

2002

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

DRAFT-IN-CONFIDENCE

This draft is supplied in confidence and should be given appropriate protection.

Sexuality and Gender Identity Discrimination Bill 2002

No. , 2002

(Senator Greig)

**A Bill for an Act to prohibit discrimination on the
ground of sexuality, transgender, or intersex, and
for related purposes**

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	1
3 Object	2
4 Application of Act	2
5 Definitions	4
6 What is discrimination on the ground of sexuality, transgender, or intersex.....	10
7 Operation of State and Territory laws.....	12
8 Act does not prevent action to stop unlawful behaviour.....	13
9 Extent to which Act binds the Crown.....	13
Part 2C Prohibition of discrimination	14
Division 1C Discrimination in work	14
10 Discrimination in employment or in superannuation.....	14
11 Discrimination against commission agents.....	15
12 Discrimination against contract workers	16
13 Partnerships	16
14 Qualifying bodies	17
15 Registered organisations under the Industrial Relations Act	17
16 Employment agencies.....	18
17 Rights etc. of same sex couples under laws of the Commonwealth	18
Division 2C Discrimination in other areas	20
18 Education.....	20
19 Goods, services and facilities	20
20 Accommodation	20
21 Land.....	21
22 Clubs and incorporated associations.....	22
23 Sport	22
24 Administration of Commonwealth laws and programs.....	23
25 Receivers of Commonwealth funding not to discriminate.....	23
26 Application forms etc.	23
27 Official documents etc.....	24
Division 3C Inciting hatred etc. on ground of sexuality, transgender or intersex identity	25
28 Inciting hatred etc. on ground of sexuality, transgender or intersex identity	25

Division 4	Special measures	26
29	Special measures	26
Division 5	Exemptions	27
30	Religious bodies	27
31	Acts done under statutory authority	27
32	Superannuation and insurance	27
33	Commission may grant exemptions.....	28
34	Review by Administrative Appeals Tribunal	29
35	Notice of decisions to be published	30
36	Effect of exemptions.....	30
Part 3	Inquiries and Civil Proceedings	31
Division 1	Preliminary	31
37	Part applies to victimisation offences	31
38	Functions of Human Rights and Equal Opportunity Commission.....	31
39	Functions of Commissioner.....	32
40	Complaints	32
41	Referral of discriminatory awards to the Australian Industrial Relations Commission.....	33
42	President may review a decision of the Commissioner not to refer an award.....	35
43	Referral of discriminatory determinations to the Remuneration Tribunal.....	35
44	President may review a decision of the Commissioner not to refer a determination to the Remuneration Tribunal.....	37
45	Commissioner deemed to be a complainant	37
Division 2	Inquiries by Commissioner	39
46	Inquiries by Commissioner.....	39
47	President may review a decision of the Commissioner not to hold an inquiry or to discontinue an inquiry	41
48	Review by PresidentC interim determination.....	41
49	Application for interim determination	42
50	Power to obtain information and documents	42
51	Directions to people to attend compulsory conference	43
52	Compulsory conference.....	44
53	Reference of matters to the Commission	44
Division 3	Inquiries by Human Rights and Equal Opportunity Commission	46
54	Minister may appoint people to participate in inquiries.....	46
55	Reference of matter to the Commission by the Minister	47

56	Inquiries into complaints	47
57	Exercise of inquiry powers by Commission	47
58	Single inquiry in relation to several complaints.....	48
59	Joinder of parties by the Commission.....	48
60	Notice of inquiry and rights of parties at inquiry.....	49
61	Parties to an inquiry.....	49
62	Right of appearance and to representation.....	49
63	Inquiries may be held in private	50
64	Commission may prohibit publication of evidence etc.....	50
65	Counsel assisting the Commission	50
66	Conditions for making a representative complaint	50
67	Commission may decide that a complaint is not to continue as a representative complaint.....	51
68	Additional rules applying to the determination of representative complaints	52
69	Amendment of representative complaints	52
70	Class member for representative complaint not entitled to lodge individual complaint	53
71	Resolution of complaint by conciliation	53
72	Evidence and findings in other proceedings	53
73	Powers of Commission to take evidence	54
74	Fees for witnesses.....	54
75	Retention and copying of documents.....	54
76	Application of rules of evidence etc.	55
77	Consideration of exceptions and exemptions	55
78	Commission may dismiss frivolous etc. complaints.....	55
79	Making of interim determination.....	55
80	Determination or other decision of the Commission	56
81	Determination must identify the class members who are to be affected by the determination.....	57
82	Assistance in proceedings before Commission.....	58
83	Proceedings in the Federal Court to enforce a determination	58
84	Assistance in proceedings before the Federal Court.....	59

**Division 4C Review and enforcement of determinations
involving Commonwealth agencies**

		60
85	Application of Division	60
86	Obligations of respondent agency.....	60
87	Obligations of principal executive of agency	60
88	Damages	61
89	Review of determinations regarding damages	61

90	Enforcement of determination against Commonwealth agency.....	62
Part 4C Offences		64
91	Unlawful act not offence unless expressly so provided	64
92	Advertisements	64
93	Failure to attend conference.....	64
94	Failure to provide information etc.	65
95	Offences in relation to Commission	65
96	Self-incrimination.....	66
97	False or misleading information	66
98	Victimisation	66
99	Offence to vilify on the ground of sexuality, transgender, or intersex identity	67
100	Obstruction etc.	68
Part 5C Sexuality Discrimination Commissioner		69
101	Sex Discrimination Commissioner	69
Part 7C Miscellaneous		70
102	This Act does not make unlawful acts lawful	70
103	Delegation	70
104	Liability of people involved in unlawful acts	70
105	Vicarious liability etc.....	70
106	Acts done for bodies corporate	71
107	Commonwealth taken to be employer	71
108	Awards inconsistent with this Act not to be made.....	71
109	Unlawful act not basis of civil action unless expressly so provided.....	71
110	Protection from civil actions.....	72
111	Non-disclosure of private information.....	72
112	Information stored otherwise than in written form	74
113	Commissioner to provide information	74
114	Amendments of the Human Rights and Equal Opportunity Commission Act 1986	74
115	Regulations.....	74
Schedule 1—Amendments of the Human Rights and Equal Opportunity Commission Act 1986		76

1
2
3
4
5

DRAFT-IN-CONFIDENCE
This draft is supplied in confidence and should be given appropriate protection

6
7
8

9 **A Bill for an Act to prohibit discrimination on the**
10 **ground of sexuality, transgender, or intersex, and**
11 **for related purposes**

12 The Parliament of Australia enacts:

13 **Part 1—Preliminary**

14 **1 Short title**

15 This Act may be cited as the *Sexuality and Gender Identity*
16 *Discrimination Act 2002*.

17 **2 Commencement**

18 (1) Each provision of this Act specified in column 1 of the table
19 commences, or is taken to have commenced, on the day or at the
20 time specified in column 2 of the table.
21

Part 1 Preliminary

Section 3

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 on which this Act receives the Royal Assent	
2.		
3.		
4.		
5.		
6.		
7.		
8.		

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table is for additional information that is not part
5 of this Act. This information may be included in any published
6 version of this Act.

7 **3 Object**

8 The purpose of this Act is to eliminate, as far as possible,
9 discrimination against people irrespective of gender or sexuality.

10 **4 Application of Act**

11 (1) This Act applies throughout Australia and the external territories to
12 the extent that this Act:

13 (a) gives effect to:

14 (i) the International Covenant on Civil and Political Rights;
15 or

16 (ii) the International Covenant on Economic, Social and
17 Cultural Rights; or

Section 4

- 1 (iii) the Convention Concerning Discrimination in Respect
2 of Employment and Occupation, 1958; or
3 (iv) a prescribed treaty or international agreement; or
4 (b) relates to matters external to Australia; or
5 (c) relates to matters of international concern.
- 6 (2) This Act also has effect as stated in this section.
- 7 (3) This Act applies to things done in each Territory.
- 8 (4) This Act applies to things done by or for the Commonwealth or a
9 public authority of the Commonwealth.
- 10 (5) This Act applies to:
11 (a) Commonwealth employees in connection with their
12 employment as Commonwealth employees; and
13 (b) people seeking to become Commonwealth employees.
- 14 (6) This Act applies to things done by an authority or body in the
15 exercise of a power under a Commonwealth law to confer, renew,
16 extend, revoke or withdraw an authorisation or qualification.
- 17 (7) This Act applies to things done by or for:
18 (a) the Commonwealth or the Administration of a Territory; or
19 (b) a body or authority established for a public purpose by a law
20 of the Commonwealth or a law of a Territory;
21 in the exercise of a power conferred by a law of the
22 Commonwealth or a law of a Territory.
- 23 (8) This Act applies to things done by a person in connection with
24 exercising a power conferred by a law of the Commonwealth or a
25 law of a Territory.
- 26 (9) This Act applies to things done by:
27 (a) a person who is a Commonwealth employee in connection
28 with the person's duties as a Commonwealth employee; or
29 (b) a person who is a member of the staff of an educational
30 institution established by a law of the Commonwealth or a
31 law of a Territory in connection with the person's duties as a
32 member of the staff of the institution.
-

Section 5

- 1 (10) This Act applies to:
2 (a) things done by a foreign corporation; or
3 (b) things done by a trading or financial corporation formed
4 within the limits of the Commonwealth for the purpose of its
5 trading or financial activities.
- 6 (11) Without limiting paragraph (10)(b), this Act applies to things done
7 by a corporation referred to in that paragraph in the course of its
8 trading activities or its financial activities, as the case may be.
- 9 (12) This Act applies to things done in the course of the carrying on of
10 the business of:
11 (a) banking, other than State banking not extending beyond the
12 limits of the State concerned; or
13 (b) insurance, other than State insurance not extending beyond
14 the limits of the State concerned.
- 15 (13) This Act applies to things done in the course of trade or commerce:
16 (a) between Australia and a place outside Australia; or
17 (b) among the States; or
18 (c) between a State and a Territory; or
19 (d) between 2 Territories.
- 20 (14) This Act applies to things done within Australia involving people
21 or things, or matters arising, outside Australia.

22 **5 Definitions**

23 In this Act:

24 **accommodation** includes residential and business accommodation.

25 **administrative office** means:

- 26 (a) an office established by, or an appointment made under, a
27 law of the Commonwealth; or
28 (b) an office established by, or an appointment made under, a
29 law of a Territory; or

- 1 (c) an appointment made by the Governor-General or a Minister
2 otherwise than under a law of the Commonwealth or of a
3 Territory; or
4 (d) an appointment as a director of an incorporated company that
5 is a public authority of the Commonwealth;
6 but does not include:
7 (e) an office of member of the Assembly, member of the
8 Executive, or Minister within the meaning of the *Australian
9 Capital Territory (Self-Government) Act 1988*; or
10 (f) an office of member of the Legislative Assembly, member of
11 the Council or Minister of the Territory, within the meaning
12 of the *Northern Territory (Self-Government) Act 1978*; or
13 (g) an office of member of the Legislative Assembly within the
14 meaning of the *Norfolk Island Act 1979*; or
15 (h) an office or appointment in the Australian Public Service.

16 **androgynous** means someone who identifies as not exclusively male
17 or female who is not intersexed.

18 **associate** of a person means:

- 19 (a) another person with whom the person associates, whether
20 socially, in business or otherwise; or
21 (b) another person who is a partner of, or who is wholly or
22 mainly dependent on a partner, or on a member of the
23 household of, the person.

24 **class member**, in relation to a representative complaint, means any
25 of the people on whose behalf the complaint was lodged, but does
26 not include a person who has withdrawn under section 0.

27 **club** means an association (whether incorporated or
28 unincorporated) of at least 30 people associated together for social,
29 literary, cultural, political, sporting, athletic or other lawful
30 purposes that:

- 31 (a) provides and maintains its facilities, in whole or in part, from
32 the funds of the association; and
33 (b) sells or supplies liquor for consumption on its premises.

Section 5

1 **Commission** means the Human Rights and Equal Opportunity
2 Commission established by the *Human Rights and Equal*
3 *Opportunity Commission Act 1986*.

4 **commission agent** means a person who does work for another
5 person as the agent of the other person and who is remunerated,
6 wholly or partly, by commission.

7 **Commissioner** means the Sexuality Discrimination Commissioner
8 appointed under section 0.

