



# **Disability Discrimination Act 1992**

**Act No. 135 of 1992 as amended**

This compilation was prepared on 20 July 2009  
taking into account amendments up to Act No. 70 of 2009

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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

## **Part 1—Preliminary**

### **1 Short title** *[see Note 1]*

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

### **2 Commencement** *[see Note 1]*

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (3) If a provision of this Act does not commence under subsection (2) within the period of 12 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

### **3 Objects**

The objects of this Act are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
  - (i) work, accommodation, education, access to premises, clubs and sport; and
  - (ii) the provision of goods, facilities, services and land; and
  - (iii) existing laws; and
  - (iv) the administration of Commonwealth laws and programs; and
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.

#### 4 Interpretation

(1) In this Act, unless the contrary intention appears:

**accommodation** includes residential or business accommodation.

**administrative office** means:

- (a) an office established by, or an appointment made under, a law of the Commonwealth; and
- (b) an office established by, or an appointment made under, a law of a Territory; and
- (c) an appointment made by the Governor-General or a Minister otherwise than under a law of the Commonwealth or of a Territory; and
- (d) an appointment as a director of an incorporated company that is a public authority of the Commonwealth;

but does not include:

- (e) an office of member of the Assembly, member of the Executive, or Minister within the meaning of the *Australian Capital Territory (Self-Government) Act 1988*; or
- (f) an office of member of the Legislative Assembly, member of the Council or Minister of the Territory, within the meaning of the *Northern Territory (Self-Government) Act 1978*; or
- (g) an office of member of the Legislative Assembly within the meaning of the *Norfolk Island Act 1979*; or
- (h) an office or appointment in the Australian Public Service.

**associate**, in relation to a person, includes:

- (a) a spouse of the person; and
- (b) another person who is living with the person on a genuine domestic basis; and
- (c) a relative of the person; and
- (d) a carer of the person; and
- (e) another person who is in a business, sporting or recreational relationship with the person.

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

**club** means an association (whether incorporated or unincorporated) of persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that provides and maintains its facilities, in whole or in part, from the funds of the association.

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

**commission agent** means a person who does work for another person as the agent of that other person and who is remunerated, whether in whole or in part, by commission.

**Commissioner** means the Disability Discrimination Commissioner appointed under section 113.

**committee of management**, in relation to a club or a registered organisation, means the group or body of persons (however described) that manages the affairs of that club or organisation, as the case may be.

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

**Commonwealth employee** means a person who:

- (a) is appointed or engaged under the *Public Service Act 1999*;
- (b) holds an administrative office; or
- (c) is employed by a public authority of the Commonwealth; or
- (d) holds an office or appointment in the Commonwealth Teaching Service or is employed as a temporary employee under the *Commonwealth Teaching Service Act 1972*; or
- (e) is employed under the *Australian Security Intelligence Organisation Act 1979*, the *Commonwealth Electoral Act 1918* or the *Naval Defence Act 1910*; or
- (f) is a member of the Defence Force; or
- (g) is the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*).

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**Commonwealth law** means:

- (a) an Act, or a regulation, rule, by-law or determination made under an Act; or
- (b) an ordinance of a Territory, or a regulation, rule, by-law or determination made under an ordinance of a Territory; or
- (c) an order or award made under a law referred to in paragraph (a) or (b).

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

**contract worker** means a person who does work for another person under a contract between the employer of the first-mentioned person and that other person.

**Convention** means the Discrimination (Employment and Occupation) Convention, 1958 adopted by the General Conference of the International Labour Organization on 25 June 1958, a copy of the English text of which is set out in Schedule 1 of the *Human Rights and Equal Opportunity Commission Act 1986*.

**Covenant on Civil and Political Rights** means the International Covenant on Civil and Political Rights, a copy of the English text of which is set out in Schedule 2 of the *Human Rights and Equal Opportunity Commission Act 1986*.

**Department** means an Agency within the meaning of the *Public Service Act 1999*.

**disability**, in relation to a person, means:

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or
- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or

(g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

and includes a disability that:

- (h) presently exists; or
- (i) previously existed but no longer exists; or
- (j) may exist in the future; or
- (k) is imputed to a person.

**disability discrimination** has the meaning given by sections 5 to 9 (inclusive).

**discriminate** has the meaning given by sections 5 to 9 (inclusive).

**document** includes any book, register or other record of information, however compiled, recorded or stored.

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

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

**education provider** means:

- (a) an educational authority; or
- (b) an educational institution; or
- (c) an organisation whose purpose is to develop or accredit curricula or training courses used by other education providers referred to in paragraph (a) or (b).

**employment** includes:

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

**employment agency** means any person who, or body that, whether for payment or not, assists persons to find employment or other work or assists employers to find employees or workers, and includes the Commonwealth Employment Service.

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**enactment** has the same meaning as in the *Human Rights and Equal Opportunity Commission Act 1986*.

**exemption** means an exemption granted under section 55.

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

**function** includes duty.

**institution of tertiary education** means a university, technical and further education institution or other institution at which tertiary education or training is provided.

**instrumentality of a State** means a body or authority established for a public purpose by a law of a State and includes a local government body.

**premises** includes:

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).

**President** means President of the Commission.

**principal** means:

- (a) in relation to a commission agent—a person for whom the commission agent does work as a commission agent; and
- (b) in relation to a contract worker—a person for whom the contract worker does work under a contract between the employer of the contract worker and the person.

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

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

**public authority of the Commonwealth** means:

- (a) a body incorporated, whether before or after the commencement of this Act, for a public purpose by a law of the Commonwealth or a law of a Territory, being a body corporate employing staff on its own behalf; or

- (b) an authority or body, not being a body corporate, established, whether before or after the commencement of this Act, for a public purpose by, or in accordance with the provisions of, a law of the Commonwealth or a law of a Territory, being an authority or body employing staff on its own behalf; or
- (c) an incorporated company over which the Commonwealth, or a body or authority referred to in paragraph (a) or (b), is in a position to exercise control.

**registered organisation** means an organisation registered, or an association recognised, under the *Fair Work (Registered Organisations) Act 2009*.

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

**services** includes:

- (a) services relating to banking, insurance, superannuation and the provision of grants, loans, credit or finance; or
- (b) services relating to entertainment, recreation or refreshment; or
- (c) services relating to transport or travel; or
- (d) services relating to telecommunications; or
- (e) services of the kind provided by the members of any profession or trade; or
- (f) services of the kind provided by a government, a government authority or a local government body.

**State**, except in subsections 12(11) and (12), includes the Australian Capital Territory and the Northern Territory.

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

**Territory**, except in subsection 12(12) or in paragraph (c) of the definition of **administrative office** in this subsection, does not include the Australian Capital Territory and the Northern Territory.

**this Act** includes the regulations.

**unjustifiable hardship** has the meaning given by section 11.

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**voluntary body** means an association or other body (whether incorporated or unincorporated) the activities of which are not engaged in for the purpose of making a profit, but does not include:

- (a) a club; or
  - (b) a body established by a law of the Commonwealth, a State or a Territory; or
  - (c) an association that provides grants, loans, credit or finance to its members.
- (2) For the purposes of this Act, refusing or failing to do an act is taken to be the doing of an act and a reference to an act includes a reference to a refusal or failure to do an act.

### 5 Disability discrimination

- (1) For the purposes of this Act, a person (**discriminator**) discriminates against another person (**aggrieved person**) on the ground of a disability of the aggrieved person if, because of the aggrieved person's disability, the discriminator treats or proposes to treat the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person without the disability.
- (2) For the purposes of subsection (1), circumstances in which a person treats or would treat another person with a disability are not materially different because of the fact that different accommodation or services may be required by the person with a disability.

### 6 Indirect disability discrimination

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) For the purposes of this Act, a person (*discriminator*) discriminates against a person with:
- (a) a visual disability; or
  - (b) a hearing disability; or
  - (c) any other disability;
- (*aggrieved person*) if the discriminator treats the aggrieved person less favourably because of the fact that the aggrieved person possesses, or is accompanied by:
- (d) a guide dog; or
  - (e) a dog trained to assist the aggrieved person in activities where hearing is required, or because of any matter related to that fact; or
  - (f) any other animal trained to assist the aggrieved person to alleviate the effect of the disability, or because of any matter related to that fact;
- whether or not it is the discriminator's practice to treat less favourably any person who possesses, or is accompanied by, a dog or any other animal.
- (2) Subsection (1) does not affect the liability of a person with a disability for damage to property caused by a dog or other animal trained to assist the person to alleviate the effect of the disability or because of any matter related to that fact.

### **10 Act done because of disability and for other reason**

If:

- (a) an act is done for 2 or more reasons; and
- (b) one of the reasons is the disability of a person (whether or not it is the dominant or a substantial reason for doing the act);

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

### **11 Unjustifiable hardship**

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

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

## **12 Application of Act**

- (1) In this section:

*Australia* includes the external Territories.

