (c) any other person who:
- 13 (i) the Aboriginal and Torres Strait Islander Social Justice
14 Commissioner is satisfied is suitably qualified; and
15 (ii) is approved by the Commission.
- 16 (3) In exercising any powers or performing any functions under a
17 delegation under this section, the delegate must comply with any
18 directions of the Aboriginal and Torres Strait Islander Social
19 Justice Commissioner.

20 **186 Delegation of Commission's functions and powers: functions**
21 **and powers that are to be performed by the National**
22 **Children's Commissioner**

- 23 (1) This section applies to the functions and powers of the
24 Commission to which section 154 applies.
- 25 (2) The National Children's Commissioner may, in writing, delegate
26 any of the functions and powers to which this section applies to
27 any of the following persons:
- 28 (a) another Commission member;
29 (b) a member of the Commission staff;
30 (c) any other person who:
- 31 (i) the National Children's Commissioner is satisfied is
32 suitably qualified; and
33 (ii) is approved by the Commission.

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**

How the Commission operates **Part 6-3**

Delegation **Division 4**

Section 187

- 1 (3) In exercising any powers or performing any functions under a
2 delegation under this section, the delegate must comply with any
3 directions of the National Children's Commissioner.

4 **187 Delegation of President's functions and powers**

- 5 (1) This section applies to the functions and powers of the President
6 (but not including functions and powers to which section 184
7 applies).
- 8 (2) The President may, in writing, delegate any of the functions and
9 powers to which this section applies to any of the following
10 persons:
11 (a) another Commission member;
12 (b) a member of the Commission staff;
13 (c) any other person who the President is satisfied is suitably
14 qualified.
- 15 (3) In exercising any powers or performing any functions under a
16 delegation under this section, the delegate must comply with any
17 directions of the President.
18

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-4 Other matters

Division 1 Guide to this Part

Section 188

1 **Part 6-4—Other matters**

2 **Division 1—Guide to this Part**

3 **188 Guide to this Part**

4

This Part deals with other matters relating to the Commission.

5

Division 2 deals with the Commission's staff.

6

Division 3 deals with the Commission's planning and reporting obligations.

7

8

Division 4 deals with confidentiality.

9

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**

Other matters **Part 6-4**

Staff **Division 2**

Section 189

1 **Division 2—Staff**

2 **189 Staff**

3 (1) The staff of the Commission are to be persons engaged under the
4 *Public Service Act 1999*.

5 (2) For the purposes of the *Public Service Act 1999*:

6 (a) the President and the Commission staff together constitute a
7 Statutory Agency; and

8 (b) the President is the Head of that Statutory Agency.
9

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-4 Other matters

Division 3 Planning and reporting obligations

Section 190

1 **Division 3—Planning and reporting obligations**

2 **190 Corporate plan**

- 3 (1) The Commission must prepare a corporate plan at least once each 3
4 year period and give it to the Minister.
- 5 (2) Each corporate plan must cover a 3 year period.
- 6 (3) Each corporate plan must include details of:
7 (a) the objectives of the Commission; and
8 (b) the strategies and policies that are to be followed by the
9 Commission in order to achieve those objectives.
- 10 (4) The Commission must keep the Minister informed about:
11 (a) changes to a corporate plan; and
12 (b) matters that might significantly affect the achievement of the
13 objectives set out in a corporate plan.
- 14 (5) The Commission must ensure that each corporate plan is published
15 in such manner as the Commission considers appropriate.

16 **191 Annual report**

17 The Commission must, as soon as practicable after the end of each
18 financial year, prepare and give to the Minister a report on its
19 operations during that year.