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

11 **Commonwealth employee** means a person who:

- 12 (a) holds an office or appointment in the Australian Public
13 Service or is employed in a temporary capacity in a
14 Department; or
15 (b) holds an administrative office; or
16 (c) is employed by a public authority of the Commonwealth; or
17 (d) holds an office or appointment in the Commonwealth
18 Teaching Service or is employed as a temporary employee
19 under the *Commonwealth Teaching Service Act 1972*; or
20 (e) is employed under the Australian Security Intelligence
21 Organization Act 1979, the Commonwealth Electoral Act
22 1918, the Supply and Development Act 1939 or the Naval
23 Defence Act 1910; or
24 (f) is a member of the Defence Force.

25 **Commonwealth law** means:

- 26 (a) an Act, or an instrument made under an Act; or
27 (b) an Act or Ordinance of a Territory, or an instrument made
28 under an Act or Ordinance of a Territory; or
29 (c) an order or award made under a law referred to in
30 paragraph (a) or (b).

31 **Commonwealth program** means a program conducted by or for the
32 Commonwealth government.

1 **contract worker** means a person who does work for another person
2 under a contract between them.

3 **de facto spouse** of a person means another person who is not
4 married to the person but lives with the person on a *bona fide*
5 domestic basis.

6 **Department** has the same meaning as in the *Public Service Act*
7 1922.

8 **educational authority** means a body or person administering an
9 educational institution.

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

12 **employment** includes:

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

18 **employment agency** means a person who or body that, whether for
19 payment or not, assists people to find employment or other work or
20 assists employers to find employees or workers, and includes the
21 Commonwealth Employment Service.

22 **homosexuality** means the identity of being gay, lesbian or
23 homosexual.

24 **intersex** means a condition where a child is born with reproductive
25 organs and or sex chromosomes which are not exclusively male or
26 female.

27 **near relative** of a person means:

- 28 (a) a parent, child, grandparent, grandchild, brother or sister of
29 the person; or
- 30 (b) the spouse or de facto spouse of the person or of a person
31 referred to in paragraph (a).

Section 5

1 **President** means the President of the Commission.

2 **principal** means:

- 3 (a) for a commission agent— a person for whom the commission
4 agent works as a commission agent; and
5 (b) for a contract worker— a person for whom the contract
6 worker does work under a contract between them.

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

9 **public authority of the Commonwealth** means:

- 10 (a) a body incorporated, whether before or after the
11 commencement of this Act, for a public purpose by a law of
12 the Commonwealth or a law of a Territory, being a body that
13 employs staff on its own behalf; or
14 (b) an unincorporated authority or body established, whether
15 before or after the commencement of this Act, for a public
16 purpose by or under a law of the Commonwealth or a law of
17 a Territory, being an authority or body that employs staff on
18 its own behalf; or
19 (c) an incorporated company over which the Commonwealth, or
20 a body or authority referred to in paragraph (a) or (b), is in a
21 position to exercise control.

22 **reassignment procedure** means:

- 23 (a) a medical or surgical procedure, or a combination of medical
24 and surgical procedures, to alter the genitals and other sexual
25 characteristics of a person who was identified by birth
26 certificate as male or female in a way that the person will be
27 identified as a person of the opposite sex; or
28 (b) in relation to a person under 18, such a procedure or
29 combination of procedures to correct or eliminate
30 ambiguities in the person's sexual characteristics.

31 **registered organisation** means an organisation within the meaning
32 of the Industrial Relations Act 1988.

33 **relative** of a person means another person to whom the person is
34 related by blood, marriage, affinity or adoption.

1 **representative complaint** means a complaint where the people on
2 whose behalf the complaint was made include people other than
3 the complainant, but does not include a complaint that the
4 Commission has decided should no longer be continued as a
5 representative complaint.

6 **services** includes:

- 7 (a) services relating to banking, insurance and the provision of
8 grants, loans, credit or finance; and
9 (b) services relating to entertainment, recreation or refreshment;
10 and
11 (c) services relating to transport or travel; and
12 (d) services of the kind provided by the members of a profession
13 or trade; and
14 (e) services of the kind provided by a government, a government
15 authority or a local government body.

16 **sexuality** means heterosexuality, homosexuality, bisexuality and
17 asexuality that presently exists, existed in the past or may exist in
18 the future.

19 **State**, except in subsections 0(12) and (13), includes the Australian
20 Capital Territory and the Northern Territory.

21 **superannuation benefit**, in relation to a member of a
22 superannuation fund, means a benefit that is payable, under the
23 terms and conditions relating to the fund:

- 24 (a) in the event of the member's death to the estate of the
25 deceased or to someone other than the deceased; or
26 (b) in the event of the member's physical or mental
27 incapacity to the member or to another person.

28 **superannuation fund** means a superannuation or provident fund or
29 scheme.

30 **superannuation fund conditions**, in relation to a superannuation
31 fund, means the terms and conditions that relate to membership of,
32 or benefits payable from, the superannuation fund.

Section 6

1 ***Territory***, except in subsection (12), does not include the
2 Australian Capital Territory or the Northern Territory.

3 ***trade union*** means:

- 4 (a) an organisation of employees that is a registered
5 organisation; or
6 (b) a trade union within the meaning of a State Act or a law of a
7 Territory; or
8 (c) another similar body.

9 ***transgender*** means a person originally of one sex who:

- 10 (a) identifies and lives or seeks to live as a member of the other
11 sex; and
12 (b) assumes the characteristics of the other sex on a full time
13 basis or as much as is reasonable in the circumstances; and
14 (c) includes a transsexual; and
15 (d) for the purposes of this Act, includes intersexual androgyne
16 and

17 a reference to transgender status includes a reference to part or
18 future status or perceived status.

19 ***transsexual person*** means a person who:

- 20 (a) has undergone, or is in the process of undergoing, a surgical
21 re-assignment procedure; and
22 (b) who identifies and lives or seeks to live as a member of the
23 sex to which he or she has been re-assigned or seeks to be
24 re-assigned.

25 **6 What is discrimination on the ground of sexuality, transgender, or**
26 **intersex**

- 27 (1) A person (the *discriminator*) discriminates against another person
28 (the *aggrieved person*) on the ground of sexuality if, because of the
29 actual or perceived sexuality of the aggrieved person or of a
30 relative or associate of the aggrieved person, the discriminator
31 treats the aggrieved person less favourably than, in the same
32 circumstances or in circumstances that are not materially different,

- 1 the discriminator treats or would treat a person of a different
2 sexuality or who had a relative or associate of a different sexuality.
- 3 (2) A person (the *discriminator*) also discriminates against another
4 person (the *aggrieved person*) on the ground of sexuality if the
5 discriminator requires the aggrieved person to comply with a
6 requirement or condition:
- 7 (a) with which a substantial proportion of people of the same
8 sexuality as the aggrieved person cannot comply; and
9 (b) that, on the balance of probabilities, is considered to cause
10 disadvantage to the aggrieved person or group.
- 11 (3) A person (the *discriminator*) discriminates against another person
12 (the *aggrieved person*) on the ground of transgender identity if,
13 because the aggrieved person or a relative or associate of the
14 aggrieved person is a transgender or is thought to be a transgender,
15 the discriminator treats the aggrieved person less favourably than,
16 in the same circumstances or in circumstances that are not
17 materially different, the discriminator treats or would treat a person
18 who is not a transgender or who had a relative or associate who is
19 not a transgender.
- 20 (4) A person (the *discriminator*) also discriminates against another
21 person (the *aggrieved person*) on the ground of transgender
22 identity or status if the discriminator requires the aggrieved person
23 to comply with a requirement or condition that, on the balance of
24 probabilities, is considered to have a disadvantageous effect on the
25 complainant group.
- 26 (5) For the purposes of this Clause, a “complainant group” is restricted
27 to transgender people of a particular gender, regardless of
28 re-assignment procedures.
- 29 (6) Discrimination includes harassment, which is an act reasonably
30 likely, in all the circumstances, to offend, insult, humiliate or
31 intimidate a person or an associate or relative of the person.
- 32 (7) Harassment of a person on the ground of transgender status
33 includes harassment of a person by refusing to acknowledge that he

Section 7

- 1 or she wishes to be known as a member of a specific gender and
2 has made this preference clear.
- 3 (8) Harassment of a person on the grounds of bisexuality includes a
4 refusal to accept bisexuality as a distinct sexuality.
- 5 (9) Discrimination includes a failure to offer or continue employment,
6 or to provide access to goods and services, on the basis that a
7 person's dress or appearance suggests he or she is of a particular
8 sexuality or is a transgender person, or is thought to be of a
9 particular sexuality or to be a transgender person, or has a relative
10 or associate who appears to be, or is thought to be of a particular
11 sexuality or a transgender person.
- 12 (10) In determining whether or not a person discriminates, the person's
13 motive is irrelevant.

14 **7 Operation of State and Territory laws**

- 15 (1) In this section:
- 16 *law of a State or Territory* means a law of a State or Territory that
17 deals with discrimination on the ground of sexuality, transgender
18 or intersex identity.
- 19 (2) This Act is not intended to exclude or limit the operation of a law
20 of a State or Territory that is capable of operating concurrently
21 with this Act.
- 22 (3) If:
- 23 (a) a law of a State or Territory deals with a matter dealt with by
24 this Act; and
- 25 (b) a person has made a complaint, instituted a proceeding or
26 taken other action under that law about an act or omission;
27 and
- 28 (b) the person would, apart from this subsection, be entitled to
29 make a complaint under this Act about the act or omission;
30 the person is not entitled to make a complaint or institute a
31 proceeding under this Act about that act or omission.

- 1 (4) If:
2 (a) a law of a State or Territory deals with a matter dealt with by
3 this Act; and
4 (b) an act or omission by a person that constitutes an offence
5 against that law also constitutes an offence against this Act;
6 the person may be prosecuted and convicted either under that law
7 or under this Act, but this subsection does not render a person
8 liable to be punished more than once for the same act or omission.

9 **8 Act does not prevent action to stop unlawful behaviour**

10 This Act does not prevent a person from taking action to stop
11 another person from engaging in unlawful behaviour.

12 **9 Extent to which Act binds the Crown**

- 13 (1) This Act binds the Crown in right of the Commonwealth, of each
14 State and of Norfolk Island.
15 (2) This Act does not render the Crown in right of the Commonwealth,
16 of a State or of Norfolk Island liable to be prosecuted for an
17 offence.

1

2

Part 2C Prohibition of discrimination

3

Division 1C Discrimination in work

4

10 Discrimination in employment or in superannuation

5

(1) It is unlawful for an employer to discriminate against a person on the ground of sexuality, transgender or intersex identity:

6

7

(a) in the arrangements made for the purpose of deciding who should be offered employment; or

8

9

(b) in deciding who should be offered employment; or

10

(c) in the terms or conditions on which employment is offered.

11

(2) It is unlawful for an employer to discriminate against an employee on the ground of sexuality, transgender or intersex identity:

12

13

(a) in the terms or conditions of employment that the employer affords the employee; or

14

15

(b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or

16

17

(c) by dismissing the employee; or

18

19

(d) by subjecting the employee to any other detriment.

20

(3) Paragraph (1)(a) or (b) does not make it unlawful for a person to discriminate against another person on the ground of sexuality, transgender or intersex identity in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

21

22

23

24

25

(4) Paragraph (1)(a) or (b) does not make it unlawful for a person to discriminate against another person on the ground of sexuality, transgender or intersex identity in connection with employment as a member of the staff of an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the person is acting in good faith and

26

27

28

29

30

- 1 the act is necessary in order to avoid injury to the religious
2 susceptibilities of adherents of that religion or creed.
- 3 (5) If a person exercises a discretion about the payment of a
4 superannuation benefit to or for a member of a superannuation
5 fund, it is unlawful for the person to discriminate, in exercising of
6 the discretion, against the member or another person on the ground,
7 in either case, of sexuality, transgender or intersex identity.
- 8 (6) In this section:
- 9 *employee* includes a person working as a volunteer.
- 10 *member* of a superannuation fund, includes a person who has been
11 a member of the fund at any time.

12 **11 Discrimination against commission agents**

- 13 (1) It is unlawful for a principal to discriminate against a person on the
14 ground of sexuality, transgender or intersex identity:
- 15 (a) in the arrangements the principal makes for the purpose of
16 deciding who should be engaged as a commission agent; or
17 (b) in deciding who should be engaged as a commission agent;
18 or
19 (c) in the terms or conditions on which the person is engaged as
20 a commission agent.
- 21 (2) It is unlawful for a principal to discriminate against a commission
22 agent on the ground of sexuality, transgender or intersex identity:
- 23 (d) in the terms or conditions that the principal affords the
24 commission agent as a commission agent; or
25 (e) by denying the commission agent access, or limiting the
26 commission agent's access, to opportunities for promotion,
27 transfer or training, or to any other benefits associated with
28 the position as a commission agent; or
29 (f) by terminating the engagement; or
30 (g) by subjecting the commission agent to any other detriment.