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

- (2) Subject to this section, this Act applies throughout Australia.
- (3) This Act has effect in relation to acts done within a Territory.
- (4) The limited application provisions have effect as provided in subsection (3) of this section and the following provisions of this section and not otherwise.
- (5) Sections 15, 16 and 17 have effect in relation to discrimination against:
- (a) Commonwealth employees in connection with their employment as Commonwealth employees; and
  - (b) persons seeking to become Commonwealth employees.
- (6) Section 19 has effect in relation to discrimination by an authority or body in the exercise of a power under a Commonwealth law to confer, renew, extend, revoke or withdraw an authorisation or qualification.
- (7) The limited application provisions have effect in relation to acts done by, or on behalf of:
- (a) the Commonwealth or the Administration of a Territory; or
  - (b) a body or authority established for a public purpose by a law of the Commonwealth or a law of a Territory;

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in the exercise of a power conferred by a law of the Commonwealth or a law of a Territory.

- (8) The limited application provisions have effect in relation to discrimination against a person with a disability to the extent that the provisions:
- (a) give effect to the Convention; or
  - (b) give effect to the Covenant on Civil and Political Rights; or
  - (c) give effect to the International Covenant on Economic, Social and Cultural Rights; or
  - (d) relate to matters external to Australia; or
  - (e) relate to matters of international concern.
- (9) The limited application provisions have effect in relation to discrimination by a foreign corporation, or a trading or financial corporation formed within the limits of the Commonwealth, or by a person in the course of the person's duties or purported duties as an officer or employee of such a corporation.
- (10) Without limiting the effect of subsection (9), the limited application provisions have effect in relation to discrimination by a trading or financial corporation formed within the limits of the Commonwealth, or by a person in the course of the person's duties or purported duties as an officer or employee of such a corporation, to the extent that the discrimination takes place in the course of the trading activities of the trading corporation or the financial activities of the financial corporation, as the case may be.
- (11) The limited application provisions have effect in relation to discrimination in the course of, or in relation to, the carrying on of the business of:
- (a) banking, other than State banking not extending beyond the limits of the State concerned; or
  - (b) insurance, other than State insurance not extending beyond the limits of the State concerned.
- (12) The limited application provisions have effect in relation to discrimination in the course of, or in relation to, trade or commerce:
- (a) between Australia and a place outside Australia; or
  - (b) among the States; or
  - (c) between a State and a Territory; or

- (d) between 2 Territories.
- (13) The limited application provisions have effect in relation to discrimination within Australia involving persons or things, or matters arising outside Australia.
- (14) The provisions of Division 3 of Part 2 have effect in relation to acts done within Australia involving persons or things, or matters arising outside Australia.

### **12A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### **13 Operation of State and Territory laws**

- (1) A reference in this section to this Act is a reference to this Act as it has effect because of a provision of section 12.
- (2) A reference in this section to a law of a State or Territory is a reference to a law of a State or Territory that deals with discrimination on the grounds of disability.
- (3) This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.
- (4) If:
- (a) a law of a State or Territory relating to discrimination deals with a matter dealt with by this Act; and
  - (b) a person has made a complaint or initiated a proceeding under that law in respect of an act or omission in respect of which the person would, apart from this subsection, have been entitled to make a complaint under the *Human Rights and Equal Opportunity Commission Act 1986* alleging that the act or omission is unlawful under a provision of Part 2 of this Act;

the person is not entitled to make a complaint or institute a proceeding under the *Human Rights and Equal Opportunity*

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*Commission Act 1986* alleging that the act or omission is unlawful under a provision of Part 2 of this Act.

- (5) If:
- (a) a law of a State or Territory deals with a matter dealt with by this Act; and
  - (b) an act or omission by a person that constitutes an offence against that law also constitutes an offence against this Act;
- the person may be prosecuted and convicted either under that law of the State or Territory or under this Act, but nothing in this subsection renders a person liable to be punished more than once in respect of the same act or omission.

**14 Extent to which Act binds the Crown**

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

## **Part 2—Prohibition of disability discrimination**

### **Division 1—Discrimination in work**

#### **15 Discrimination in employment**

- (1) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against a person on the ground of the other person's disability or a disability of any of that other person's associates:
  - (a) in the arrangements made for the purpose of determining who should be offered employment; or
  - (b) in determining who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer to discriminate against an employee on the ground of the employee's disability or a disability of any of that employee's associates:
  - (a) in the terms or conditions of employment that the employer affords the employee; or
  - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.
- (3) Neither paragraph (1)(a) nor (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's disability, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.
- (4) Neither paragraph (1)(b) nor (2)(c) renders unlawful discrimination by an employer against a person on the ground of the person's disability, if taking into account the person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors

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that it is reasonable to take into account, the person because of his or her disability:

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

**16 Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a person on the ground of the person's disability or a disability of any of that person's associates:
  - (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent; or
  - (b) in determining who should be engaged as a commission agent; or
  - (c) in the terms or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's disability or a disability of any of the person's associates:
  - (a) in the terms or conditions that the principal affords the commission agent as a commission agent; or
  - (b) by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with the position as a commission agent; or
  - (c) by terminating the engagement; or
  - (d) by subjecting the commission agent to any other detriment.
- (3) Neither paragraph (1)(b) nor (2)(c) renders unlawful discrimination by a principal against a person on the ground of the person's disability, if taking into account the person's past training, qualifications and experience relevant to engagement as a commission agent and, if the person is already engaged by the principal as a commission agent, the person's performance as a commission agent, and all other relevant factors that it is

reasonable to take into account, the person because of his or her disability:

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

### **17 Discrimination against contract workers**

- (1) It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's disability or a disability of any of the contract worker's associates:
  - (a) in the terms or conditions on which the principal allows the contract worker to work; or
  - (b) by not allowing the contract worker to work or continue to work; or
  - (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
  - (d) by subjecting the contract worker to any other detriment.
- (2) Paragraph (1)(b) does not render it unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's disability, if taking into account the contract worker's past training, qualifications and experience relevant to working as a contract worker and, if the person is already working for the principal as a contract worker, the contract worker's performance as a contract worker, and all other relevant factors that it is reasonable to take into account, the person because of the contract worker's disability:
  - (a) would be unable to carry out the inherent requirements of a contract worker; or
  - (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without the disability and the provision of which would impose an unjustifiable hardship on the principal.

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**18 Partnerships**

- (1) It is unlawful for 3 or more persons who are proposing to form themselves into a partnership to discriminate against another person on the ground of the other person's disability or a disability of any of the other person's associates:
    - (a) in determining who should be invited to become a partner in the partnership; or
    - (b) in the terms or conditions on which the other person is invited to become a partner in the partnership.
  
  - (2) It is unlawful for any one or more of the partners in a partnership consisting of 3 or more partners to discriminate against another person on the ground of the other person's disability or a disability of any of the other person's associates:
    - (a) in determining who should be invited to become a partner in the partnership; or
    - (b) in the terms or conditions on which the other person is invited to become a partner in the partnership.
  
  - (3) It is unlawful for any one or more of the partners in a partnership consisting of 3 or more partners to discriminate against another partner in the partnership on the ground of the other partner's disability or a disability of any of the other person's associates:
    - (a) by denying the other partner access, or limiting the other partner's access, to any benefit arising from being a partner in the partnership; or
    - (b) by expelling the other partner from the partnership; or
    - (c) by subjecting the partner to any other detriment.
  
  - (4) Neither paragraph (1)(a), (2)(a) nor (3)(b) renders unlawful discrimination by a person against another person on the ground of the other person's disability, if taking into account the other person's past training, qualifications and experience relevant to the proposed partnership or the partnership and, if the other person is already a partner, the other person's performance as a partner, and all other relevant factors that it is reasonable to take into account, the person because of the other person's disability:
    - (a) would be unable to carry out the inherent requirements of a partner in the proposed partnership or the partnership; or
    - (b) would, in order to carry out those requirements, require services or facilities that are not required by partners without
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the disability and the provision of which would impose an unjustifiable hardship on the partnership.

### **19 Qualifying bodies**

- (1) It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of the person's disability or a disability of any of the person's associates:
  - (a) by refusing or failing to confer, renew or extend the authorisation or qualification; or
  - (b) in the terms or conditions on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
  - (c) by revoking or withdrawing the authorisation or qualification or varying the terms or the conditions upon which it is held.
- (2) This section does not render it unlawful for an authority or body to discriminate against a person on the ground of the person's disability, if taking into account the person's past training, qualifications and experience relevant to the particular profession, trade or occupation and, if the person is already a member of the profession, carrying on the trade or engaged in the occupation, the person's performance in the profession, trade or occupation, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability, would be unable to carry out the inherent requirements of the profession, trade or occupation.

### **20 Registered organisations under the *Fair Work (Registered Organisations) Act 2009***

- (1) It is unlawful for a registered organisation, the committee of management of a registered organisation or a member of the committee of management of a registered organisation to discriminate against a person, on the ground of the person's disability or a disability of any of the person's associates:
  - (a) by refusing or failing to accept the person's application for membership; or

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- (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.
- (2) It is unlawful for a registered organisation, the committee of management of a registered organisation or a member of the committee of management of a registered organisation to discriminate against a person who is a member of the registered organisation, on the ground of the member's disability or a disability of any of the member's associates:
  - (a) by denying the member access or limiting the member's access, to any benefit provided by the organisation; or
  - (b) by depriving the member of membership or varying the terms of membership; or
  - (c) by subjecting the member to any other detriment.