20 **192 Reports given to Minister are to be tabled in Parliament**

- 21 (1) The Minister must cause a copy of each report given to the
22 Minister by the Commission under this Act to be laid before each
23 House of the Parliament within 15 sitting days of that House after
24 the Minister receives the report.
- 25 (2) Subsection (1) does not apply to a report given to the Minister
26 under subsection 116(2) or 142(4).
27

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**

Other matters **Part 6-4**

Confidentiality **Division 4**

Section 193

1 **Division 4—Confidentiality**

2 **193 Prohibition of unauthorised disclosure etc. of protected**
3 **information and documents**

4 *Offence*

5 (1) A person commits an offence if:

6 (a) the person is, or was at any time, a Commission official; and

7 (b) the person:

8 (i) makes a record of information, or all or part of a
9 document; or

10 (ii) directly or indirectly discloses information, or all or part
11 of a document, to another person (other than the person
12 to whom the information or document relates); and

13 (c) the information is protected information, or the document is a
14 protected document; and

15 (d) the making of the record, or the disclosure, is not authorised
16 by section 194.

17 **Penalty:** Imprisonment for 2 years.

18 *Protected information*

19 (2) Information is **protected information** if the information:

20 (a) is obtained by a Commission official in the course of
21 performing duties or functions, or exercising powers, as a
22 Commission official; and

23 (b) relates to the affairs of a person.

24 *Protected document*

25 (3) A document is a **protected document** if the document:

26 (a) is obtained or produced by a Commission official in the
27 course of performing duties or functions, or exercising
28 powers, as a Commission official; and

29 (b) relates to the affairs of a person.

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-4 Other matters

Division 4 Confidentiality

Section 194

1 **194 Authorised records and disclosures**

2 A person may make a record of protected information or of all or
3 part of a protected document, or disclose protected information or
4 all or part of a protected document, if:

5 (a) the record or disclosure:

6 (i) is necessary to comply with, or in accordance with,
7 another provision of this Act or another Commonwealth
8 law; or

9 (ii) is made in the course of performing a function, or
10 exercising a power, as a Commission official; or

11 (iii) is made for the purposes of enabling another person to
12 perform functions, or exercise powers, as a Commission
13 official; or

14 (b) the disclosure is of information that relates to the affairs of a
15 person, and is made with the consent of the person.

16 **195 Disclosure to courts or tribunals**

17 Except when it is necessary to do so for the purposes of giving
18 effect to this Act, a person who is, or was at any time, a
19 Commission official must not be required to disclose protected
20 information to a court or tribunal, or to produce all or part of a
21 protected document to a court or tribunal.

22 **196 Commission may give directions to preserve anonymity**

23 *Directions to preserve anonymity of certain persons*

24 (1) The Commission may give a direction to a person prohibiting or
25 restricting the disclosure of information that might enable another
26 person (the *second person*) to be identified if:

27 (a) this subsection applies to the second person (see
28 subsection (2)); and

EXPOSURE-DRAFT

1 (b) the Commission considers that the preservation of the
2 anonymity of the second person is necessary to protect the
3 security of employment, the privacy, or any human right, of
4 the second person.

5 (2) Subsection (1) applies to the second person if:

6 (a) the second person, an associate of the second person or a
7 person acting on behalf of the second person has made a
8 complaint; or

9 (b) the second person, an associate of the second person or a
10 person acting on behalf of the second person:

11 (i) has provided, or proposes to provide, information or
12 evidence (whether by answering questions or
13 otherwise); or

14 (ii) has produced or proposes to produce a document; or

15 (iii) has made or proposes to make a submission;
16 to the Commission or a Commission official.

17 *Offence of contravention of direction*

18 (3) A person commits an offence of strict liability if:

19 (a) the Commission gives a direction to the person under
20 subsection (1); and

21 (b) the person refuses or fails to comply with the direction.

22 Penalty: 10 penalty units.

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

24 *Directions are not legislative instruments*

25 (4) If a direction under subsection (1) is given in writing, the direction
26 is not a legislative instrument.