Section 12

1 **12 Discrimination against contract workers**

- 2 (1) It is unlawful for a principal to discriminate against a contract
3 worker on the ground of sexuality, transgender or intersex identity:
4 (h) in the terms or conditions on which the principal allows the
5 worker to work; or
6 (i) by not allowing the worker to work or continue to work; or
7 (j) by denying the worker access, or limiting the worker's
8 access, to a benefit associated with the work to which the
9 contract relates; or
10 (k) by subjecting the contract worker to any other detriment.
- 11 (2) Paragraph (1)(b) does not make it unlawful for a person to
12 discriminate against another person on the ground of sexuality,
13 transgender or intersex identity in connection with a position as a
14 contract worker for an educational institution that is conducted in
15 accordance with the doctrines, tenets, beliefs or teachings of a
16 particular religion or creed if the person is acting in good faith and
17 the act is necessary in order to avoid injury to the religious
18 susceptibilities of adherents of that religion or creed.

19 **13 Partnerships**

- 20 (1) It is unlawful for a person who is proposing to form a partnership
21 to discriminate against another person on the ground of sexuality,
22 transgender or intersex identity:
23 (a) in deciding who should be invited to become a partner in the
24 partnership; or
25 (b) in the terms or conditions on which the person is invited to
26 become a partner in the partnership.
- 27 (2) It is unlawful for any one or more of the partners in a partnership to
28 discriminate against a person on the ground of sexuality,
29 transgender or intersex identity:
30 (a) in deciding who should be invited to become a partner in the
31 partnership; or
32 (b) in the terms or conditions on which the person is invited to
33 become a partner in the partnership.

- 1 (3) It is unlawful for any one or more of the partners in a partnership to
2 discriminate against a partner in the partnership on the ground of
3 sexuality, transgender or intersex identity:
- 4 (a) by denying the partner access, or limiting the partner's
5 access, to a benefit arising from being a partner in the
6 partnership; or
 - 7 (b) by expelling the partner from the partnership; or
 - 8 (c) by subjecting the partner to any other detriment.

9 **14 Qualifying bodies**

- 10 It is unlawful for an authority or body that is empowered to confer,
11 renew, extend, revoke or withdraw an authorisation or qualification
12 that is needed for, or facilitates, the practice of a profession, the
13 carrying on of a trade or the engaging in of an occupation to
14 discriminate against a person on the ground of sexuality,
15 transgender or intersex identity:
- 16 (d) by refusing or failing to confer, renew or extend the
17 authorisation or qualification; or
 - 18 (e) in the terms or conditions on which it is prepared to confer
19 the authorisation or qualification or to renew or extend the
20 authorisation or qualification; or
 - 21 (f) by revoking or withdrawing the authorisation or qualification
22 or varying the terms or conditions upon which it is held.

23 **15 Registered organisations under the Industrial Relations Act**

- 24 (1) It is unlawful for a registered organisation, the committee of
25 management of a registered organisation or a member of the
26 committee of management of a registered organisation to
27 discriminate against a person, on the ground of sexuality,
28 transgender or intersex identity:
- 29 (g) by refusing or failing to accept the person's application for
30 membership; or
 - 31 (h) in the terms or conditions on which the organisation is
32 prepared to admit the person to membership.

Section 16

- 1 (2) It is unlawful for a registered organisation, the committee of
2 management of a registered organisation or a member of the
3 committee of management of a registered organisation to
4 discriminate against a person who is a member of the registered
5 organisation, on the ground of sexuality, transgender or intersex
6 identity:
7 (a) by denying the member access, or limiting the member's
8 access, to a benefit provided by the organisation; or
9 (b) by depriving the member of membership or varying the terms
10 of membership; or
11 (c) by subjecting the member to any other detriment.

12 **16 Employment agencies**

- 13 It is unlawful for an employment agency to discriminate against a
14 person on the ground of sexuality, transgender or intersex identity:
15 (d) by refusing to provide the person with any of its services; or
16 (e) in the terms or conditions on which it offers to provide the
17 person with any of its services; or
18 (f) in the manner in which it provides the person with any of its
19 services.

20 **17 Rights etc. of same sex couples under laws of the Commonwealth**

- 21 (1) This section applies to a law of the Commonwealth that:
22 (g) confers a right or entitlement on a person, or imposes an
23 obligation on a person; or
24 (h) applies to a person in a particular way;
25 because of the person living together with another person of the
26 opposite sex on a genuine domestic basis although not married to
27 the other person.
- 28 (2) After the commencement of this Act, the law:
29 (a) confers the same right or entitlement, or imposes the same
30 obligation, on a person who lives together with another
31 person of the same sex on a genuine domestic basis; or
32 (b) applies to such a person in the same way.

Section 17

- 1 (3) After the commencement of this Act, the law confers the same
2 right or entitlement, or imposes the same obligation, on a person
3 who lives with another person, either or both being a transgender
4 person, because of the couple living together on a genuine
5 domestic basis.
- 6 (4) The regulations may provide that this section does not apply to a
7 specified law of the Commonwealth.
- 8 (5) The impact of this section is to be assessed two years after its
9 commencement, and a report provided to the President of the
10 Human Rights and Equal Opportunity Commission.
- 11 (6) To assist in evaluating impact, relevant Commonwealth agencies
12 and departments should collect appropriate data and provide this in
13 a de-identified form to appropriate agencies.

1 **Division 2C Discrimination in other areas**

2 **18 Education**

- 3 (1) It is unlawful for an educational authority to discriminate against a
4 person on the ground of sexuality, transgender or intersex identity:
5 (a) by refusing or failing to accept the person's application for
6 admission as a student; or
7 (b) in the terms or conditions on which it is prepared to admit the
8 person as a student.
- 9 (2) It is unlawful for an educational authority to discriminate against a
10 student on the ground of sexuality, transgender or intersex identity:
11 (a) by denying the student access, or limiting the student's
12 access, to a benefit provided by the educational authority; or
13 (b) by expelling the student; or
14 (c) by subjecting the student to any other detriment.

15 **19 Goods, services and facilities**

- 16 (1) It is unlawful for a person who, whether for payment or not,
17 provides goods or services, or makes facilities available, to
18 discriminate against another person on the ground of sexuality,
19 transgender or intersex identity:
20 (d) by refusing to provide the other person with the goods or
21 services or to make the facilities available; or
22 (e) in the terms or conditions on which the person provides the
23 goods or services or makes the facilities available; or
24 (f) in the manner in which the person provides the goods or
25 services or makes the facilities available.

26 **20 Accommodation**

- 27 (1) It is unlawful for a person, whether as principal or agent, to
28 discriminate against another person on the ground of sexuality,
29 transgender or intersex identity:

Section 21

- 1 (g) by refusing the other person's application for
2 accommodation; or
3 (h) in the terms or conditions on which accommodation is
4 offered to the other person; or
5 (i) by deferring the other person's application for
6 accommodation or giving the other person a lower order of
7 precedence in a list of applicants for the accommodation.
- 8 (2) It is unlawful for a person, whether as principal or agent, to
9 discriminate against another person on the ground of sexuality,
10 transgender or intersex identity:
11 (a) by denying the other person access, or limiting the other
12 person's access, to a benefit associated with accommodation
13 occupied by the other person; or
14 (b) by evicting the other person from accommodation occupied
15 by the other person; or
16 (c) by subjecting the other person to any other detriment about
17 accommodation occupied by the other person.
- 18 (3) This section does not apply to providing accommodation in
19 premises if:
20 (a) the person who provides or proposes to provide the
21 accommodation or a near relative of that person resides, and
22 intends to continue to reside, on those premises; and
23 (b) the accommodation provided in the premises is for not more
24 than 3 people other than a person referred to in paragraph (a)
25 or near relatives of such a person.

21 Land

- 27 (1) It is unlawful for a person, whether as principal or agent, to
28 discriminate against another person on the ground of sexuality,
29 transgender or intersex identity:
30 (c) by refusing or failing to dispose of an estate or interest in
31 land to the other person; or
32 (d) in the terms or conditions on which an estate or interest in
33 land is offered to the other person.

Section 22

- 1 (2) This section does not apply to a disposal of an estate or interest in
2 land by will or by way of gift.

3 **22 Clubs and incorporated associations**

- 4 (1) It is unlawful for a club or incorporated association, the committee
5 of management of a club or a member of the committee of
6 management of a club or incorporated association to discriminate
7 against a person who is not a member of the club or association on
8 the ground of sexuality, transgender or intersex identity:
9 (a) by refusing or failing to accept the person's application for
10 membership; or
11 (b) in the terms or conditions on which the club or association is
12 prepared to admit the person to membership.
- 13 (2) It is unlawful for a club or incorporated association, the committee
14 of management of a club or a member of the committee of
15 management of a club or incorporated association to discriminate
16 against a person who is a member of the club or association on the
17 ground of sexuality, transgender or intersex identity:
18 (a) in the terms or conditions of membership that are afforded to
19 the member; or
20 (b) by refusing or failing to accept the member's application for a
21 particular class or type of membership; or
22 (c) by denying the member access, or limiting the member's
23 access, to any benefit provided by the club; or
24 (d) by depriving the member of membership or varying the terms
25 of membership; or
26 (e) by subjecting the member to any other detriment.

27 **23 Sport**

28 It is unlawful for a person to discriminate against another person
29 on the ground of sexuality, transgender or intersex identity in
30 relation to a sporting activity or an administrative or coaching
31 position in relation to a sporting activity.

24 Administration of Commonwealth laws and programs

(1) It is unlawful for a person who performs a function or exercises a power under a Commonwealth law or for the purposes of a Commonwealth program, or has any other responsibility for the administration of a Commonwealth law or the conduct of a Commonwealth program, to discriminate against another person, on the ground of sexuality, transgender or intersex identity in the performance of that function, the exercise of that power or the fulfilment of that responsibility.

(2) A person or an organisation may not claim an exemption from this provision on the grounds of religious belief.

25 Receivers of Commonwealth funding not to discriminate

It is unlawful for any organisation receiving Commonwealth funding to discriminate in any aspect of the operations of the organisation against another person on the grounds of sexuality, transgender or intersex identity.

26 Application forms etc.

If it would be unlawful under this Part for a person to discriminate against another person on the ground of sexuality, transgender or intersex identity in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with the doing of the act, information (whether by way of completing a form or otherwise) that:

- (a) a person of a different sexuality or who had a relative or associate of a different sexuality; or
- (b) a person who is not a transgender or who had a relative or associate who is not a transgender;

would not, in circumstances that are the same or not materially different, be requested or required to provide.

Section 27

1 **27 Official documents etc.**

2 (1) This section applies to a person who has been issued with a
3 certificate under a law of a State that specifies that the person is of
4 the sex stated in the certificate.

5 (2) It is unlawful for a person who is responsible for issuing an official
6 document, such as a passport or a driver's licence, to refuse to
7 recognise in the document the sex of a person to whom this section
8 applies as specified in the certificate.

1 **Division 3C Inciting hatred etc. on ground of sexuality,**
2 **transgender or intersex identity**

3 **28 Inciting hatred etc. on ground of sexuality, transgender or**
4 **intersex identity**

5 In this section:

6 *public act* includes:

- 7 (a) any form of communication to the public, including
8 speaking, writing, printing, displaying notices, broadcasting,
9 telecasting, screening and playing tapes or other recorded
10 material; and
11 (b) other conduct observable by the public, including actions and
12 gestures and the wearing or display of clothing, signs, flags,
13 emblems and insignia.

14 (2) It is unlawful for a person, by a public act, to incite hatred towards,
15 serious contempt for, or severe ridicule of, a person or group of
16 people on the ground of the sexuality, transgender or intersex
17 identity of the person or members of the group.

18 (3) This section does not make unlawful:

- 19 (a) a fair report of a public act referred to in subsection (2); or
20 (b) a public act, done reasonably and in good faith, for academic,
21 artistic, religious instruction, scientific or research purposes
22 or for other purposes in the public interest, including
23 discussion or debate about, and expositions of, an act or
24 matter.

25 (4) A review of this section is to be completed, either by the Human
26 Rights and Equal Opportunity Commission or by an appropriately
27 qualified organisation or review panel, within two years from the
28 commencement of the Act, with a view to determining if the
29 provisions regarding vilification and incitement to hatred should be
30 retained, modified or repealed.