**21 Employment agencies**

- (1) It is unlawful for an employment agency to discriminate against a person on the ground of the person's disability or a disability of any of the person's associates:
  - (a) by refusing to provide the person with any of its services; or
  - (b) in the terms or conditions on which it offers to provide the person with any of its services; or
  - (c) in the manner in which it provides the person with any of its services.
- (2) This section does not render it unlawful for an employment agency to discriminate against a person on the ground of the person's disability, if taking into account the person's past training, qualifications and experience relevant to the work sought, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability, would be unable to carry out the inherent requirements of the work sought.

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

### **22 Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's disability or a disability of any of the other person's associates:
  - (a) by refusing or failing to accept the person's application for admission as a student; or
  - (b) in the terms or conditions on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's disability or a disability of any of the student's associates:
  - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority; or
  - (b) by expelling the student; or
  - (c) by subjecting the student to any other detriment.
- (2A) It is unlawful for an education provider to discriminate against a person on the ground of the person's disability or a disability of any of the person's associates:
  - (a) by developing curricula or training courses having a content that will either exclude the person from participation, or subject the person to any other detriment; or
  - (b) by accrediting curricula or training courses having such a content.
- (3) This section does not render it unlawful to discriminate against a person on the ground of the person's disability in respect of admission to an educational institution established wholly or primarily for students who have a particular disability where the person does not have that particular disability.
- (4) This section does not make it unlawful for an education provider to discriminate against a person or student as described in subsection (1), (2) or (2A) on the ground of the disability of the person or student or a disability of any associate of the person or

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student if avoidance of that discrimination would impose an unjustifiable hardship on the education provider concerned.

**23 Access to premises**

- (1) It is unlawful for a person to discriminate against another person on the ground of the other person's disability or a disability of any of that other person's associates:
  - (a) by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or
  - (b) in the terms or conditions on which the first-mentioned person is prepared to allow the other person access to, or the use of, any such premises; or
  - (c) in relation to the provision of means of access to such premises; or
  - (d) by refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or
  - (e) in the terms or conditions on which the first-mentioned person is prepared to allow the other person the use of any such facilities; or
  - (f) by requiring the other person to leave such premises or cease to use such facilities.
- (2) This section does not render it unlawful to discriminate against a person on the ground of the person's disability in relation to the provision of access to premises if:
  - (a) the premises are so designed or constructed as to be inaccessible to a person with a disability; and
  - (b) any alteration to the premises to provide such access would impose unjustifiable hardship on the person who would have to provide that access.

**24 Goods, services and facilities**

- (1) It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other

person's disability or a disability of any of that other person's associates:

- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person; or
  - (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
  - (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.
- (2) This section does not render it unlawful to discriminate against a person on the ground of the person's disability if the provision of the goods or services, or making facilities available, would impose unjustifiable hardship on the person who provides the goods or services or makes the facilities available.

## **25 Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's disability or a disability of any of that other person's associates:
  - (a) by refusing the other person's application for accommodation; or
  - (b) in the terms or conditions on which the accommodation is offered to the other person; or
  - (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's disability or a disability of any of the other person's associates:
  - (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person; or

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- (b) by evicting the other person from accommodation occupied by the other person; or
  - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person; or
  - (d) by refusing to permit the other person to make reasonable alterations to accommodation occupied by that person if:
    - (i) that person has undertaken to restore the accommodation to its condition before alteration on leaving the accommodation; and
    - (ii) in all the circumstances it is likely that the person will perform the undertaking; and
    - (iii) in all the circumstances, the action required to restore the accommodation to its condition before alteration is reasonably practicable; and
    - (iv) the alteration does not involve alteration of the premises of any other occupier; and
    - (v) the alteration is at that other person's own expense.
- (3) This section does not apply to or in respect of:
- (a) the provision of accommodation in premises if:
    - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside on those premises; and
    - (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (a)(i) or near relatives of such a person; or
  - (b) the accommodation is provided by a charitable or other voluntary body solely for persons who have a particular disability and the person discriminated against does not have that particular disability; or
  - (c) the provision of accommodation in premises where special services or facilities would be required by the person with a disability and the provision of such special services or facilities would impose unjustifiable hardship on the person providing or proposing to provide the accommodation whether as principal or agent.

## **26 Land**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's disability or a disability of any of that person's associates:
  - (a) by refusing or failing to dispose of an estate or interest in land to the other person; or
  - (b) in the terms or conditions on which an estate or interest in land is offered to the other person.
- (2) This section does not apply in relation to a disposal of an estate or interest in land by will or by way of gift.

## **27 Clubs and incorporated associations**

- (1) It is unlawful for a club or incorporated association, the committee of management of a club or a member of the committee of management of a club or incorporated association to discriminate against a person who is not a member of the club or association on the ground of the person's disability or a disability of any of that person's associates:
  - (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the club or association is prepared to admit the person to membership.
- (2) It is unlawful for a club or incorporated association, the committee of management of a club or a member of the committee of management of a club or incorporated association to discriminate against a person who is a member of the club or association on the ground of the member's disability or a disability of any of the member's associates:
  - (a) in the terms or conditions of membership that are afforded to the member; or
  - (b) by refusing or failing to accept the member's application for a particular class or type of membership; or
  - (c) by denying the member access, or limiting the member's access to any benefit provided by the club or association; or
  - (d) by depriving the member of membership or varying the terms of membership; or
  - (e) by subjecting the member to any other detriment.

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- (3) Paragraph (2)(c) does not render unlawful discrimination where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the club or incorporated association.
- (4) Neither subsection (1) nor (2) renders it unlawful to discriminate against a person on the ground of the person's disability if membership (however described) of the club or incorporated association is restricted only to persons who have a particular disability and the first-mentioned person does not have that disability.

## **28 Sport**

- (1) It is unlawful for a person to discriminate against another person on the ground of the other person's disability or a disability of any of the other person's associates by excluding that other person from a sporting activity.
- (2) In subsection (1), a reference to a sporting activity includes a reference to an administrative or coaching activity in relation to any sport.
- (3) Subsection (1) does not render unlawful discrimination against a person:
  - (a) if the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity; or
  - (b) if the persons who participate or are to participate in the sporting activities are selected by a method which is reasonable on the basis of their skills and abilities relevant to the sporting activity and relative to each other; or
  - (c) if a sporting activity is conducted only for persons who have a particular disability and the first-mentioned person does not have that disability.

## **29 Administration of Commonwealth laws and programs**

It is unlawful for a person who performs any function or exercises any power under a Commonwealth law or for the purposes of a Commonwealth program or has any other responsibility for the administration of a Commonwealth law or the conduct of a

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Commonwealth program, to discriminate against another person on the ground of the other person's disability, or a disability of any of the other person's associates in the performance of that function, the exercise of that power or the fulfilment of that responsibility.

### **30 Requests for information**

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

### **31 Disability standards**

- (1) The Minister may formulate standards, to be known as disability standards, in relation to:
  - (a) the employment of persons with a disability; and
  - (b) the education of persons with a disability; and
  - (c) the accommodation of persons with a disability; and
  - (d) the provision of public transportation services and facilities by:
    - (i) the Commonwealth; and
    - (ii) a State; and
    - (iii) a Territory; and
    - (iv) a public authority of the Commonwealth; and
    - (v) an instrumentality of a State; and
    - (vi) a public authority of a Territory; and
    - (vii) any other person;to a person with a disability; and
  - (e) the administration of Commonwealth laws and programs in respect of persons with a disability; and
  - (f) the access to or the use of any premises, by persons with a disability, that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not).

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- (1A) For the avoidance of doubt, disability standards may require a person or body dealing with persons with disabilities to put in place reasonable adjustments to eliminate, as far as possible, discrimination against those persons.
- (1B) Disability standards in relation to the education of persons with disabilities may require education providers to develop strategies and programs that prevent harassment or victimisation of persons with disabilities, in relation to those disabilities.
- (1C) For the avoidance of doubt, unjustifiable hardship does not excuse an education provider from complying with a requirement made by disability standards under subsection (1B). This does not affect (by implication) the operation of section 32 in relation to other contraventions of disability standards.
- (2) Disability standards formulated in accordance with this section are to be laid before each House of the Parliament within 15 sitting days of that House after the disability standards are formulated and take effect only as provided by the following provisions of this section.
- (3) If:
- (a) notice of a motion to amend the disability standards is given in either House of the Parliament within 15 sitting days after the disability standards have been laid before that House; and
  - (b) the disability standards, whether or not as amended, are subsequently approved by that House; and
  - (c) the other House approves the disability standards in the form approved by the first-mentioned House;
- the disability standards take effect in the form so approved from the day on which that other House approves the disability standards in that form.
- (4) If no notice of a motion to amend the disability standards is given in the House of Representatives or the Senate within 15 sitting days of the particular House after the disability standards have been laid before that House, the disability standards take effect from the day immediately after that 15th sitting day or, where that day differs in respect of each House, the later of those days.

**32 Unlawful to contravene disability standards**

It is unlawful for a person to contravene a disability standard.