27 **197 Commission may give directions to restrict publication**

28 *Directions to restrict publication*

29 (1) The Commission may give a direction to a person that any of the
30 following (or content of any of the following):

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-4 Other matters

Division 4 Confidentiality

Section 197

- 1 (a) information or evidence provided (whether by answering
2 questions or otherwise) to the Commission or a Commission
3 official;
- 4 (b) a document produced to the Commission or a Commission
5 official;
- 6 (c) a submission made to the Commission or a Commission
7 official;
- 8 must not be published, or must not be published except in such
9 manner, and to such persons, as the Commission specifies in the
10 direction.
- 11 (2) A direction under subsection (1) does not prevent a person from
12 publishing something of which the person has knowledge
13 otherwise than because of the provision of information, the
14 production of a document or the making of a submission as
15 mentioned in subsection (1).
- 16 Note: In a prosecution for an offence based on subsection (5), a defendant
17 bears an evidential burden in relation to the matter in this subsection.
18 See subsection 13.3(3) of the *Criminal Code*.
- 19 (3) In deciding whether to give a direction under subsection (1), the
20 Commission must have regard to the need to prevent such of the
21 following as are relevant in the circumstances:
- 22 (a) prejudice to the security, defence or international relations of
23 Australia;
- 24 (b) prejudice to relations between the Commonwealth
25 Government and the Government of a State or between the
26 Government of a State and the Government of another State;
- 27 (c) the disclosure of deliberations or decisions of the Cabinet, or
28 of a Committee of the Cabinet, of the Commonwealth or of a
29 State;
- 30 (d) the disclosure of:
- 31 (i) deliberations or advice of the Federal Executive
32 Council, or the Executive Council of a State; or
- 33 (ii) deliberations or decisions of the Australian Capital
34 Territory Executive or a committee of that Executive;
- 35 (e) prejudice to the proper administration of justice;
- 36 (f) the endangering of the life or physical safety of any person;

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**

Other matters **Part 6-4**

Confidentiality **Division 4**

Section 197

- 1 (g) the disclosure of information the disclosure of which is
2 prohibited (absolutely or subject to qualifications) by or
3 under a law;
4 (h) the unreasonable disclosure of the personal affairs of any
5 person;
6 (i) the unreasonable disclosure of confidential commercial
7 information;
8 (j) the disclosure of material that is protected against disclosure
9 by legal professional privilege or any other duty of
10 confidence.
- 11 (4) In having regard to the matters mentioned in subsection (3), the
12 Commission must try to achieve an appropriate balance between
13 the need to have regard to those matters and the desirability of
14 ensuring that interested persons are sufficiently informed of the
15 outcomes of complaints made to, and inquiries conducted by, the
16 Commission and of other activities of the Commission.

Offence of contravention of direction

- 17
- 18 (5) A person commits an offence of strict liability if:
19 (a) the Commission gives a direction to the person under
20 subsection (1); and
21 (b) the person refuses or fails to comply with the direction.

22 Penalty: 10 penalty units.

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

Directions are not legislative instruments

- 24
- 25 (6) If a direction under subsection (1) is given in writing, the direction
26 is not a legislative instrument.

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-4 Other matters

Division 4 Confidentiality

Section 198

1 **198 Attorney-General's certificates restricting requirements for**
2 **information or documents**

3 *Certificates that certain information or documents should not be*
4 *required to be provided or produced*

- 5 (1) The Attorney-General may give the Commission a certificate
6 certifying that the giving of information relating to a specified
7 matter, the production of a specified document, or the answering of
8 specified questions, would be contrary to the public interest:
- 9 (a) because it would prejudice the security, defence or
10 international relations of Australia; or
 - 11 (b) because it would prejudice relations between the
12 Commonwealth Government and the Government of a State;
13 or
 - 14 (c) because it would involve the disclosure of deliberations or
15 decisions of the Cabinet, or of a Committee of the Cabinet, of
16 the Commonwealth; or
 - 17 (d) because it would involve the disclosure of deliberations or
18 advice of the Federal Executive Council; or
 - 19 (e) because it would prejudice the proper administration of
20 justice; or
 - 21 (f) because it would endanger the life or physical safety of any
22 person.
- 23 (2) If the Attorney-General gives the Commission a certificate under
24 subsection (1):
- 25 (a) a person cannot be required under section 107 or 140 to
26 provide information about the matter, or to produce the
27 document or answer the questions; and
 - 28 (b) any requirement purportedly made under section 107 or 140
29 has effect subject to paragraph (a).