1 **Division 4C Special measures**

2 **29 Special measures**

3 This Part does not make it unlawful to do an act that is reasonably
4 intended to:

5 (c) ensure that persons of a particular sexuality, transgender or
6 intersex identity have equal opportunities with other persons
7 in circumstances in relation to which a provision is made by
8 this Act; or

9 (d) afford persons of a particular sexuality, transgender or
10 intersex identity, goods or access to facilities, services or
11 opportunities in relation to:

12 (i) employment, education, accommodation, clubs or sport;
13 and

14 (i) the provision of goods, services, facilities or land; or

15 (ii) the making available of facilities; or

16 (iii) the administration of Commonwealth laws and
17 programs; or

18 (e) afford persons of a particular sexuality, transgender or
19 intersex identity, grants, benefits, or programs, whether direct
20 or indirect, to meet their special needs in relation to:

21 (i) employment, education, accommodation, clubs or sport;
22 or

23 (ii) the provision of goods, services, facilities or land; or

24 (iii) the making available of facilities; or

25 (iv) the administration of Commonwealth laws and
26 programs.

Division 5C Exemptions**30 Religious bodies**

Subject to Section 25, Divisions 1 and 2 do not affect an act or practice of a body established for religious purposes that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion, including:

- (a) the ordination, appointment or employment of priests, ministers of religion or members of a religious order; or
- (f) the training or education of people seeking ordination, appointment or employment as priests, ministers of religion or members of a religious order; or
- (g) the selection, appointment or employment of people to perform duties or functions for the purpose of or in connection with, or otherwise to participate in, a religious observance or practice.

31 Acts done under statutory authority

(1) Divisions 1 and 2 do not affect anything done by a person in direct compliance with:

- (h) a determination or decision of the Commission; or
- (i) an order of a court.

(2) Divisions 1 and 2 do not affect anything done by a person in direct compliance with a law of the Commonwealth.

(3) Subsection (2) ceases to have effect at the end of 6 months after the commencement of this Act.

32 Superannuation and insurance

(1) This Part does not make it unlawful for a person to discriminate against another person on the ground of sexuality, transgender or intersex identity by refusing to offer the other person:

- (a) an annuity; or

Section 33

- 1 (b) a life insurance policy; or
2 (c) a policy of insurance against accident or any other policy of
3 insurance; or
4 (d) membership of a superannuation or provident fund; or
5 (e) membership of a superannuation or provident scheme;
6 if the discrimination:
7 (f) is based on relevant actuarial and statistical data; and
8 (g) is reasonable, having regard to other available relevant
9 material; and
10 (h) the person so discriminated against may appeal to the Human
11 Rights and Equal Opportunity Commission for assessment on
12 the basis of the decision, and must be provided with the
13 information on which the decision was based.
- 14 (2) This Part does not make it unlawful for a person to discriminate
15 against another person, on the ground of sexuality, transgender or
16 intersex identity, in respect of the terms or conditions on which:
17 (a) an annuity; or
18 (b) a life insurance policy; or
19 (c) a policy of insurance against accident or any other policy of
20 insurance; or
21 (d) membership of a superannuation or provident fund; or
22 (e) membership of a superannuation or provident scheme;
23 is offered to, or may be obtained by, the other person if the
24 discrimination:
25 (f) is based on actuarial or statistical data on which it is
26 reasonable for the person to rely; and
27 (g) is reasonable having regard to the matter of the data and
28 other relevant factors.

29 **33 Commission may grant exemptions**

- 30 (1) The Commissioner may, on application by:
31 (h) a person, on that person's own behalf or on behalf of that
32 person and another person or other people; or
33 (i) 2 or more people, on their own behalf or on behalf of
34 themselves and another person or other people; or
-

- 1 (j) a person or people included in a class of people on behalf of
2 the people included in that class of people;
3 by instrument in writing, grant to the person, people or class of
4 people an exemption from the operation of a provision of
5 Division 1 or 2, as specified in the instrument.
- 6 (2) The Commission may, on application by a person to, or in respect
7 of, whom an exemption from a provision of Division 1 or 2 has
8 been granted under subsection (1), being an application made
9 before the end of the period for which that exemption was granted,
10 grant a further exemption from the operation of that provision.
- 11 (3) An exemption, or further exemption:
- 12 (a) may be granted subject to terms and conditions specified in
13 the instrument; and
- 14 (b) may be expressed to apply only in circumstances, or in
15 relation to activities, specified in the instrument; and
- 16 (c) must be granted for a specified period that does not exceed 5
17 years; and
- 18 (d) must not be granted until the Commission has advertised the
19 fact that it proposes to grant the exemption or further
20 exemption and has given interested people a reasonable
21 opportunity to make written submissions opposing the grant.
- 22 (4) The President of the Commission will ensure that an organisation
23 with appropriate legal qualifications and experience in the field of
24 human rights legislation will review and report on all exemptions
25 and exceptions, other than those subject to specific review, within
26 three years from the commencement of the Act. The President will
27 advise the Minister of the conclusions of this report.

28 **34 Review by Administrative Appeals Tribunal**

- 29 (1) Applications may be made to the Administrative Appeals Tribunal
30 for review of decisions made by the Commission under section.

Part 3C Inquiries and Civil Proceedings**Division 1C Preliminary****37 Part applies to victimisation offences**

In this Part, a reference to an act that is unlawful under a provision of Part 2 includes a reference to an act that is an offence under section.

38 Functions of Human Rights and Equal Opportunity Commission

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

- (a) to inquire into alleged infringements of Part 2, and endeavour by conciliation to effect a settlement of the matters to which the alleged infringements relate;
- (b) to inquire into, and make determinations on, matters referred to it by the Minister or the Commissioner;
- (c) to exercise the powers conferred on it by section;
- (d) to deal with complaints lodged under section;
- (e) to promote an understanding and acceptance of, and compliance with, this Act;
- (f) to undertake research and educational programs, and other programs, for the Commonwealth for the purpose of promoting the object of this Act;
- (g) to examine enactments, and (when requested to do so by the Minister or a House of the Parliament) proposed enactments, for the purpose of establishing whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to the object of this Act, and to report to the Minister or that House the results of any such examination;
- (h) on its own initiative or when requested by the Minister or a House of the Parliament, to report to the Minister or that House as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on

Section 39

- 1 matters relating to discrimination on the ground of sexuality,
2 transgender or intersex identity;
- 3 (i) to prepare, and to publish in such manner as the
4 Commission considers appropriate, guidelines for the
5 avoidance of discrimination on the ground of sexuality,
6 transgender, or intersex;
- 7 (j) if the Commission considers it appropriate to do so,
8 with the leave of the court hearing the proceedings and
9 subject to any conditions imposed by the court, to
10 intervene in proceedings that involve issues of
11 discrimination on the ground of sexuality, transgender,
12 or intersex;
- 13 (k) to do anything incidental or conducive to the performance of
14 any of the preceding functions.
- 15 (2) The Commissioner must not participate in an inquiry held by the
16 Commission under Division 3 or attend a meeting of the
17 Commission, be present during any deliberation of the
18 Commission, or take part in a decision of the Commission, in
19 connection with such an inquiry.
- 20 (3) In this section:
- 21 *enactment* and *proposed enactment* have the same meanings as in
22 the Human Rights and Equal Opportunity Commission Act 1986.

23 **39 Functions of Commissioner**

24 The functions of the Commission under paragraphs (1)(a) and (d),
25 and the function of the Commission under paragraph (1)(k), to the
26 extent that it relates to the performance of the first-mentioned
27 functions, must be performed by the Commissioner for the
28 Commission.

29 **40 Complaints**

- 30 (1) A complaint in writing alleging that a person has done an act that is
31 unlawful because of a provision of Part 2 may be lodged with the
32 Commission by:

- 1 (a) a person aggrieved by the act, on that person's own behalf or
 2 on behalf of that person and another person or other people
 3 aggrieved by the act; or
 4 (b) 2 or more people aggrieved by the act, on their own behalf or
 5 on behalf of themselves and another person or other people
 6 aggrieved by the act; or
 7 (c) a person or people included in a class of people aggrieved by
 8 the act, on behalf of the people included in that class of
 9 people; or
 10 (d) a trade union of which a person or people, or people included
 11 in a class of people, aggrieved by the act is a member or are
 12 members, on behalf of that person, those people or people
 13 included in that class of people.
- 14 (2) In the case of a representative complaint, this section has effect
 15 subject to section.

16 **41 Referral of discriminatory awards to the Australian Industrial**
 17 **Relations Commission**

- 18 (1) A complaint in writing alleging that a person has done a
 19 discriminatory act under an award may be lodged with the
 20 Commission by:
 21 (a) a person aggrieved by the act, on that person's own behalf or
 22 on behalf of that person and one or more other people
 23 aggrieved by the act; or
 24 (b) 2 or more people aggrieved by the act, on their own behalf or
 25 on behalf of themselves and one or more other people
 26 aggrieved by the act; or
 27 (c) a person or people who are in a class of people aggrieved by
 28 the act, on behalf of all the people in the class; or
 29 (d) a trade union, on behalf of one or more of its members
 30 aggrieved by the act or on behalf of a class of its members
 31 aggrieved by the act.
- 32 (2) If the Commission receives a complaint under this section, the
 33 Commission must notify the Commissioner accordingly.

Section 41

- 1 (3) If it appears to the Commissioner that the act is a discriminatory
2 act, the Commissioner must refer the award to the Australian
3 Industrial Relations Commission. However, the Commissioner
4 need not refer the award if the Commissioner is of the opinion that
5 the complaint is frivolous, vexatious, misconceived or lacking in
6 substance.
- 7 (4) If the Commissioner decides not to refer the award, the
8 Commissioner must give notice in writing of that decision to the
9 complainant or each of the complainants, together with notice of
10 the reasons for the decision and of the rights conferred by
11 subsection (5).
- 12 (5) A complainant who receives a notice under subsection (4) may,
13 within 21 days after receipt, give a notice in writing to the
14 Commissioner requiring the Commissioner to refer the decision to
15 the President.
- 16 (6) If the Commissioner receives a notice under subsection (5), the
17 Commissioner must refer the decision to the President together
18 with a report about the decision.
- 19 (7) If the Commissioner refers the award to the Australian Industrial
20 Relations Commission, the Commissioner must give notice in
21 writing of the outcome of the referral to the complainant or each of
22 the complainants.
- 23 (8) The Commissioner may obtain documents or information under
24 section for the purposes of this section.
- 25 (9) In this section:
- 26 **award** has the same meaning as in the Industrial Relations Act
27 1988.
- 28 **discriminatory act under an award** means an act that would be
29 unlawful under Part 2 except for the fact that the act was done in
30 direct compliance with an award made under the *Industrial*
31 *Relations Act 1988*. For the purposes of this definition, the fact that
32 an act is done in direct compliance with the award does not of itself
33 mean that the act is reasonable.
-

1 **42 President may review a decision of the Commissioner not to refer**
2 **an award**

- 3 (1) This section applies if the Commissioner refers to the President
4 under subsection (6) a decision of the Commissioner not to refer an
5 award to the Australian Industrial Relations Commission.
- 6 (2) The President must review the Commissioner's decision and must
7 decide either:
8 (a) to confirm the Commissioner's decision; or
9 (b) to set aside the Commissioner's decision and to direct the
10 Commissioner to refer the award in accordance with section.
- 11 (3) In spite of subsection (2), the President may refuse to review the
12 Commissioner's decision unless the complainant gives the
13 President such relevant information as the President requires.
- 14 (4) The President must give written notice of a decision of the
15 President under subsection (2) to the complainant and to the
16 Commissioner. The notice must set out the reasons for the
17 decision.

18 **43 Referral of discriminatory determinations to the Remuneration**
19 **Tribunal**

- 20 (1) A complaint in writing alleging that a person has done a
21 discriminatory act under a determination may be lodged with the
22 Commission by:
23 (a) a person aggrieved by the act, on that person's own behalf or
24 on behalf of that person and one or more other people
25 aggrieved by the act; or
26 (b) 2 or more people aggrieved by the act, on their own behalf or
27 on behalf of themselves and one or more other people
28 aggrieved by the act; or
29 (c) a person or people who are in a class of people aggrieved by
30 the act, on behalf of all the people in the class.
- 31 (2) If the Commission receives a complaint under this section, the
32 Commission must notify the Commissioner accordingly.