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

Division 5 (other than subsections 55(1A) to (1D) and any reference in that Division to those provisions) does not apply in relation to a disability standard.

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

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

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

### **35 Harassment in employment**

- (1) It is unlawful for a person to harass another person who:
  - (a) is an employee of that person; and
  - (b) has a disability;in relation to the disability.
- (2) It is unlawful for a person to harass another person who:
  - (a) is an employee of a person by whom the first-mentioned person is employed; and
  - (b) has a disability;in relation to the disability.
- (3) It is unlawful for a person to harass another person who:
  - (a) is seeking employment by the first-mentioned person or by an employer of the first-mentioned person; and
  - (b) has a disability;in relation to the disability.
- (4) It is unlawful for a person to harass another person who:
  - (a) is a commission agent or contract worker of that person; and
  - (b) has a disability;in relation to the disability.
- (5) It is unlawful for a person to harass another person who:
  - (a) is a commission agent or contract worker of a person of whom the first-mentioned person is a commission agent or contract worker; and
  - (b) has a disability;in relation to the disability.
- (6) It is unlawful for a person to harass another person who:
  - (a) is seeking to become a commission agent or contract worker of the first-mentioned person or of a person of whom the first-mentioned person is a commission agent or contract worker; and

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

**36 Harassment in employment—associates with disabilities**

- (1) It is unlawful for a person to harass another person who:
  - (a) is an employee of that person; and
  - (b) has an associate with a disability;in relation to the disability.
- (2) It is unlawful for a person to harass another person who:
  - (a) is an employee of a person by whom the first-mentioned person is employed; and
  - (b) has an associate with a disability;in relation to the disability.
- (3) It is unlawful for a person to harass another person:
  - (a) who is seeking employment by the first-mentioned person or by an employer of the first-mentioned person; and
  - (b) has an associate with a disability;in relation to the disability.
- (4) It is unlawful for a person to harass another person who:
  - (a) is a commission agent or contract worker of that person; and
  - (b) has an associate with a disability;in relation to the disability.
- (5) It is unlawful for a person to harass another person who:
  - (a) is a commission agent or contract worker of a person of whom the first-mentioned person is a commission agent or contract worker; and
  - (b) has an associate with a disability;in relation to the disability.
- (6) It is unlawful for a person to harass another person who:
  - (a) is seeking to become a commission agent or contract worker of the first-mentioned person or of a person of whom the first-mentioned person is a commission agent or contract worker; and

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

**37 Harassment in education**

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

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

**38 Harassment in education—associates with disabilities**

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

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

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

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to harass another person who:

- (a) wants to acquire the goods or services or to make use of the facilities; and
- (b) has a disability;  
in relation to the disability.

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

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to harass another person who:

- (a) wants to acquire the goods or services or to make use of the facilities; and

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

## **Division 4—Offences**

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

Except as expressly provided by this Division, nothing in this Act makes it an offence to do an act that is unlawful because of a provision of this Part.

### **42 Victimisation**

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

Penalty: Imprisonment for 6 months.

- (2) For the purposes of subsection (1), a person is taken to commit an act of victimisation against another person if the first-mentioned person subjects, or threatens to subject, the other person to any detriment on the ground that the other person:
- (a) has made, or proposes to make, a complaint under this Act or the *Human Rights and Equal Opportunity Commission Act 1986*; or
  - (b) has brought, or proposes to bring, proceedings under this Act or the *Human Rights and Equal Opportunity Commission Act 1986* against any person; or
  - (c) has given, or proposes to give, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Act or the *Human Rights and Equal Opportunity Commission Act 1986*; or
  - (d) has attended, or proposes to attend, a conference held under this Act or the *Human Rights and Equal Opportunity Commission Act 1986*; or
  - (e) has appeared, or proposes to appear, as a witness in a proceeding under this Act or the *Human Rights and Equal Opportunity Commission Act 1986*; or

- (f) has reasonably asserted, or proposes to assert, any rights of the person or the rights of any other person under this Act or the *Human Rights and Equal Opportunity Commission Act 1986*; or
  - (g) has made an allegation that a person has done an act that is unlawful by reason of a provision of this Part;
- or on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in any of paragraphs (a) to (g) (inclusive).

#### **43 Offence to incite doing of unlawful acts or offences**

It is an offence for a person:

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

Penalty: Imprisonment for 6 months.

#### **44 Advertisements**

- (1) It is an offence for a person to publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention by that person to do an act that is unlawful under a provision of Division 1, 2 or 3.

Penalty: \$1,000.

- (2) For the purposes of subsection (1), *advertisement* includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, show cards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films or in any other way, and the reference in that subsection to publish or display, in relation to an advertisement, is to be construed accordingly.

## **Division 5—Exemptions**

### **45 Special measures**

This Part does not render it unlawful to do an act that is reasonably intended to:

- (a) ensure that persons who have a disability have equal opportunities with other persons in circumstances in relation to which a provision is made by this Act; or
- (b) afford persons who have a disability or a particular disability, goods or access to facilities, services or opportunities to meet their special needs in relation to:
  - (i) employment, education, accommodation, clubs or sport; and
  - (ii) the provision of goods, services, facilities or land; or
  - (iii) the making available of facilities; or
  - (iv) the administration of Commonwealth laws and programs; or
  - (v) their capacity to live independently; or
- (c) afford persons who have a disability or a particular disability, grants, benefits or programs, whether direct or indirect, to meet their special needs in relation to:
  - (i) employment, education, accommodation, clubs or sport; or
  - (ii) the provision of goods, services, facilities or land; or
  - (iii) the making available of facilities; or
  - (iv) the administration of Commonwealth laws and programs; or
  - (v) their capacity to live independently.

### **46 Superannuation and insurance**

- (1) This Part does not render it unlawful for a person to discriminate against another person, on the ground of the other person's disability, by refusing to offer the other person:
  - (a) an annuity; or
  - (b) a life insurance policy; or

- (c) a policy of insurance against accident or any other policy of insurance; or
  - (d) membership of a superannuation or provident fund; or
  - (e) membership of a superannuation or provident scheme;
- if:
- (f) the discrimination:
    - (i) is based upon actuarial or statistical data on which it is reasonable for the first-mentioned person to rely; and
    - (ii) is reasonable having regard to the matter of the data and other relevant factors; or
  - (g) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the discrimination is reasonable having regard to any other relevant factors.
- (2) This Part does not render it unlawful for a person to discriminate against another person, on the ground of the other person's disability, in respect of the terms or conditions on which:
- (a) an annuity; or
  - (b) a life insurance policy; or
  - (c) a policy of insurance against accident or any other policy of insurance; or
  - (d) membership of a superannuation or provident fund; or
  - (e) membership of a superannuation or provident scheme;
- is offered to, or may be obtained by, the other person, if:
- (f) the discrimination:
    - (i) is based upon actuarial or statistical data on which it is reasonable for the first-mentioned person to rely; and
    - (ii) is reasonable having regard to the matter of the data and other relevant factors; or
  - (g) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the discrimination is reasonable having regard to any other relevant factors.

#### **47 Acts done under statutory authority**

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

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- (b) an order of a court; or
- (c) an instrument (an *industrial instrument*) that is:
  - (i) a fair work instrument (within the meaning of the *Fair Work Act 2009*); or
  - (ii) a transitional instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*);to the extent to which the industrial instrument has specific provisions relating to the payment of rates of salary or wages to persons, in circumstances in which:
  - (iii) if the persons were not in receipt of the salary or wages, they would be eligible for a disability support pension; and
  - (iv) the salary or wages are determined by reference to the capacity of the person; or
- (d) an order, award or determination of a court or tribunal having power to fix minimum wages, to the extent to which the order, award or determination has specific provisions relating to the payment of rates of salary or wages to persons, in circumstances in which:
  - (i) if the persons were not in receipt of the salary or wages, they would be eligible for a disability support pension; and
  - (ii) the salary or wages payable to each person are determined by reference to the capacity of that person.

Note: A person does not comply with an industrial instrument for the purpose of this subsection if that person purports to comply with a provision of that instrument that has no effect. Accordingly, the exemption under this subsection for acting in direct compliance with such an instrument would not apply in such circumstances.

- (2) This Part does not render unlawful anything done by a person in direct compliance with a prescribed law.
- (3) During the period beginning at the commencement of this section and ending 3 years after the day this section commences, this Part does not render unlawful anything done by a person in direct compliance with another law.
- (4) In subsection (1):

***disability support pension*** has the same meaning as in the *Social Security Act 1991*.

(5) In subsection (2):

***law*** means:

- (a) a law of the Commonwealth or of a State or Territory; or
- (b) regulations or any other instrument made under such a law.

Note: See also subsection 98(6B) of the *Civil Aviation Act 1988*, which allows regulations made under that Act to contain provisions that are inconsistent with this Act if the inconsistency is necessary for the safety of air navigation.

## **48 Infectious diseases**

This Part does not render it unlawful for a person to discriminate against another person on the ground of the other person's disability if:

- (a) the person's disability is an infectious disease; and
- (b) the discrimination is reasonably necessary to protect public health.