30 Note: In a prosecution for an offence based on section 201, a defendant
31 bears an evidential burden in relation to the matters in this subsection.
32 See subsection 13.3(3) of the *Criminal Code*.

EXPOSURE-DRAFT

Australian Human Rights Commission **Chapter 6**

Other matters **Part 6-4**

Confidentiality **Division 4**

Section 199

1 *Certificates that existence or non-existence of certain information*
2 *or documents should not be required to be provided or produced*

3 (3) The Attorney-General may give the Commission a certificate
4 certifying that giving information or answering questions as to the
5 existence or non-existence of information relating to a specified
6 matter, or as to the existence or non-existence of a document that a
7 person has been required to produce under section 107 or 140,
8 would be contrary to the public interest:

9 (a) because it would prejudice the security, defence or
10 international relations of Australia; or

11 (b) because it would prejudice the proper performance of the
12 functions of the Australian Crime Commission.

13 (4) If the Attorney-General gives the Commission a certificate under
14 subsection (3):

15 (a) a person cannot be required under section 107 or 140:

16 (i) to provide information or answer questions as to the
17 existence or non-existence of information relating to the
18 matter; or

19 (ii) to provide information or answer questions as to the
20 existence or non-existence of the document; and

21 (b) any requirement purportedly made under section 107 or 140
22 has effect subject to paragraph (a).

23 Note: In a prosecution for an offence based on section 201, a defendant
24 bears an evidential burden in relation to the matters in this subsection.
25 See subsection 13.3(3) of the *Criminal Code*.

26 *Certificates are not legislative instruments*

27 (5) A certificate given under subsection (1) or (3) is not a legislative
28 instrument.

29 **199 Information or documents originating from an intelligence** 30 **agency**

31 If:

32 (a) a person is required under section 107 or 140 to provide
33 information, to produce a document or to answer questions;
34 and

EXPOSURE-DRAFT

Chapter 6 Australian Human Rights Commission

Part 6-4 Other matters

Division 4 Confidentiality

Section 199

1
2
3
4
5
6
7
8
9
10
11

(b) either:

(i) the information or document originated with, or has been received from, an intelligence agency; or

(ii) answering the questions might reveal information about the operations of an intelligence agency, or might reveal (or reveal the contents of or other circumstances relating to) information or a document that originated with, or has been received from, an intelligence agency;

the person must immediately notify the intelligence agency of the making of the requirement.

EXPOSURE-DRAFT

Miscellaneous **Chapter 7**
Miscellaneous **Part 7-1**
Guide to this Part **Division 1**

Section 200

1 **Chapter 7—Miscellaneous**

2 **Part 7-1—Miscellaneous**

3 **Division 1—Guide to this Part**

4 **200 Guide to this Part**

5 This Part deals with miscellaneous matters.

6 Division 2 deals with offences related to the administration of this
7 Act.

8 Division 3 deals with other miscellaneous matters.

9

EXPOSURE-DRAFT

Chapter 7 Miscellaneous

Part 7-1 Miscellaneous

Division 2 Offences related to the administration of the Act

Section 201

1 **Division 2—Offences related to the administration of the**
2 **Act**

3 **201 Failure to comply with notice requiring the provision of**
4 **information etc.**

- 5 (1) A person commits an offence of strict liability if:
6 (a) the person has been given:
7 (i) a notice under section 107 requiring the person to
8 provide information or produce a document; or
9 (ii) a notice under section 140 requiring the person to
10 provide information, produce a document or attend and
11 answer questions; and
12 (b) the person refuses or fails comply with the requirement.

13 Penalty: 10 penalty units.

14 Note 1: A notice under section 107 or 140 has effect subject to any certificate
15 given by the Attorney-General to the Commission under section 198.

16 Note 2: For strict liability, see section 6.1 of the *Criminal Code*.

- 17 (2) Subsection (1) does not apply if providing the information,
18 producing the document or answering the question might tend to
19 incriminate the person or expose the person to a penalty.