Section 43

- 1 (3) If it appears to the Commissioner that the act is a discriminatory
2 act, the Commissioner must refer the determination to the
3 Remuneration Tribunal. However, the Commissioner need not
4 refer the determination if the Commissioner is of the opinion that
5 the complaint is frivolous, vexatious, misconceived or lacking in
6 substance.
- 7 (4) If the Commissioner decides not to refer the determination, the
8 Commissioner must give notice in writing of that decision to the
9 complainant or each of the complainants, together with notice of
10 the reasons for the decision and of the rights conferred by
11 subsection (5).
- 12 (5) A complainant who receives a notice under subsection (4) may,
13 within 21 days after receipt, give a notice in writing to the
14 Commissioner requiring the Commissioner to refer the decision to
15 the President.
- 16 (6) If the Commissioner receives a notice under subsection (5), the
17 Commissioner must refer the decision to the President together
18 with a report about the decision.
- 19 (7) If the Commissioner refers the determination to the Remuneration
20 Tribunal, the Commissioner must give notice in writing of the
21 outcome of the referral to the complainant or each of the
22 complainants.
- 23 (8) The Commissioner may obtain documents or information under
24 section 54 for the purposes of this section.
- 25 (9) In this section:
- 26 **determination** means:
- 27 (a) a determination made after the commencement of this section
28 by the Remuneration Tribunal under the *Remuneration*
29 *Tribunal Act 1973*; or
- 30 (b) a variation made after that commencement by that Tribunal
31 to a determination made by it under that Act before that
32 commencement.

1 *discriminatory act under a determination* means an act that would
 2 be unlawful under Part 2 except for the fact that the act was done in
 3 direct compliance with a determination. For the purposes of this
 4 definition, the fact that an act is done in direct compliance with the
 5 determination does not of itself mean that the act is reasonable.

6 **44 President may review a decision of the Commissioner not to refer**
 7 **a determination to the Remuneration Tribunal**

- 8 (1) This section applies if the Commissioner refers to the President
 9 under subsection (6) a decision of the Commissioner not to refer a
 10 determination to the Remuneration Tribunal.
- 11 (2) The President must review the Commissioner's decision and must
 12 decide either:
 13 (c) to confirm the Commissioner's decision; or
 14 (d) to set aside the Commissioner's decision and to direct the
 15 Commissioner to refer the determination in accordance with
 16 section.
- 17 (3) In spite of subsection (2), the President may refuse to review the
 18 Commissioner's decision unless the complainant gives the
 19 President such relevant information as the President requires.
- 20 (4) The President must give written notice of a decision of the
 21 President under subsection (2) to the complainant and to the
 22 Commissioner. The notice must set out the reasons for the
 23 decision.

24 **45 Commissioner deemed to be a complainant**

- 25 (1) If:
 26 (a) the Commissioner has referred to the Commission a matter
 27 that came before the Commissioner otherwise than as the
 28 result of the making of a complaint to the Commission; or
 29 (b) the Minister has referred a matter to the Commission under
 30 section 0;
 31 then, for the purposes of any inquiry into the matter by the
 32 Commission, this Act has effect as if:

Section 45

- 1 (c) the matter had been the subject of a complaint; and
2 (d) the reference to the complainant in section were a reference
3 to the Commissioner; and
4 (e) a reference to the respondent were a reference to the person
5 who is, or each of the people who are, alleged to have done
6 the act to which the matter relates.

7 (2) In this section:

8 *respondent*, in relation to a complaint, means the person who is, or
9 each of the people who are, alleged to have done the act to which
10 the complaint relates.

Division 2C Inquiries by Commissioner**46 Inquiries by Commissioner**

(1) If:

(a) a complaint relating to an alleged unlawful act is made to the Commission under section; or

(b) it appears to the Commission that a person has done an act that is unlawful under a provision of Part 2;

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

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

(a) the Commissioner is satisfied that the act is not unlawful under a provision of Part 2; or

(b) the Commissioner thinks that the person aggrieved by the act does not desire that the inquiry be made or continued; or

(c) in a case where a complaint has been made to the Commission in relation to the act a period of more than 12 months has elapsed since the act was done and the complaint was made to the Commission; or

(d) in a case where a complaint has been made to the Commission in relation to the act the Commissioner thinks that the complaint was frivolous, vexatious, misconceived or lacking in substance; or

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

(f) the Commissioner thinks that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the person aggrieved by the act.

Section 46

- 1 (3) If the Commissioner decides not to inquire into or to continue to
2 inquire into an act in respect of which a complaint was made to the
3 Commission, the Commissioner must give notice in writing to the
4 complainant of that decision, of the reasons for that decision and of
5 the rights of the complainant under subsection (5).
- 6 (4) Subsection (3) does not apply to a decision of the Commissioner
7 that is made at the request of the complainant.
- 8 (5) If the Commissioner has given a complainant a notice under
9 subsection (3), the complainant may, within 21 days after receipt of
10 the notice, by notice in writing served on the Commissioner:
11 (a) if paragraph (2) (a) applies require the Commissioner to
12 refer the complaint to the Commission; or
13 (b) in any other case require the Commissioner to refer the
14 decision to the President.
- 15 (6) If the Commissioner receives a notice under paragraph (5)(a), the
16 Commissioner must refer the complaint to the Commission
17 together with a report relating to any inquiries made by the
18 Commissioner into the complaint.
- 19 (7) If the Commissioner receives a notice under paragraph (5)(b), the
20 Commissioner must refer the decision to the President together
21 with a report about the decision.
- 22 (8) A report for the purposes of subsection (7) must not set out or
23 describe anything said or done in the course of conciliation
24 proceedings under this Division (including anything said or done at
25 a conference held under this Division).
- 26 (9) The Commissioner may, for the purposes of this Act, obtain
27 information from such people, and make such inquiries, as the
28 Commissioner thinks fit.

47 President may review a decision of the Commissioner not to hold an inquiry or to discontinue an inquiry

- 1
2
- 3 (1) This section applies if a decision of the Commissioner not to
4 inquire into an act, or not to continue to inquire into an act, is
5 referred to the President under subsection (7).
- 6 (2) The President:
7 (a) must review the Commissioner's decision; and
8 (b) must decide either:
9 (i) to confirm the Commissioner's decision; or
10 (v) to set aside the Commissioner's decision and to direct
11 the Commissioner to inquire into the act, or to continue
12 to inquire into the act, in accordance with section .
- 13 (3) In spite of subsection (2), the President may refuse to review the
14 Commissioner's decision unless the complainant gives the
15 President such relevant information as the President requires.
- 16 (4) The President must give written notice of a decision of the
17 President under paragraph (2)(b) to the complainant and to the
18 Commissioner.
- 19 (5) The notice must set out the reasons for the decision.
- 20 (6) In spite of subsection (2), the Commissioner must comply with a
21 direction of the President under subparagraph (2)(b)(ii) of this
22 section unless the complainant notifies the Commissioner that the
23 complainant does not wish the inquiry to be held or continued.

48 Review by President Cinterim determination

- 24
- 25 (1) This section applies if a decision of the Commissioner not to
26 inquire into an act, or not to continue to inquire into an act, is
27 referred to the President under subsection (7).
- 28 (2) If the President has not completed a review of the Commissioner's
29 decision, the Commission or the President may make an interim
30 determination of such a nature as would, if it were binding and
31 conclusive upon the parties, preserve:

Section 49

- 1 (a) the status quo between the parties to the complaint; or
2 (a) the rights of the parties to the complaint;
3 pending completion of the matter the subject of the complaint.
- 4 (3) The Commission or the President may vary or revoke an interim
5 determination made under this section.
- 6 (4) The functions conferred on the Commission by subsection (2) or
7 (3) may only be performed on an application made by the
8 President.
- 9 (5) The functions conferred on the President by subsection (2) or (3)
10 may only be performed:
11 (a) on the President's own initiative; and
12 (b) if the President thinks that it is expedient that the President
13 should perform those functions.
- 14 (6) An interim determination under this section is not binding or
15 conclusive between any of the parties to the determination.

16 **49 Application for interim determination**

- 17 (1) The Commissioner may, at any time after a complaint is lodged
18 and before the Commissioner declines to entertain the complaint,
19 resolves the complaint by conciliation or refers the matter to which
20 the complaint relates to the Commission under subsection (1),
21 apply to the Commission for the making of an interim
22 determination under section or for the variation or revocation of
23 such a determination.
- 24 (2) In relation to a matter arising under paragraph (1)(b), the
25 Commissioner may apply to the Commission for the making of
26 such an interim determination, or for the variation or revocation of
27 such an interim determination, at any time.

28 **50 Power to obtain information and documents**

- 29 (1) The powers of the Commissioner under this section apply if the
30 Commissioner has reason to believe that a person is capable of

Section 51

- 1 giving information (*relevant information*) or producing documents
2 (*relevant documents*) relevant to an inquiry under this Division.
- 3 (2) The Commissioner may, by written notice given to the person,
4 require the person, at a reasonable place, and within a reasonable
5 period or on a reasonable date and time, specified in the notice:
- 6 (a) to give to the Commissioner, by writing signed by the person
7 or, in the case of a body corporate, by an officer of the body
8 corporate, the relevant information specified in the notice; or
9 (b) to give to the Commissioner the relevant documents specified
10 in the notice.
- 11 (3) If documents are produced to the Commissioner in accordance
12 with a requirement under subsection (1), the Commissioner:
- 13 (a) may take possession of, and may make copies of, or take
14 extracts from, the documents; and
15 (b) may retain possession of the documents for the period that is
16 necessary for the purposes of the inquiry to which the
17 documents relate; and
18 (c) during that period must permit a person who would be
19 entitled to inspect any one or more of the documents if they
20 were not in the possession of the Commissioner to inspect at
21 all reasonable times the documents that person would be so
22 entitled to inspect.

51 Directions to people to attend compulsory conference

- 23
- 24 (1) For the purpose of inquiring into an act, and endeavouring to settle
25 the matter to which the act relates, in accordance with section, the
26 Commissioner may, by written notice, direct the people referred to
27 in subsection (2) of this section to attend, at a reasonable time and
28 place specified in the notice, a conference presided over by the
29 Commissioner or a person appointed by the Commissioner.
- 30 (2) Directions under subsection (1) to attend a conference in relation to
31 an act must be given to:
- 32 (d) if a complaint was made to the Commission in relation to that
33 act the complainant, or all the complainants, as the case
34 requires; and

Section 52

- 1 (e) the person who is alleged to have done the act; and
2 (c) any other person who, in the opinion of the Commissioner, is
3 likely to be able to provide information relevant to the
4 inquiry or whose presence at the conference is, in the opinion
5 of the Commissioner, likely to be conducive to the settlement
6 of the matter to which the act relates.
- 7 (3) A person who has been given a direction under subsection (1) to
8 attend a conference is entitled to be paid by the Commonwealth a
9 reasonable sum for the person's attendance at the conference.
- 10 (4) The Commissioner may, in a notice given to a person under
11 subsection (1), require the person to produce documents specified
12 in the notice at the conference.

13 **52 Compulsory conference**

- 14 (1) The person presiding at a conference held under this Division may
15 require a person attending the conference to produce a document.
- 16 (2) A conference under this Division is to be held in private and,
17 subject to this Act, must be conducted in the manner decided by
18 the person presiding at the conference.
- 19 (3) Subject to subsection (4), a body of people, whether incorporated
20 or not, that is directed under section to attend a conference is taken
21 to attend if an officer or employee of the body attends on behalf of
22 the body.
- 23 (4) Unless the person presiding at a conference under this Division
24 consents:
- 25 (a) a natural person is not entitled to be represented at the
26 conference by another person; and
- 27 (b) a body of people, whether incorporated or not, is not entitled
28 to be represented at the conference by a person other than an
29 officer or employee of the body.

30 **53 Reference of matters to the Commission**

- 31 (1) If the Commissioner:
-

- 1 (c) thinks that a matter cannot be settled by conciliation; or
2 (d) has endeavoured to settle a matter by conciliation but has not
3 been successful; or
4 (e) thinks that the nature of a matter is such that it should be
5 referred to the Commission;
6 the Commissioner must refer the matter to the Commission
7 together with a report relating to any inquiries made by the
8 Commissioner into the matter.
- 9 (2) A report for the purposes of subsection (1) must not set out or
10 describe anything said or done in the course of conciliation
11 proceedings under this Division (including anything said or done at
12 a conference held under this Division).
- 13 (3) Evidence of anything said or done in the course of conciliation
14 proceedings under this Division (including anything said or done at
15 a conference held under this Division) is not admissible in
16 subsequent proceedings under this Part relating to the matter.