## **49 Exemption for charities**

(1) This Part does not:

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

(2) In this section:

***Australia*** includes the external Territories.

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

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

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**50 Telecommunications**

- (1) This Part does not render it unlawful for:
- (a) a carrier; or
  - (b) a supplier of an eligible service;
- to discriminate against another person on the ground of the other person's disability in the provision of telecommunications services through payphones and public payphones.
- (2) In this section:
- carrier* has the same meaning as in the *Telecommunications Act 1991*.
- eligible service* has the same meaning as in the *Telecommunications Act 1991*.
- payphone* has the same meaning as in the *Telecommunications Act 1991*.
- public payphone* has the same meaning as in the *Telecommunications Act 1991*.
- (3) Subsection (1) ceases to be in force at the end of 3 years after the day this section commences.

**51 Pensions and allowances**

- (1) This Part does not affect discriminatory provisions relating to pensions, allowances or benefits in:
- (a) the *Defence Service Homes Act 1918*; or
  - (b) the *Papua New Guinea (Member of the Forces Benefits) Act 1957*; or
  - (d) the *Social Security Act 1991*; or
  - (e) the *Veterans' Affairs Legislation Amendment Act 1988*; or
  - (f) the *Veterans' Entitlements Act 1986*; or
  - (g) the *Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986*; or
  - (h) the *Military Rehabilitation and Compensation Act 2004*; or
  - (i) the *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*; or

- (j) the *Safety, Rehabilitation and Compensation Act 1988* so far as that Act applies to defence-related claims mentioned in Part XI of that Act.
- (2) This Part does not render unlawful anything done by a person in direct compliance with a provision referred to in subsection (1).

## 52 Migration

Neither Division 1 nor 2:

- (a) affect discriminatory provisions in the *Migration Act 1958* or any regulation made under that Act; or
- (b) render unlawful anything done by a person in relation to the administration of that Act or those regulations.

## 53 Combat duties and peacekeeping services

- (1) This Part does not render it unlawful for a person to discriminate against another person on the ground of the other person's disability in connection with employment, engagement or appointment in the Defence Force:
  - (a) in a position involving the performance of combat duties, combat-related duties or peacekeeping service; or
  - (b) in prescribed circumstances in relation to combat duties, combat-related duties or peacekeeping service; or
  - (c) in a position involving the performance of duties as a chaplain or a medical support person in support of forces engaged or likely to be engaged in combat duties, combat-related duties or peacekeeping service.
- (2) In this section:

***combat duties*** means such duties as are declared by the regulations to be combat duties for the purposes of this section.

***combat-related duties*** means such duties as are declared by the regulations to be combat-related duties for the purposes of this section.

***medical support person*** means:

- (a) a person exclusively engaged in the search for, or the collection, transport or treatment of, the wounded or sick, or in the prevention of disease; or

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- (b) a person exclusively engaged in the administration of medical units and establishments.

*peacekeeping service* has the same meaning as in the *Veterans' Entitlements Act 1986*.

**54 Peacekeeping services by the AFP**

- (1) This Part does not render it unlawful for a person to discriminate against another person on the ground of the other person's disability in connection with selection for peacekeeping duties as part of a Peacekeeping Force.
- (2) In this section:

*AFP* means the Australian Federal Police.

*Peacekeeping Force* means a force raised or organised for the purpose of peacekeeping in an area outside Australia.

**55 Commission may grant exemptions**

- (1) The Commission may, on application by:
- (a) a person:
    - (i) on that person's own behalf; or
    - (ii) on behalf of that person and another person or other persons; or
    - (iii) on behalf of another person or other persons; or
  - (b) 2 or more persons:
    - (i) on their own behalf; or
    - (ii) on behalf of themselves and another person or other persons; or
    - (iii) on behalf of another person or other persons;
- by instrument grant to the person or persons to whom the application relates, as the case may be, an exemption from the operation of a provision of Division 1 or 2 (other than section 31 or 32), as specified in the instrument.
- (1A) The Commission may, on application by:
- (a) a person:
    - (i) on that person's own behalf; or

- (ii) on behalf of that person and another person or other persons; or
    - (iii) on behalf of another person or other persons; or
  - (b) 2 or more persons:
    - (i) on their own behalf; or
    - (ii) on behalf of themselves and another person or other persons; or
    - (iii) on behalf of another person or other persons;
- by instrument grant to the person or persons to whom the application relates, as the case may be, an exemption from the operation of section 32, as specified in the instrument.
- (1B) An exemption granted under subsection (1A) must be in relation to a specified disability standard and only applies to the extent that the disability standard deals with the provision of public transportation services and facilities covered by paragraph 31(1)(d).
  - (1C) If the regulations prescribe a body as a body that the Commission must consult in relation to the kinds of public transportation services or facilities that will be dealt with in an exemption under subsection (1A), the Commission must consult that body before granting the exemption.
  - (1D) The Commission may, before granting an exemption under subsection (1A), consult any other body or person that the Commission considers it appropriate to consult.
- (2) The Commission may, on application by a person to, or in respect of, whom an exemption from a provision of Division 1 or 2 has been granted under subsection (1) or (1A), being an application made before the expiration of the period to which the exemption was granted, grant a further exemption from the operation of that provision.
  - (3) An exemption granted under subsection (1) or (1A), or further exemption, from the operation of a provision of Division 1 or 2:
    - (a) may be granted subject to such terms and conditions as are specified in the instrument; and
    - (b) may be expressed to apply only in such circumstances, or in relation to such activities, as are specified in the instrument; and

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- (c) are to be granted for a specified period not exceeding 5 years.

**56 Review by Administrative Appeals Tribunal**

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

**57 Notice of decisions to be published**

- (1) The Commission, not later than one month after it makes a decision under section 55, is to cause to be published in the *Gazette* a notice of the making of the decision:
- (a) setting out its findings on material questions of facts; and
  - (b) referring to the evidence on which those findings were based; and
  - (c) giving the reasons for the making of the decision; and
  - (d) containing a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates by or on behalf of any person or persons whose interests are affected by the decision.
- (2) Any failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

**58 Effect of exemptions**

This Part does not render it unlawful for a person who has been granted an exemption from a provision of Division 1 or 2, or a person in the employment or under the direction or control of a person who has been granted such an exemption, to do an act in accordance with the provisions of the instrument by which the exemption was granted.

## **Part 3—Action plans**

### **59 Interpretation**

In this Part:

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

- (a) provides goods or services; or
  - (b) makes facilities available;
- whether for payment or not.

### **60 Action plans**

A service provider may prepare and implement an action plan.

### **61 Provisions of action plans**

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

- (a) the devising of policies and programs to achieve the objects of this Act; and
- (b) the communication of these policies and programs to persons within the service provider; and
- (c) the review of practices within the service provider with a view to the identification of any discriminatory practices; and
- (d) the setting of goals and targets, where these may reasonably be determined against which the success of the plan in achieving the objects of the Act may be assessed; and
- (e) the means, other than those referred to in paragraph (d), of evaluating the policies and programs referred to in paragraph (a); and
- (f) the appointment of persons within the service provider to implement the provisions referred to in paragraphs (a) to (e) (inclusive).

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**62 Action plans may have other provisions**

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

**63 Amendment of action plans**

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

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

A service provider may give:

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

**65 Commission to sell action plans to public**

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

## **Part 4—Functions of Human Rights and Equal Opportunity Commission**

### **Division 1—Preliminary**

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

- (1) The following functions are conferred on the Commission:
  - (c) to exercise the powers conferred on it by section 55;
  - (d) to report to the Minister on matters relating to the development of disability standards;
  - (e) to monitor the operation of such standards and report to the Minister the results of such monitoring;
  - (f) to receive action plans under section 64;
  - (g) to promote an understanding and acceptance of, and compliance with, this Act;
  - (h) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting the objects of this Act;
  - (i) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to the objects of this Act, and to report to the Minister the results of any such examination;
  - (j) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to discrimination on the ground of disability;
  - (k) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of discrimination on the ground of disability;
  - (l) where the Commission thinks it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve issues of discrimination on the ground of disability;

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

Note: For the provisions about inquiries into complaints of discrimination and conciliation of those complaints: see Part IIB of the *Human Rights and Equal Opportunity Commission Act 1986*.

- (2) The Commission is not to regard an enactment or proposed enactment as being inconsistent with or contrary to the objects of this Act for the purposes of paragraph (1)(i) because of a provision of the enactment or proposed enactment that is included for the purpose referred to in section 45.

## Part 5—Other offences

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

- (1) If a person has engaged in an act of discrimination that would, apart from section 46, be unlawful, the President or the Commission may, by notice in writing served on the person as prescribed, require the person within 28 days after service of the notice on the person, to disclose to the President or to the Commission, as the case may be, the source of the actuarial or statistical data on which the act of discrimination was based and, where the President or the Commission, as the case may be, makes such a requirement of a person, the person must not fail to comply with the requirement.

Penalty: \$1,000.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (1B) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

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

## **Part 6—Disability Discrimination Commissioner**

### **113 Disability Discrimination Commissioner**

- (1) There is to be a Disability Discrimination Commissioner, who is to be appointed by the Governor-General.
- (2) A person is not qualified to be appointed as the Disability Discrimination Commissioner unless the Governor-General is satisfied that the person has appropriate qualifications, knowledge or experience.