20 Note: A defendant bears an evidential burden in relation to the matter in
21 subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- 22 (3) If a court hearing proceedings for an offence based on
23 subsection (1) is satisfied that:
24 (a) the Attorney-General has been asked to give the Commission
25 a certificate under section 198, but has not yet decided
26 whether to do so; and
27 (b) if a certificate were given to the Commission pursuant to the
28 request, the person could not be required to provide the
29 information, produce the document or answer the questions;
30 the court may stay the proceedings until the Attorney-General has
31 decided whether to give a certificate.
32 (4) Subsection (3) does not limit any other power of the court to order
33 a stay of the proceedings.
-

EXPOSURE-DRAFT

Miscellaneous **Chapter 7**

Miscellaneous **Part 7-1**

Offences related to the administration of the Act **Division 2**

Section 202

1 **202 Failure to comply with notice requiring attendance at**
2 **conference**

3 A person commits an offence of strict liability if:

- 4 (a) the person has been given a notice under section 109
5 requiring the person to attend a conference; and
6 (b) the person refuses or fails comply with the requirement.

7 Penalty: 10 penalty units.

8 Note: For strict liability, see section 6.1 of the *Criminal Code*.
9

EXPOSURE-DRAFT

Chapter 7 Miscellaneous

Part 7-1 Miscellaneous

Division 3 Other miscellaneous provisions

Section 203

1 **Division 3—Other miscellaneous provisions**

2 **203 Compensation for acquisition of property**

3 (1) If the operation of this Act would result in an acquisition of
4 property from a person otherwise than on just terms, the
5 Commonwealth is liable to pay a reasonable amount of
6 compensation to the person.

7 (2) If the Commonwealth and the person do not agree on the amount
8 of the compensation, the person may institute proceedings in a
9 court of competent jurisdiction for the recovery from the
10 Commonwealth of such reasonable amount of compensation as the
11 court determines.

12 **204 Protection of Commission etc. from civil liability**

13 Neither the Commission, nor a Commission official, is liable to
14 civil proceedings for loss, damage or injury of any kind suffered by
15 another person for or in relation to conduct engaged in in good
16 faith in the performance or exercise (or purported performance, or
17 exercise) of duties, functions or powers as the Commission or a
18 Commission official.

19 **205 Protection of persons making complaints etc. from civil liability**

20 A person who, in good faith:

21 (a) makes a complaint to the Commission; or

22 (b) brings proceedings in a court under this Act; or

23 (c) produces a document, provides information, makes a
24 submission or gives evidence to the Commission or a
25 Commission official, or to a court in which proceedings
26 under this Act have been brought; or

27 (d) attends or participates in a conference held under section 109;

28 is not liable to civil proceedings for loss, damage or injury of any
29 kind suffered by another person merely because of that conduct.

EXPOSURE-DRAFT

Miscellaneous **Chapter 7**

Miscellaneous **Part 7-1**

Other miscellaneous provisions **Division 3**

Section 206

1 **206 No right of action except as expressly provided**

- 2 Except as expressly provided by this Act, this Act does not confer
3 on a person a right of action in relation to conduct that:
4 (a) is unlawful conduct; or
5 (b) is an offence against a provision of this Act.

6 **207 Commission may charge fees for certain matters**

- 7 (1) Subject to subsections (2) and (3), if the Commission receives an
8 application under section 64, 76, 80 or 84, the Commission may
9 charge the person or body that made the application a fee for
10 dealing with the application.
- 11 (2) The regulations may prescribe the rate of any fee that may be
12 charged under subsection (1), or may provide for how such a fee is
13 to be calculated.
- 14 Note: If there are no regulations that apply to a fee, the amount of the fee is
15 as determined by the Commission (subject to subsection (3)).
- 16 (3) A fee must not amount to taxation.

17 **208 Regulations**

- 18 The Governor-General may make regulations prescribing matters:
19 (a) required or permitted by this Act to be prescribed; or
20 (b) necessary or convenient to be prescribed for carrying out or
21 giving effect to this Act.



Australian Government
Attorney-General's Department