1 **Division 3C Inquiries by Human Rights and Equal**
2 **Opportunity Commission**

3 **54 Minister may appoint people to participate in inquiries**

- 4 (1) The Minister may appoint a person or people to participate, in
5 accordance with this section, in the performance of the functions of
6 the Commission.
- 7 (2) A person who holds an appointment under subsection (1) may, at
8 the request of the President, participate in the holding of an inquiry
9 under this Division as if the person were a member of the
10 Commission and, for the purposes of the application of this Act in
11 relation to the inquiry, the person is taken to be a member of the
12 Commission.
- 13 (3) A person appointed under subsection (1):
14 (a) holds the appointment for such period, not exceeding 5 years,
15 as is specified in the instrument of the person's appointment,
16 but is eligible for re-appointment; and
17 (b) may resign the appointment by written notice given to the
18 Minister.
- 19 (4) The Minister may:
20 (a) determine the terms and conditions of appointment, including
21 remuneration, of a person appointed under subsection (1);
22 and
23 (b) at any time terminate such an appointment.
- 24 (5) The Minister may, for the purpose of appointing under
25 subsection (1) a person who is the holder of a judicial office of a
26 State, enter into such arrangement with the appropriate Minister of
27 the State as is necessary to secure that person's services.
- 28 (6) An arrangement under subsection (5) may provide for the
29 Commonwealth to reimburse a State with respect to the services of
30 the person to whom the arrangement relates.

1 (7) The appointment under subsection (1) of the holder of a judicial
2 office, or service by the holder of a judicial office under such an
3 appointment, does not affect the person's tenure of that judicial
4 office or the person's rank, title, status, precedence, salary, annual
5 or other allowances or other rights or privileges as the holder of
6 that judicial office and the person's service under such an
7 appointment is taken to be service as the holder of that judicial
8 office.

9 (8) In this section, *judicial office* means:

- 10 (a) an office of Judge of a court created by the Parliament; or
11 (b) an office the holder of which has, because of holding that
12 office, the same status as a Judge of a court created by the
13 Parliament.

14 **55 Reference of matter to the Commission by the Minister**

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

17 **56 Inquiries into complaints**

- 18 (1) Subject to subsections (2) and (3), the Commission must hold an
19 inquiry into each complaint or matter referred to it under
20 subsection (6) or (1) or section .
- 21 (2) The Commission must not hold, or must discontinue, an inquiry
22 into a complaint or matter referred to it under subsection (6) or (1)
23 if the complainant notifies the Commission that the complainant
24 does not wish the inquiry to be held or to continue.
- 25 (3) The Commission must not hold, or must discontinue, an inquiry
26 into a complaint or matter referred to it under section if the
27 Minister notifies the Commission that the Minister does not wish
28 the inquiry to be held or to continue.

29 **57 Exercise of inquiry powers by Commission**

- 30 (1) Subject to subsection (2), the powers of the Commission to hold
31 inquiries under this Act may, if the President so directs, be
-

Section 58

1 exercised by a single member of the Commission who is a legally
2 qualified person, or by 2 or more members of the Commission at
3 least one of whom is a legally qualified person.

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

6 (c) if only one of those members is a legally qualified
7 person, that member must preside; or

8 (d) if 2 or more of those members are legally qualified people:

9 (i) if one of those people is the President, the President
10 must preside; or

11 (ii) in any other case, those members must elect one of
12 those people to preside.

13 (3) In this section:

14 ***legally qualified person*** means a person who:

15 (a) is or has been a Judge of a court created by the Parliament or
16 of a court of a State or a person who has the same
17 designation and status as a Judge of a court created by the
18 Parliament; or

19 (b) is enrolled as a barrister or solicitor, as a barrister and
20 solicitor, or as a legal practitioner, of the High Court, of
21 another federal court or of the Supreme Court of a State or
22 Territory.

23 **58 Single inquiry in relation to several complaints**

24 If the Commission is of the opinion that 2 or more complaints arise
25 out of the same or substantially the same circumstances or
26 subject-matter, it may hold a single inquiry into those complaints.

27 **59 Joinder of parties by the Commission**

28 If, before or during the holding of an inquiry, the Commission is of
29 the opinion that a person ought to be joined as a party to the
30 inquiry, it may, by notice in writing given to the person, join the
31 person as a party to the inquiry.

60 Notice of inquiry and rights of parties at inquiry

(1) The Commission:

(c) must give a party to an inquiry, other than a person to whom the Commission grants leave to appear as a party to the inquiry, such notice in such manner as the Commission determines of the time and place at which it intends to hold the inquiry; and

(d) must give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Commission.

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

61 Parties to an inquiry

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

62 Right of appearance and to representation

(1) A party to an inquiry:

(a) must appear personally or, if the party is a body of people, whether incorporated or not, by an officer, employee or agent of the body; and

(b) may:

(i) if the Commission has made arrangements under subsection (1) for counsel to appear at the inquiry to assist the Commission; or

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

Section 63

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

4 **63 Inquiries may be held in private**

- 5 (1) Subject to subsection (2), an inquiry must be held in public.
6 (2) The Commission may, on its own initiative or on the application of
7 a party to the inquiry, if it is satisfied that it is appropriate to do so,
8 direct that an inquiry, or a part of an inquiry, be held in private.

9 **64 Commission may prohibit publication of evidence etc.**

- 10 (1) The Commission may direct that:
11 (c) any evidence given before it;
12 (d) the contents of any document produced to the Commission;
13 or
14 (e) any information that might enable a person who has appeared
15 before the Commission to be identified;
16 must not be published, or must not be published except in such
17 manner, and to such people, as the Commission specifies.
18 (2) This section is not to be taken to derogate from the Commission's
19 powers under section.

20 **65 Counsel assisting the Commission**

- 21 (1) The Commission may make arrangements for counsel to appear at
22 an inquiry to assist the Commission.
23 (2) Counsel assisting the Commission at an inquiry pursuant to
24 arrangements made under subsection (1) must, in relation to that
25 inquiry, be subject to the control and direction of the Commission.

26 **66 Conditions for making a representative complaint**

- 27 (1) A representative complaint may be lodged under this section only
28 if:

- 1 (a) the class members have complaints against the same person;
2 and
3 (b) all the complaints are in respect of, or arise out of, the same,
4 similar or related circumstances; and
5 (c) all the complaints give rise to a substantial common issue of
6 law or fact.
- 7 (2) A representative complaint under this section must:
8 (a) describe or otherwise identify the class members; and
9 (b) specify the nature of the complaints made on behalf of the
10 class members; and
11 (c) specify the nature of the relief sought; and
12 (d) specify the questions of law or fact that are common to the
13 complaints of the class members.
- 14 In describing or otherwise identifying the class members, it is not
15 necessary to name them or specify how many there are.
- 16 (3) A representative complaint may be lodged without the consent of
17 class members.

18 **67 Commission may decide that a complaint is not to continue as a**
19 **representative complaint**

- 20 (1) The Commission may, on application by the respondent or of its
21 own motion, decide that a complaint should no longer continue as a
22 representative complaint.
- 23 (2) The Commission may only make such a decision if it is satisfied
24 that it is in the interests of justice to do so for any of the following
25 reasons:
26 (a) the costs that would be incurred if the complaint were to
27 continue as a representative complaint are likely to exceed
28 the costs that would be incurred if each class member lodged
29 a separate complaint;
30 (b) the representative complaint will not provide an efficient and
31 effective means of dealing with the complaints of the class
32 members;

Section 68

- 1 (c) the complaint was not brought in good faith as a
2 representative complaint;
- 3 (d) it is otherwise inappropriate that the complaints be pursued
4 by means of a representative complaint.
- 5 (3) If the Commission makes such a determination:
- 6 (a) the complaint may be continued as a complaint by the
7 complainant on his or her own behalf against the respondent,
8 unless the complainant is a trade union; and
- 9 (b) on the application of a person who was a class member for
10 the purposes of the former representative complaint, the
11 Commission may join that person as a complainant to the
12 complaint as continued under paragraph (a).

13 **68 Additional rules applying to the determination of representative**
14 **complaints**

- 15 (1) The Commission may, on application by a class member, replace
16 the complainant with another class member, if it appears to the
17 Commission that the complainant is not able adequately to
18 represent the interests of the class members.
- 19 (2) A class member may, by notice in writing to the Commission,
20 withdraw from a representative complaint at any time before the
21 Commission begins to hold an inquiry into the complaint.
- 22 (3) The Commission may at any stage direct that notice of any matter
23 be given to a class member or class members.

24 **69 Amendment of representative complaints**

- 25 (1) If the Commission is satisfied that a complaint could be dealt with
26 as a representative complaint if the class of people on whose behalf
27 that complaint is lodged is increased, reduced or otherwise altered,
28 the Commission may amend the complaint so that the complaint
29 can be dealt with as a representative complaint.
- 30 (2) If the Commission is satisfied that a complaint has been wrongly
31 made as a representative complaint, the Commission may amend
32 the complaint by removing the names of the people or the

1 description of the class of people on whose behalf the complaint
2 was lodged so that the complaint can be dealt with otherwise than
3 as a representative complaint.

4 **70 Class member for representative complaint not entitled to lodge**
5 **individual complaint**

6 A person who is a class member for a representative complaint is
7 not entitled to lodge a complaint in respect of the same subject
8 matter.

9 **71 Resolution of complaint by conciliation**

10 The Commission:

- 11 (c) may endeavour, by all such means as to it seem reasonable,
12 to resolve a complaint the subject of an inquiry by
13 conciliation; and
14 (d) must take all such steps as to it seem reasonable to effect an
15 amicable settlement of a complaint the subject of an inquiry
16 and for this purpose may adjourn an inquiry at any stage to
17 enable the parties to negotiate with a view to settlement of
18 the complaint by amicable arrangements.

19 **72 Evidence and findings in other proceedings**

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

- 21 (e) receive in evidence the transcript of evidence in any
22 proceedings before a court or tribunal and draw any
23 conclusions of fact from that transcript that it considers
24 proper; and
25 (f) adopt any findings, decision or judgment of a court or
26 tribunal that may be relevant to the inquiry; and
27 (g) receive in evidence any report of the Commissioner if a copy
28 of that report has been made available to every other party to
29 the inquiry.

Section 73

1 **73 Powers of Commission to take evidence**

- 2 (1) The Commission may take evidence on oath or affirmation and for
3 that purpose a member of the Commission may administer an oath
4 or affirmation.
- 5 (2) A member of the Commission may summon a person to appear
6 before the Commission to give evidence and to produce such
7 documents (if any) as are referred to in the summons.
- 8 (3) A person to whom an inquiry under this Part relates or who is a
9 party to proceedings before the Commission may call witnesses.
- 10 (4) A person appearing as a witness before the Commission may be
11 examined, cross-examined and re-examined.

12 **74 Fees for witnesses**

- 13 (1) A person summoned to appear before the Commission is entitled to
14 be paid, in respect of the person's attendance, fees, and allowances
15 for expenses, fixed by or in accordance with the regulations.
- 16 (2) Subject to subsection (3), the fees and allowances must be paid:
17 (h) if the person was summoned at the request of a person other
18 than the Commonwealth by the person who made the
19 request; or
20 (i) in any other case by the Commonwealth.
- 21 (3) The Commission may, in its discretion, order that the fees and
22 allowances payable to a person summoned as mentioned in
23 paragraph (2) (a) must be paid, in whole or in part, by the
24 Commonwealth.

25 **75 Retention and copying of documents**

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

76 Application of rules of evidence etc.

- 1
- 2 (1) For the purposes of an inquiry, the Commission:
- 3 (a) is not bound by the rules of evidence and may inform itself
- 4 on any matter in the manner it thinks fit; and
- 5 (b) must conduct the inquiry with as little formality and
- 6 technicality, and with as much expedition, as the
- 7 requirements of this Act and a proper consideration of the
- 8 matters before the Commission permit; and
- 9 (c) may give directions relating to procedure that it thinks will
- 10 enable costs or delay to be reduced and will help to achieve a
- 11 prompt hearing of the matters at issue between the parties.
- 12 (2) The member presiding at an inquiry must decide any question
- 13 relating to the admissibility of evidence and any other question of
- 14 law or procedure.

77 Consideration of exceptions and exemptions

15

16 In deciding whether an act is unlawful under a provision of Part 2,

17 the Commission is not required to have regard to any exception or

18 exemption provided for in that Part unless there is evidence before

19 the Commission that the exception or exemption is or may be

20 applicable in relation to that act.