### **114 Terms and conditions of appointment**

- (1) Subject to this section, the Commissioner holds office for such period, not exceeding 7 years, as is specified in the instrument of the person's appointment, but is eligible for re-appointment.
- (2) The Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

### **115 Remuneration of Commissioner**

- (1) The Commissioner is to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Remuneration Tribunal is in operation, the Commissioner is to be paid such remuneration as is prescribed.
- (2) The Commissioner is to be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **116 Leave of absence**

- (1) The Commissioner has such recreation leave entitlements as are determined by the Remuneration Tribunal.

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

### **117 Outside employment**

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

### **118 Resignation**

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

### **119 Termination of appointment**

- (1) The Governor-General may terminate the appointment of the Commissioner because of:
  - (a) misbehaviour; or
  - (b) a disability which renders the Commissioner incapable of performing the inherent requirements of the office.
- (2) The Governor-General must terminate the appointment of the Commissioner if the Commissioner:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
  - (c) engages in paid employment outside the duties of the office of Commissioner otherwise than with the approval of the Minister.

### **120 Acting Commissioner**

- (1) The Minister may appoint a person to act as Commissioner:
    - (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
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- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office of Commissioner.
- (2) The validity of anything done by a person purporting to act under an appointment made under subsection (1) is not to be called in question on the ground that:
  - (a) the occasion for the person's appointment had not arisen; or
  - (b) there is a defect or irregularity in or in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had ceased.

## **Part 7—Miscellaneous**

### **121 Delegation**

- (1) The Commission may, by writing under its seal, delegate to:
  - (a) a member of the Commission; or
  - (b) the Commissioner; or
  - (c) a member of the staff of the Commission; or
  - (d) another person or body of persons;all or any of the powers conferred on the Commission under this Act, other than powers in connection with the performance of the functions that, under section 67, are to be performed by the Commissioner on behalf of the Commission.
- (2) The Commissioner may, by writing signed by the Commissioner, delegate to:
  - (a) a member of the staff of the Commission; or
  - (b) any other person or body of persons;approved by the Commission, all or any of the powers exercisable by the Commissioner under this Act.

### **122 Liability of persons involved in unlawful acts**

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

### **123 Conduct by directors, servants and agents**

- (1) If, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
  - (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) that the director, servant or agent had the state of mind.

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- (2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, for the purposes of this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to a particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) that the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If:
- (a) a person other than a body corporate is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (7) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (8) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate

incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

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

#### **124 Commonwealth taken to be employer**

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

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

- (1) This Act does not confer on a person a right of action in respect of the doing of an act that is unlawful under a provision of Part 2 unless a provision of this Act expressly provides otherwise.
- (2) For the purposes of subsection (1), a reference to an act that is unlawful under a provision of Part 2 includes a reference to an act that is an offence under a provision of Division 4 of that Part.

#### **126 Protection from civil actions**

- (1) The Commission, a member of the Commission, the Commissioner or a person acting under the direction or authority of the Commission or of the Commissioner or a delegate under section 121 is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function, or in the exercise or purported exercise of any power or authority, conferred on the Commission or the Commissioner.
- (2) If a submission has been made, a document or information has been given, or evidence has been given, to the Commission or the Commissioner, a person is not liable to an action, suit or other proceeding in respect of loss, damage or injury of any kind suffered by another person because only that submission was made, the document or information was given or the evidence was given.

**127 Non-disclosure of private information**

- (1) A person who is, or has at any time been, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorised to perform or exercise any function or power of the Commission or the Commissioner or any function or power on behalf of the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act, must not, either directly or indirectly:
- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the first-mentioned person because of that person's office of employment under or for the purposes of this Act or because of that person being or having been so authorised; or
  - (b) make use of any such information as is mentioned in paragraph (a); or
  - (c) produce to any person a document relating to the affairs of another person given for the purposes of this Act.

Penalty: Imprisonment for 2 years.

- (2) A person who is, or has at any time been, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorised to perform or exercise any function or power of the Commission or the Commissioner or any function or power on behalf of the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act, must not be required:
- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the first-mentioned person because of that person's office or employment under or for the purposes of this Act or because of that person being or having been so authorised; or
  - (b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, because of that person's office or employment under or for the purposes of this Act or because of that person being or having been so authorised;

except where it is necessary to do so for the purposes of this Act.

- (3) This section does not prohibit a person from:
- (a) making a record of information that is required or permitted by an Act to be recorded, if the record is made for the purposes of or under that Act; or
  - (b) divulging or communicating information, or producing a document, to any person in accordance with an arrangement in force under section 16 of the *Human Rights and Equal Opportunity Commission Act 1986*; or
  - (c) divulging or communicating information, or producing a document that is required or permitted by an Act to be divulged, communicated or produced as the case may be, if the information is divulged or communicated, or the document is produced, for the purposes of or under that Act.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (3A) Subsection (1) does not prevent a person from making a record of, divulging, communicating or making use of information, or producing a document, if the person does so:
- (a) in the performance of a duty under or in connection with this Act; or
  - (b) in the performance or exercise of a function or power conferred on the Commission or on the Commissioner under this Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3A) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Subsection (2) does not prevent a person from being required, for the purposes of or under an Act, to divulge or communicate information, or to produce a document, that is required or permitted by that Act to be divulged, communicated or produced.
- (5) In this section:

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

***produce*** includes permit access to.

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

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

**129 Commissioner to give information**

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

**131 Courts to ensure just terms**

- (1) In any case where, but for this section, the application of any of the provisions of this Act would result in an acquisition of property from any person having been made otherwise than on just terms, the person is entitled to such compensation from the Commonwealth as is necessary to ensure that the acquisition is made on just terms.
- (2) The Federal Court has jurisdiction with respect to matters arising under subsection (1) and that jurisdiction is exclusive of the jurisdiction of all other courts, other than jurisdiction of the High Court under section 75 of the Constitution.

**132 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (1A) Without limiting the generality of subsection (1), the Governor-General may make regulations for the purposes of subsection 55(1C) prescribing a body as a body that the Commission must consult in relation to all or specified kinds of public transportation services or facilities.
- (2) Before making any regulations for the purposes of section 31 or 47, the Governor-General is to take into consideration any comments

made to the Minister by a Minister of a State or Territory who is responsible for matters relating to disability discrimination.



**Table of Acts****Notes to the *Disability Discrimination Act 1992*****Note 1**

The *Disability Discrimination Act 1992* as shown in this compilation comprises Act No. 135, 1992 amended as indicated in the Tables below.

The *Disability Discrimination Act 1992* was amended by the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)* (SLI 2006 No. 50) (as amended by the *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009* (Act No. 70, 2009)). The amendments are incorporated in this compilation.

All relevant information pertaining to application, saving or transitional provisions prior to 13 October 1999 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Disability Discrimination Act 1992</i>	135, 1992	5 Nov 1992	Ss. 1 and 2: Royal Assent Ss. 3–14, 59–65, 67(1)(d)–(m), 113–120, 126, 127, 129 and 132: 26 Nov 1992 ( <i>see Gazette</i> 1992, No. S346) Remainder: 1 Mar 1993 ( <i>see Gazette</i> 1992, No. S346)	
<i>Sex Discrimination and other Legislation Amendment Act 1992</i>	179, 1992	16 Dec 1992	13 Jan 1993 (a)	S. 4
<i>Law and Justice Legislation Amendment Act 1993</i>	13, 1994	18 Jan 1994	Part 2 (ss. 3–5): Royal Assent (b)	S. 4(2)
<i>Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994</i>	164, 1994	16 Dec 1994	Part 4 (s. 60): Royal Assent (c)	—
<i>Human Rights Legislation Amendment Act 1995</i>	59, 1995	28 June 1995	S. 3 (item 25): 30 Oct 1992 Remainder: Royal Assent	Ss. 4 and 5

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Workplace Relations and Other Legislation Amendment Act 1996</i>	60, 1996	25 Nov 1996	Schedule 11 (item 61): 31 Dec 1996 (see <i>Gazette</i> 1996, No. S535) (d) Schedule 19 (item 18): Royal Assent (d)	S. 2(2) and (6) (am. by 77, 1996, Sch. 3 [items 1, 2])
<b>as amended by</b> <i>Workplace Relations and Other Legislation Amendment Act (No. 2) 1996</i>	77, 1996	19 Dec 1996	Schedule 3 (items 1, 2): (e)	—
<i>Defence Legislation Amendment Act (No. 1) 1999</i>	116, 1999	22 Sept 1999	Schedule 5 (item 2): 1 Jan 2001 (f)	—
<b>as amended by</b> <i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 2 (item 9): (g)	—
<i>Human Rights Legislation Amendment Act (No. 1) 1999</i>	133, 1999	13 Oct 1999	Ss. 1–3 and 21: Royal Assent S. 22 and Schedule 1 (items 53, 60): 10 Dec 1999 (see <i>Gazette</i> 1999, No. S598) Remainder: 13 Apr 2000	Ss. 4–22 [see Table A]
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 394–396): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (h)	—
<i>Australian Security Intelligence Organisation Legislation Amendment Act 1999</i>	161, 1999	10 Dec 1999	Schedule 3 (items 1, 25): (i)	—
<i>Australian Federal Police Legislation Amendment Act 2000</i>	9, 2000	7 Mar 2000	2 July 2000 (see <i>Gazette</i> 2000, No. S328)	Sch. 3 (items 20, 24, 34, 35) [see Table A]
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 24: (j)	S. 4(1) and (2) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Disability Discrimination Amendment Act 2002</i>	62, 2002	3 July 2002	Schedule 1: 19 Aug 2002 (see <i>Gazette</i> 2002, No. GN32) Remainder: Royal Assent	—
<i>Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002</i>	105, 2002	14 Nov 2002	Schedule 3 (item 41): 12 May 2003	—
<i>Age Discrimination (Consequential Provisions) Act 2004</i>	40, 2004	21 Apr 2004	Schedule 2 (item 26): [see (k) and Note 2]	—
<i>Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004</i>	52, 2004	27 Apr 2004	Schedule 3 (item 20): 1 July 2004 (see s. 2)	—
<i>Disability Discrimination Amendment (Education Standards) Act 2005</i>	19, 2005	1 Mar 2005	Schedule 1: 10 Aug 2005 (see F2005L01968) Remainder: Royal Assent	—
<i>Civil Aviation Amendment Act 2005</i>	86, 2005	6 July 2005	6 July 2005	—
<i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i>	54, 2009	25 June 2009	S. 4: Royal Assent Schedule 5 (items 28–30, 65, 66, 84): (l) Schedule 5 (item 31): [see (l) and Note 3]	S. 4 and Sch. 5 (item 84) [see Table A]
<i>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009</i>	70, 2009	8 July 2009	Schedule 2 (items 1–90) and Schedule 3 (items 22–31, 117, 118): [see Note 4 and Table A] Schedule 2 (items 101, 102): 27 Mar 2006 (see s. 2(1)) Schedule 2 (items 103–105): [see Note 4]	Sch. 2 (items 63, 86) [see Table A]

## Act Notes

- (a) The *Disability Discrimination Act 1992* was amended by the *Sex Discrimination and other Legislation Amendment Act 1992*, subsection 2(2) of which provides as follows:
- (2) An amendment of a provision of the *Disability Discrimination Act 1992* commences:
- (a) on the 28th day after this Act receives the Royal Assent; or
- (b) on the commencement of the relevant provision of the *Disability Discrimination Act 1992*;
- whichever is later.
- Section 4 commenced on 26 November 1992 (see *Gazette* 1992, No. S346). The remaining amended provisions commenced on 1 March 1993 (see *Gazette* 1992, No. S346).
- (b) The *Disability Discrimination Act 1992* was amended by Part 2 (sections 3–5) only of the *Law and Justice Legislation Amendment Act 1993*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) The *Disability Discrimination Act 1992* was amended by Part 4 (section 60) only of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:
- (1) Part 1, Divisions 1 and 11 of Part 2 and Parts 3 and 4 commence on the day on which this Act receives the Royal Assent.
- (d) The *Disability Discrimination Act 1992* was amended by Schedule 11 (item 61) and Schedule 19 (item 18) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on a day on which it receives the Royal Assent.
- (2) Subject to subsection (3), the items of the Schedules, other than Schedule 5, item 1 of Schedule 9, items 2 and 3 of Schedule 12, item 90 of Schedule 16 and the items of Schedule 19, commence on a day or days to be fixed by Proclamation.
- (e) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:
- (4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace and Other Legislation Amendment Act 1996* received the Royal Assent.
- The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.
- (f) The *Disability Discrimination Act 1992* was amended by Schedule 5 (item 2) only of the *Defence Legislation Amendment Act (No. 1) 1999*, subsection 2(4) of which provides as follows:
- (4) Schedule 5 commences on 1 January 2001.
- (g) Subsection 2(1) (item 38) of the *Statute Law Revision Act 2002* provides as follows:

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### Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
38. Schedule 2, item 9	Immediately after the time specified in the <i>Defence Legislation Amendment Act (No. 1) 1999</i> for the commencement of item 2 of Schedule 5 to that Act	1 January 2001

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**Act Notes**

- (h) The *Disability Discrimination Act 1992* was amended by Schedule 1 (items 394–396) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (i) The *Disability Discrimination Act 1992* was amended by Schedule 3 (items 1 and 25) only of the *Australian Security Intelligence Organisation Legislation Amendment Act 1999*, subsection 2(2) of which provides as follows:
- Schedule 3*
- (2) Subject to subsections (3) to (6), Schedule 3 commences immediately after the commencement of the other Schedules to this Act.
- The other Schedules to this Act commence on 10 December 1999.
- (j) The *Disability Discrimination Act 1992* was amended by Schedule 24 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
    - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
 Item 15 commenced on 24 May 2001.
- (k) Subsection 2(1) (item 7) of the *Age Discrimination (Consequential Provisions) Act 2004* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
7. Schedule 2, items 23 to 28	The later of: (a) immediately after the commencement of the <i>Age Discrimination Act 2004</i> ; and (b) immediately after the commencement of Schedule 1 to the <i>Australian Human Rights Commission Legislation Act 2004</i>	[see Note 2] (paragraph (b) applies)

- (l) Subsection 2(1) (items 11, 12, 14 and 21) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
11. Schedule 5, items 1 to 30	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009 (see F2009L02563)

**Act Notes**

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
12. Schedule 5, item 31	The later of: (a) immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> ; and (b) immediately after the commencement of item 41 of Schedule 2 to the <i>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	[see Note 3] (paragraph (b) applies)
14. Schedule 5, items 65 and 66	The later of: (a) immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> ; and (b) immediately after the commencement of item 101 of Schedule 2 to the <i>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	1 July 2009 (see F2009L02563) (paragraph (a) applies)
21. Schedule 5, Part 3	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009 (see F2009L02563)

**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 1</b>	
S. 4.....	am. No. 179, 1992; No. 60, 1996; No. 116, 1999 (as am. by No. 63, 2002); Nos. 133, 146 and 161, 1999; No. 9, 2000; No. 105, 2002; No. 19, 2005; SLI 2006 No. 50; No. 54, 2009
S. 12A.....	ad. No. 24, 2001
S. 13.....	am. No. 133, 1999
<b>Part 2</b>	
<b>Division 1</b>	
Heading to s. 20.....	am. No. 60, 1996; No. 105, 2002; No. 54, 2009
<b>Division 2</b>	
S. 22.....	am. No. 19, 2005
S. 31.....	am. No. 133, 1999; No. 62, 2002; No. 19, 2005
S. 33.....	rs. No. 62, 2002
<b>Division 4</b>	
S. 42.....	am. No. 133, 1999
S. 43.....	am. No. 24, 2001
<b>Division 5</b>	
S. 47.....	am. No. 60, 1996; No. 133, 1999; Nos. 54 and 70, 2009
Note to s. 47(1).....	ad. No. 70, 2009 rs. No. 54, 2009
Note to s. 47.....	ad. No. 86, 2005
S. 51.....	am. No. 164, 1994; No. 52, 2004
S. 55.....	am. No. 62, 2002
<b>Part 4</b>	
Heading to Part 4.....	rs. No. 133, 1999
<b>Division 1</b>	
S. 66.....	rep. No. 133, 1999
S. 67.....	am. No. 133, 1999
Note to s. 67(1).....	ad. No. 133, 1999
S. 68.....	rep. No. 133, 1999
S. 69.....	am. No. 179, 1992 rep. No. 133, 1999
S. 70.....	rep. No. 133, 1999
Div. 2 of Part 4.....	rep. No. 133, 1999
Ss. 71–76.....	rep. No. 133, 1999
Div. 3 of Part 4.....	rep. No. 133, 1999
Ss. 77–88.....	rep. No. 133, 1999
Ss. 89, 90.....	rs. No. 179, 1992 rep. No. 133, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 90A .....	ad. No. 179, 1992 rep. No. 133, 1999
S. 91 .....	am. No. 179, 1992 rep. No. 133, 1999
S. 92 .....	rs. No. 179, 1992 rep. No. 133, 1999
Ss. 93–97 .....	rep. No. 133, 1999
S. 98 .....	am. No. 179, 1992 rep. No. 133, 1999
Ss. 99–101 .....	rep. No. 133, 1999
Ss. 102, 103 .....	am. No. 179, 1992 rep. No. 133, 1999
S. 104 .....	rs. No. 179, 1992 rep. No. 133, 1999
S. 104A .....	ad. No. 179, 1992 rep. No. 59, 1995
S. 104B .....	ad. No. 179, 1992 am. No. 13, 1994 rep. No. 59, 1995
S. 104C .....	ad. No. 179, 1992 rep. No. 59, 1995
S. 105 .....	rep. No. 133, 1999
S. 106 .....	am. No. 179, 1992; No. 13, 1994 rep. No. 59, 1995
Div. 3A of Part 4 .....	ad. No. 59, 1995 rep. No. 133, 1999
Ss. 105A–105F .....	ad. No. 59, 1995 rep. No. 133, 1999
S. 106 .....	ad. No. 59, 1995 rep. No. 133, 1999
Div. 4 of Part 4 .....	ad. No. 179, 1992 rep. No. 133, 1999
Ss. 106A–106F .....	ad. No. 179, 1992 rep. No. 133, 1999
<b>Part 5</b>	
S. 107 .....	am. No. 133, 1999; No. 24, 2001
Ss. 108–111 .....	rep. No. 133, 1999
S. 112 .....	am. No. 133, 1999 rep. No. 137, 2000
<b>Part 6</b>	
S. 113 .....	am. No. 59, 1995
S. 116 .....	am. No. 146, 1999
<b>Part 7</b>	
S. 123 .....	am. No. 133, 1999
S. 126 .....	am. No. 133, 1999