78 Commission may dismiss frivolous etc. complaints

21

22 The Commission may, at any stage of an inquiry, dismiss a

23 complaint if it is satisfied that the complaint is frivolous, vexatious,

24 misconceived, lacking in substance or relates to an act that is not

25 unlawful because of a provision of Part 2.

79 Making of interim determination

- 26
- 27 (1) The Commission may, on the application of the Commissioner
- 28 under section or on the application of a party to an inquiry at any
- 29 time after the lodgement of the complaint into which that inquiry is
- 30 held, make an interim determination of such a nature as would, if it
- 31 were binding and conclusive upon the parties, preserve:

Section 80

- 1 (a) the status quo between the parties to the complaint; or
2 (b) the rights of the parties to the complaint;
3 pending completion of the matter the subject of the complaint.
- 4 (2) The President may exercise the power under subsection (1) if the
5 President is of the opinion that it is expedient that the President
6 alone should do so.
- 7 (3) An interim determination under subsection (1) is not binding or
8 conclusive between any of the parties to the determination.

9 **80 Determination or other decision of the Commission**

- 10 (1) After holding an inquiry, the Commission may:
11 (a) dismiss the complaint the subject of the inquiry; or
12 (b) find the complaint substantiated and make a determination,
13 which may include any one or more of the following:
14 (i) a declaration that the respondent has engaged in conduct
15 that is unlawful under Part 2 and should not repeat or
16 continue the unlawful conduct;
17 (i) a declaration that the respondent should perform any
18 reasonable act or course of conduct to redress any loss
19 or damage suffered by the complainant;
20 (ii) a declaration that the respondent should employ or
21 re-employ the complainant;
22 (iii) a declaration that the respondent should pay to the
23 complainant damages by way of compensation for any
24 loss or damage suffered because of the conduct of the
25 respondent;
26 (iv) a declaration that the respondent should promote the
27 complainant;
28 (v) a declaration that the termination of a contract or
29 agreement should be varied to redress any loss or
30 damage suffered by the complainant;
31 (vi) a declaration that it would be inappropriate for any
32 further action to be taken in the matter.

- 1 (2) A determination of the Commission under subsection (1) is not
2 binding or conclusive between any of the parties to the
3 determination.
- 4 (3) The Commission may, in a determination under subsection (1),
5 state any findings of fact upon which the determination is based.
- 6 (4) The damage referred to in paragraph (1)(b) includes injury to the
7 complainant's feelings or humiliation suffered by the complainant.
- 8 (5) A determination by the Commission under subparagraph (1)(b)(iv)
9 on a representative complaint:
10 (a) may provide for payment of specified amounts or of amounts
11 worked out in a manner specified by the Commission; and
12 (b) if it provides for payment in accordance with paragraph (a),
13 must make provision for the payment of the money to the
14 complainants concerned.
- 15 (6) If the Commission makes a determination under
16 subparagraph (1)(b)(iv) on a representative complaint, the
17 Commission may give such directions (if any) as it thinks just in
18 relation to:
19 (a) the manner in which a class member is to establish his or her
20 entitlement to the payment of an amount under the
21 determination; and
22 (b) the manner for determining any dispute regarding the
23 entitlement of a class member to the payment.
- 24 (7) In this section:
25 *complainant*, in relation to a representative complaint, means the
26 class members.

27 **81 Determination must identify the class members who are to be**
28 **affected by the determination**

29 A determination under section or on a representative complaint
30 must describe or otherwise identify those of the class members
31 who are to be affected by the determination.

Section 82

1 **82 Assistance in proceedings before Commission**

2 (1) If:

- 3 (a) a person has made a complaint in respect of which the
4 Commission has held an inquiry under section and the
5 Commission has found the complaint to be substantiated; or
6 (b) a person has done or is alleged to have done an act in respect
7 of which an inquiry has been held by the Commission under
8 section and the Commission dismisses the complaint the
9 subject of the inquiry;

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

13 (2) If a recommendation is made by the Commission under
14 subsection (1) in relation to a person, the Attorney-General may
15 authorise the provision by the Commonwealth to that person, on
16 such conditions (if any) as the Attorney-General decides, of such
17 financial assistance in respect of expenses incurred by the person in
18 connection with the inquiry as the Attorney-General decides.

19 **83 Proceedings in the Federal Court to enforce a determination**

20 (1) The Commission or the complainant may commence proceedings
21 in the Federal Court for an order to enforce a determination under
22 subsection (1) or (1), except where the respondent to the
23 determination is a Commonwealth agency or the principal
24 executive of a Commonwealth agency.

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

28 (3) The Court may, if it thinks fit, grant an interim injunction pending
29 the determination of the proceedings.

30 (4) The Court is not to require a person, as a condition of granting an
31 interim injunction, to give an undertaking as to damages.

- 1 (5) In the proceedings, the question whether the respondent has
 2 engaged in conduct or committed an act that is unlawful under this
 3 Act is to be dealt with by the Court by way of a hearing *de novo*,
 4 but the Court may receive as evidence any of the following:
 5 (a) a copy of the Commission's written reasons for the
 6 determination;
 7 (b) a copy of any document that was before the Commission;
 8 (c) a copy of the record (including any tape recording) of the
 9 Commission's inquiry into the complaint.
- 10 (6) In this section:
 11 *complainant*, in relation to a representative complaint, means any
 12 of the class members.

13 **84 Assistance in proceedings before the Federal Court**

- 14 (1) A person who:
 15 (a) has commenced or proposes to commence proceedings in the
 16 Federal Court under section; or
 17 (b) has done or is alleged to have done an act in respect of which
 18 proceedings have been commenced in the Federal Court
 19 under that section;
 20 may apply to the Attorney-General for assistance under this section
 21 in respect of the proceedings.
- 22 (2) If:
 23 (a) an application is made by a person under subsection (1); and
 24 (b) the Attorney-General is satisfied that:
 25 (i) it would involve hardship to that person to refuse the
 26 application; and
 27 (i) 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 decides, of such legal or financial assistance in
 32 respect of the proceedings as the Attorney-General decides.

1 **Division 4C Review and enforcement of determinations**
2 **involving Commonwealth agencies**

3 **85 Application of Division**

4 This Division applies to a determination that is made under section
5 or and has a Commonwealth agency, or the principal executive of a
6 Commonwealth agency, as the respondent.

7 **86 Obligations of respondent agency**

- 8 (1) If a Commonwealth agency is the respondent to a determination to
9 which this Division applies that is made under section, the agency
10 must comply with the determination.
- 11 (2) If a Commonwealth agency is the respondent to a determination to
12 which this Division applies that is made under section:
- 13 (c) the agency must not repeat or continue conduct that is
14 covered by a declaration included in the determination under
15 subparagraph (1)(b)(i); and
- 16 (d) the agency must perform the act or course of conduct that is
17 covered by a declaration included in the determination under
18 subparagraph (1)(b)(ii), (iii), (v) or (vi).

19 **87 Obligations of principal executive of agency**

- 20 (1) If the principal executive of a Commonwealth agency is the
21 respondent to a determination to which this Division applies that is
22 made under section, the principal executive must take all such
23 steps as are reasonably within his or her power to ensure:
- 24 (e) that the terms of the determination are brought to the notice
25 of all members, officers and employees of the agency whose
26 duties are such that they may engage in conduct of the kind
27 to which the determination relates; and
- 28 (f) that the determination is complied with.
- 29 (2) If the principal executive of a Commonwealth agency is the
30 respondent to a determination to which this Division applies that is

1 made under section, the principal executive must take all such
2 steps as are reasonably within his or her power to ensure:

- 3 (a) that the terms of the determination are brought to the notice
4 of all members, officers and employees of the agency whose
5 duties are such that they may engage in conduct of the kind
6 to which the determination relates; and
7 (b) that no member, officer or employee of the agency repeats or
8 continues conduct that is covered by a declaration included in
9 the determination under subparagraph (1)(b)(i); and
10 (c) the performance of any act or course of conduct that is
11 covered by a declaration included in the determination under
12 subparagraph (1)(b)(ii), (iii), (v) or (vi).

13 **88 Damages**

- 14 (1) If a determination to which this Division applies that is made under
15 section includes a declaration that the respondent should pay
16 damages to the complainant, the complainant is entitled to be paid
17 the amount specified in the declaration.
- 18 (2) If the respondent is a Commonwealth agency that has the capacity
19 to sue and be sued, the amount is recoverable as a debt due by the
20 agency to the complainant. In any other case, the amount is
21 recoverable as a debt due by the Commonwealth to the
22 complainant.
- 23 (3) In this section:
- 24 *complainant*, in relation to a representative complaint, means a
25 class member.

26 **89 Review of determinations regarding damages**

- 27 (1) Application may be made to the Administrative Appeals Tribunal
28 for review of:
- 29 (d) a declaration of the kind referred to in
30 subparagraph (1)(b)(iv) that is included in a determination to
31 which this Division applies; or

Section 90

- 1 (e) a decision of the Commission refusing to include such a
2 declaration in a determination to which this Division applies.
- 3 (2) A Commonwealth agency, or the principal executive of a
4 Commonwealth agency, may not apply for review without the
5 permission of the Minister.
- 6 (3) In exercising powers in relation to an application under
7 subsection (1), the Tribunal must be constituted by a presidential
8 member who is a Judge and 2 other members who are not Judges.
9 This subsection has effect subject to subsection 21(1A) of the
10 *Administrative Appeals Tribunal Act 1975*.
- 11 (4) Terms used in subsection (3) that are also used in the
12 *Administrative Appeals Tribunal Act 1975* have the same meanings
13 as in that Act.

14 **90 Enforcement of determination against Commonwealth agency**

- 15 (1) If a Commonwealth agency fails to comply with section, an
16 application may be made to the Federal Court for an order
17 directing the agency to comply.
- 18 (2) If the principal executive of a Commonwealth agency fails to
19 comply with section, an application may be made to the Federal
20 Court for an order directing the principal executive to comply.
- 21 (3) The application may be made by the Commission or by the
22 complainant. In the case of a representative complaint,
23 **complainant** means a class member.
- 24 (4) On an application under this section, the Federal Court may make
25 such other orders as it thinks fit with a view to securing compliance
26 by the respondent.
- 27 (5) An application may not be made under this section in relation to a
28 determination under section until:
29 (a) the time has expired for making an application under section
30 for review of the determination; or

- 1 (a) if such an application is made, the decision of the
2 Administrative Appeals Tribunal on the application has come
3 into operation.

1 **Part 4C Offences**

2 **91 Unlawful act not offence unless expressly so provided**

3 Except as expressly provided by this Part, this Act does not make it
4 an offence to do an act that is unlawful because of a provision of
5 Part 2.

6 **92 Advertisements**

7 (1) A person must not publish or display, or cause or permit to be
8 published or displayed, an advertisement or notice that indicates, or
9 could reasonably be understood as indicating, an intention to do an
10 act that is unlawful because of a provision of Part 2.

11 Maximum penalty: 10 penalty units.

12 (2) In subsection (1):

13 *advertisement* includes every form of advertisement or notice,
14 whether to the public or not, and whether in a newspaper or other
15 publication, by television or radio, by display of notices, signs,
16 labels, showcards or goods, by distribution of samples, circulars,
17 catalogues, price lists or other material, by exhibition of pictures,
18 models or films, or in any other way, and the reference in that
19 subsection to publish or display, in relation to an advertisement, is
20 to be construed accordingly.

21 **93 Failure to attend conference**

22 A person who has been given a direction under subsection (1) to
23 attend a conference must not, without reasonable excuse:

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

28 Maximum penalty: 10 penalty units.

94 Failure to provide information etc.

A person must not, without reasonable excuse, refuse or fail:

(c) to provide information; or

(d) to produce a document;

when so required under section, or.

Maximum penalty: 10 penalty units.

95 Offences in relation to Commission

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

(e) fail to attend as required by the summons; or

(f) fail to appear and report from day to day unless excused, or released from further attendance, by the Commission.

(2) A person appearing before the Commission as a witness at an inquiry must not, without reasonable excuse:

(a) refuse or fail to be sworn or make an affirmation; or

(b) refuse or fail to answer a question that is required by the member presiding at the inquiry to be answered; or

(c) refuse or fail to produce a document that was required to be produced by a summons under this Act served on that person as prescribed.

(3) A person must not:

(a) interrupt an inquiry or proceedings of the Commission; or

(b) use insulting language towards a member of the Commission when the member is exercising any powers or performing any functions as a member; or

(c) make a publication in contravention of any direction given under section; or

(d) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Commission is meeting or holding an inquiry; or

(e) do any other act or thing that would, if the Commission were a court of record, constitute a contempt of that court.

Section 96

1 Maximum penalty: 10 penalty units.

2 **96 Self-incrimination**

3 It is not a reasonable excuse for the purposes of section for a
4 person to refuse or fail to provide information or produce a
5 document that the providing of the information or the production of
6 the document might incriminate the person, but evidence of the
7 provision of the information or the production of the document is
8 not admissible in evidence against the person in any civil or
9 criminal proceeding other than a proceeding for an offence under
10 section.

11 **97 False or misleading information**

12 A person must not provide information or make a statement to the
13 Commission, to the Commissioner or to any other person
14 exercising powers or performing functions under this Act, knowing
15 that the information or statement is false or misleading in a
16 material particular.

17 Maximum penalty: 25 penalty units.

18 **98 Victimisation**

19 (1) A person must not commit an act of victimisation against another
20 person.

21 Maximum penalty: 25 penalty units.

22 (2) For the purposes of subsection (1), a person commits an act of
23 victimisation against another person if the first-mentioned person
24 subjects, or threatens to subject, the other person to any detriment
25 on the ground that the other person:

26 (a) has made, or proposes to make, a complaint under this Act;
27 or

28 (b) has brought, or proposes to bring, proceedings under this Act
29 against any person; or

30 (c) has provided or proposes to provide information, or has
31 produced or proposes to produce documents, to a person

- 1 exercising or performing any power or function under this
2 Act; or
- 3 (d) has attended, or proposes to attend, a conference held under
4 Division 2 or 3 of Part 3; or
- 5 (e) has appeared, or proposes to appear, as a witness before the
6 Commission in a proceeding under this Act; or
- 7 (f) has reasonably asserted, or proposes to assert, any rights of
8 the person or the rights of any other person under this Act; or
- 9 (g) has made an allegation that a person has done an act that is
10 unlawful because of a provision of Part 2;
- 11 or on the ground that the first-mentioned person believes that the
12 other person has done, or proposes to do, an act or thing referred to
13 in any of paragraphs (a) to (g), inclusive.
- 14 (3) It is a defence to a prosecution for an offence under subsection (1)
15 constituted by subjecting, or threatening to subject, a person to a
16 detriment on the ground that the person has made an allegation that
17 another person had done an act that was unlawful because of a
18 provision of Part 2 if it is proved that the allegation was false and
19 was not made in good faith.

20 **99 Offence to vilify on the ground of sexuality, transgender, or**
21 **intersex identity**

- 22 (1) In this section:
- 23 *public act* has the same meaning as in section.
- 24 (2) A person must not, by a public act, incite hatred towards, serious
25 contempt for, or severe ridicule of, a person or group of people on
26 the ground of the sexuality, transgender or intersex identity of the
27 person or members of the group by means that include:
- 28 (a) threatening physical harm to, or to property of, the person or
29 members of the group; or
- 30 (b) inciting others to threaten physical harm to, or to property of,
31 the person or members of the group.
- 32 Maximum penalty: 50 penalty units or imprisonment for 6 months,
33 or both.

Section 100

1 **100 Obstruction etc.**

2 A person must not insult, hinder, obstruct, molest or interfere with
3 a person exercising a power or performing a function under this
4 Act.

5 Maximum penalty: 10 penalty units.

1 **Part 5C Sexuality Discrimination Commissioner**

2 **101 Sex Discrimination Commissioner**

- 3 (1) The Sex Discrimination Commission is to assume responsibility
4 for issues of sexuality and gender discrimination.
- 5 (2) Within two years of the commencement of the Act, the President of
6 the Commission is to report on the management of sexuality and
7 gender complaints, including the appropriateness of the Sex
8 Discrimination Commissioner continuing to have responsibility for
9 sexuality and gender discrimination issues, and if there is a
10 demonstrated need for additional resources.

1 **Part 7C Miscellaneous**

2 **102 This Act does not make unlawful acts lawful**

3 Nothing in this Act makes it lawful to do a thing that would be
4 unlawful apart from this Act.

5 **103 Delegation**

6 (1) The Commission may by writing under its seal, delegate to a
7 member of the Commission, the Commissioner, a member of the
8 staff of the Commission or another person or body of people all or
9 any of the powers conferred on the Commission under this Act,
10 other than powers in connection with the performance of the
11 functions that, under section, are to be performed by the
12 Commissioner for the Commission.

13 (2) The Commissioner may, by writing signed by the Commissioner,
14 delegate to:

15 (c) a member of the staff of the Commission; or

16 (d) any other person or body of people;

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

19 **104 Liability of people involved in unlawful acts**

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

23 **105 Vicarious liability etc.**

24 (1) Subject to subsection (2), if an employee or agent of a person does,
25 in connection with the employment of the employee or with the
26 duties of the agent as an agent, an act that would, if it were done by
27 the person, be unlawful under Division 1 or 2 of Part 2 (whether or
28 not the act done by the employee or agent is unlawful under

1 Division 1 or 2 of Part 2), this Act applies to that person as if that
2 person had also done the act.

3 (2) Subsection (1) does not apply in relation to an act of a kind
4 referred to in subsection (1) done by an employee or agent of a
5 person if it is established that the person took all reasonable steps
6 to prevent the employee or agent from doing acts of the kind
7 referred to in that paragraph.

8 **106 Acts done for bodies corporate**

9 (1) If, for the purposes of this Act, it is necessary to establish that a
10 body corporate has done an act on a particular ground, it is
11 sufficient to establish that a person who acted for the body
12 corporate in the matter so acted on that ground.

13 (2) If a person attends a conference under Division 2 of Part 3, or
14 appears before the Commission under Division 3 of that Part, for a
15 body of people, whether incorporated or not, any conduct by that
16 person when so attending or appearing is taken, for the purposes of
17 this Act, to be conduct of the body.

18 **107 Commonwealth taken to be employer**

19 For the purposes of this Act, all Commonwealth employees are
20 taken to be employed by the Commonwealth.

21 **108 Awards inconsistent with this Act not to be made**

22 This Act is a prescribed Act for the purposes of section 121 of the
23 *Industrial Relations Act 1988*.

24 **109 Unlawful act not basis of civil action unless expressly so 25 provided**

26 Except as expressly provided by this Act, nothing in this Act
27 confers on a person any right of action in respect of the doing of an
28 act that is unlawful because of a provision of Part 2.

Section 110

1 **110 Protection from civil actions**

2 (1) The Commission, a member of the Commission, the Commissioner
3 or a person acting under the direction or authority of the
4 Commission or of the Commissioner or under a delegation under
5 section is not liable to an action or other proceeding for damages
6 for or in relation to an act done or omitted to be done in good faith
7 in the performance or purported performance of a function, or in
8 the exercise or purported exercise of any power or authority,
9 conferred on the Commission or the Commissioner.

10 (2) If:

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

12 (f) a submission has been made, a document or information has
13 been provided, or evidence has been given, to the
14 Commission or the Commissioner;

15 a person is not liable to an action, suit or other proceeding in
16 respect of loss, damage or injury of any kind suffered by another
17 person by reason only that the complaint or submission was made,
18 the document or information was provided or the evidence was
19 given.

20 **111 Non-disclosure of private information**

21 (1) This section applies to a person who is, or has at any time been:

22 (g) the Commissioner; or

23 (h) a member of the Commission or a member of the staff
24 assisting the Commission; or

25 (i) authorised to perform or exercise a function or power of the
26 Commission or the Commissioner or a function or power for
27 the Commission or the Commissioner, being a function or
28 power conferred on the Commission or on the Commissioner
29 under this Act

30 (2) A person to whom this section applies must not, either directly or
31 indirectly, except in the performance of a duty under or in
32 connection with this Act or in the performance or exercise of a
33 function or power referred to in paragraph (1)(c):

Section 111

- 1 (a) make a record of, or divulge or communicate to any person,
 2 any information relating to the affairs of another person
 3 acquired by the person because of that person's office or
 4 employment under or for the purposes of this Act or because
 5 of the person being or having been so authorised; or
 6 (b) make use of any such information as is mentioned in
 7 paragraph (a); or
 8 (c) produce to any person a document relating to the affairs of
 9 another person provided for the purposes of this Act.

10 Maximum penalty: 50 penalty units, or imprisonment for 1 year, or
 11 both.

- 12 (3) A person to whom this section applies must not be required:
 13 (a) to divulge or communicate to a court information relating to
 14 the affairs of another person acquired by the person because
 15 of the person's office or employment under or for the
 16 purposes of this Act or because of the person being or having
 17 been so authorised; or
 18 (b) to produce in a court a document relating to the affairs of
 19 another person of which the person has custody, or to which
 20 that person has access, because of the person's office or
 21 employment under or for the purposes of this Act or because
 22 of the person being or having been so authorised;
 23 except where it is necessary to do so for the purposes of this Act.
- 24 (4) Nothing in this section prohibits a person from:
 25 (a) making a record of information that is, or is included in a
 26 class of information that is, required or permitted by an Act
 27 to be recorded, if the record is made under that Act; or
 28 (b) divulging or communicating information, or producing a
 29 document, to a person in accordance with an arrangement in
 30 force under section 16 of the *Human Rights and Equal*
 31 *Opportunity Commission Act 1986*; or
 32 (c) divulging or communicating information, or producing a
 33 document, that is, or is included in a class of information that
 34 is or class of documents that are, required or permitted by an
 35 Act to be divulged, communicated or produced, as the case

Section 112

1 may be, if the information is divulged or communicated, or
2 the document is produced, for the purposes of or pursuant to
3 that Act.

4 (5) Subsection (3) does not prevent a person from being required, for
5 the purposes of an Act, to divulge or communicate information, or
6 to produce a document, that is, or is included in a class of
7 information that is or class of documents that are, required or
8 permitted by that Act to be divulged, communicated or produced.

9 (6) In this section:

10 *court* includes a tribunal, authority or person having power to
11 require the production of documents or the answering of questions.

12 *produce* includes permit access to.

13 **112 Information stored otherwise than in written form**

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

19 **113 Commissioner to provide information**

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

23 **114 Amendments of the Human Rights and Equal Opportunity
24 Commission Act 1986**

25 The Human Rights and Equal Opportunity Commission Act 1986
26 is amended as set out in the Schedule.

27 **115 Regulations**

28 The Governor-General may make regulations prescribing matters:

Section 115

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

1 **Schedule 1—Amendments of the Human**
2 **Rights and Equal Opportunity**
3 **Commission Act 1986**

4 **1 Subsection 8(1):**

5 Add at the end:

6 “and (g) the Sexuality Discrimination Commissioner”.

7 **2 Subsection 8A(3) (Item 2 of Table):**

8 Add “and section of the Sexuality DA”

9 **3 Subsection 8A(3) (Item 3 of Table):**

10 Add “and sections and of the Sexuality DA”

11 **4 Subsection 8A(3) (Item 6 of Table):**

12 Add “and section of the Sexuality DA”

13 **5 Subsection 8A(3) (Item 7 of Table):**

14 Add “and subsection (2) of the Sexuality DA”

15 **6 Subsection 8A(4):**

16 Add “‘Sexuality DA’ means the *Sexuality Discrimination Act 1995*.”

17 **7 Paragraph 11(1)(a):**

18 After “the *Sex Discrimination Act 1984*” insert “or the *Sexuality*
19 *Discrimination Act 1995*”.

20 **8 Subsection 11(3):**

21 After “the *Sex Discrimination Act 1984*” insert “, the *Sexuality*
22 *Discrimination Act 1995*”.

23 **9 Subsection 14(8):**

24 After “the *Sex Discrimination Act 1984*” insert “, the *Sexuality*
25 *Discrimination Act 1995*”.

1 **10 Subsection 16(2A):**

2 After “the *Sex Discrimination Act 1984*” insert “, the *Sexuality*
3 *Discrimination Act 1995*”.

4 **11 Paragraph 16(2A)(b):**

5 After “the *Sex Discrimination Act 1984*” insert “or section 0 of the
6 *Sexuality Discrimination Act 1995*”.

7 **12 Paragraph 19(3)(b):**

8 After “the *Sex Discrimination Act 1984*” insert “, subsection 0(1) of the
9 *Sexuality Discrimination Act 1995*”.

10 **13 After paragraph 19(4)(b):**

11 Insert:

12 “(ba) sections 0 and 0 of the *Sexuality Discrimination Act 1995*;
13 or”.

14 **14 Subsection 19(6):**

15 After “the *Sex Discrimination Act 1984*” insert “, the *Sexuality*
16 *Discrimination Act 1995*”.