**Table of Amendments**

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

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<u>Provision affected</u>	<u>How affected</u>
S. 127.....	am. No. 24, 2001
Note to s. 127(3).....	ad. No. 24, 2001
S. 130.....	rep. No. 133, 1999
S. 132.....	am. No. 62, 2002

## **Note 2**

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### **Note 2**

*Age Discrimination (Consequential Provisions) Act 2004* (No. 40, 2004)

The following amendment commences immediately after the commencement of Schedule 1 to the *Australian Human Rights Commission Legislation Act 2004*:

### **Schedule 2**

#### **26 Paragraph 67(3)(c)**

Repeal the paragraph, substitute:

- (c) whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of any of the following Acts:
  - (i) this Act;
  - (ii) the *Age Discrimination Act 2004*;
  - (iii) the *Australian Human Rights Commission Act 1986*;
  - (iv) the *Racial Discrimination Act 1975*;
  - (v) the *Sex Discrimination Act 1984*;

As at 20 July 2009 the amendment is not incorporated in this compilation.

### **Note 3**

*Fair Work (State Referral and Consequential and Other Amendments) Act 2009*  
(No. 54, 2009)

The following amendment commences immediately after 5 August 2009:

### **Schedule 5**

#### **31 Paragraph 21A(4)(b)**

Omit "*Workplace Relations Act 1996*", substitute "*Fair Work (Registered Organisations) Act 2009*".

As at 20 July 2009 the amendment is not incorporated in this compilation.

**Note 4**

*Disability Discrimination and Other Human Rights Legislation Amendment Act 2009* (No. 70, 2009)

The following amendments commence on 5 August 2009:

**Schedule 2**

**1 Subsection 4(1)**

Insert:

*assistance animal* has the meaning given by subsection 9(2).

**2 Subsection 4(1) (definition of *auxiliary aid*)**

Repeal the definition.

**3 Subsection 4(1)**

Insert:

*carer or assistant* has the meaning given by subsection 9(1).

**4 Subsection 4(1)**

Insert:

*Disabilities Convention* means the Convention on the Rights of Persons with Disabilities, done at New York on 30 March 2007, as in force for Australia.

Note: The text of the Convention is set out in Australian Treaty Series 2008 No. 12 ([2008] ATS 12). In 2008, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

**5 Subsection 4(1) (paragraph (j) of the definition of *disability*)**

After “future”, insert “(including because of a genetic predisposition to that disability)”.

**6 Subsection 4(1) (at the end of the definition of *disability*)**

Add:

## Note 4

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To avoid doubt, a *disability* that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.

### 7 Subsection 4(1)

Insert:

*disability aid* has the meaning given by subsection 9(3).

### 8 Subsection 4(1) (definition of *disability discrimination*)

Repeal the definition.

### 9 Subsection 4(1)

Insert:

*disability standards* has the meaning given by subsection 31(1).

### 10 Subsection 4(1) (definition of *discriminate*)

Omit “sections 5 to 9 (inclusive)”, substitute “sections 5 and 6”.

### 11 Subsection 4(1) (at the end of the definition of *discriminate*)

Add:

Note: Section 7 (associates) and section 8 (carers, assistants, assistance animals and disability aids) extend the concept of discrimination.

### 12 Subsection 4(1) (definition of *institution of tertiary education*)

Repeal the definition.

### 13 Subsection 4(1)

Insert:

*reasonable adjustment*: an adjustment to be made by a person is a *reasonable adjustment* unless making the adjustment would impose an unjustifiable hardship on the person.

### 14 Subsection 4(1) (definition of *technical and further education institution*)

Repeal the definition.

**15 Subsection 4(1) (definition of *this Act*)**

Repeal the definition.

**16 Subsection 4(1) (definition of *unjustifiable hardship*)**

Repeal the definition, substitute:

*unjustifiable hardship* has a meaning affected by section 11.

**17 Sections 5 to 9**

Repeal the sections, substitute:

**5 Direct disability discrimination**

- (1) For the purposes of this Act, a person (the *discriminator*) *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if, because of the disability, the discriminator treats, or proposes to treat, the aggrieved person less favourably than the discriminator would treat a person without the disability in circumstances that are not materially different.
- (2) For the purposes of this Act, a person (the *discriminator*) also *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:
  - (a) the discriminator does not make, or proposes not to make, reasonable adjustments for the person; and
  - (b) the failure to make the reasonable adjustments has, or would have, the effect that the aggrieved person is, because of the disability, treated less favourably than a person without the disability would be treated in circumstances that are not materially different.
- (3) For the purposes of this section, circumstances are not *materially different* because of the fact that, because of the disability, the aggrieved person requires adjustments.

**6 Indirect disability discrimination**

- (1) For the purposes of this Act, a person (the *discriminator*) *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:
-

#### Note 4

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- (a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
  - (b) because of the disability, the aggrieved person does not or would not comply, or is not able or would not be able to comply, with the requirement or condition; and
  - (c) the requirement or condition has, or is likely to have, the effect of disadvantaging persons with the disability.
- (2) For the purposes of this Act, a person (the *discriminator*) also *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:
- (a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
  - (b) because of the disability, the aggrieved person would comply, or would be able to comply, with the requirement or condition only if the discriminator made reasonable adjustments for the person, but the discriminator does not do so or proposes not to do so; and
  - (c) the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.
- (3) Subsection (1) or (2) does not apply if the requirement or condition is reasonable, having regard to the circumstances of the case.
- (4) For the purposes of subsection (3), the burden of proving that the requirement or condition is reasonable, having regard to the circumstances of the case, lies on the person who requires, or proposes to require, the person with the disability to comply with the requirement or condition.

#### 7 Discrimination in relation to associates

- (1) This Act applies in relation to a person who has an associate with a disability in the same way as it applies in relation to a person with the disability.

Example: It is unlawful, under section 15, for an employer to discriminate against an employee on the ground of a disability of any of the employee's associates.

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**Note 4**

- (2) For the purposes of subsection (1), but without limiting that subsection, this Act has effect in relation to a person who has an associate with a disability as if:
- (a) each reference to something being done or needed because of a disability were a reference to the thing being done or needed because of the fact that the person has an associate with the disability; and
  - (b) each other reference to a disability were a reference to the disability of the associate.
- (3) This section does not apply to section 53 or 54 (combat duties and peacekeeping services) or subsection 54A(2) or (3) (assistance animals).

Note: The combined effect of sections 7 and 8 is that this Act applies in relation to a person who has an associate who has a carer, assistant, assistance animal or disability aid in the same way as it applies in relation to a person with a disability.

**8 Discrimination in relation to carers, assistants, assistance animals and disability aids**

- (1) This Act applies in relation to having a carer, assistant, assistance animal or disability aid in the same way as it applies in relation to having a disability.

Example: For the purposes of section 5 (direct discrimination), circumstances are not materially different because of the fact that a person with a disability requires adjustments for the person's carer, assistant, assistance animal or disability aid (see subsection 5(3)).

- (2) For the purposes of subsection (1), but without limiting that subsection, this Act has effect in relation to a person with a disability who has a carer, assistant, assistance animal or disability aid as if:
- (a) each reference to something being done or needed because of a disability were a reference to the thing being done or needed because of the fact that the person has the carer, assistant, animal or aid; and
  - (b) each other reference to a disability were a reference to the carer, assistant, animal or aid.
- (3) This section does not apply to section 48 (infectious diseases) or section 54A (exemptions in relation to assistance animals).

## Note 4

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Note: The combined effect of sections 7 and 8 is that this Act applies in relation to a person who has an associate who has a carer, assistant, assistance animal or disability aid in the same way as it applies in relation to a person with a disability.

### 9 Carer, assistant, assistance animal and disability aid definitions

#### *Meanings of carer or assistant, assistance animal and disability aid*

- (1) For the purposes of this Act, a ***carer or assistant***, in relation to a person with a disability, is one of the following who provides assistance or services to the person because of the disability:
- (a) a carer;
  - (b) an assistant;
  - (c) an interpreter;
  - (d) a reader.
- (2) For the purposes of this Act, an ***assistance animal*** is a dog or other animal:
- (a) accredited under a law of a State or Territory that provides for the accreditation of animals trained to assist a persons with a disability to alleviate the effect of the disability; or
  - (b) accredited by an animal training organisation prescribed by the regulations for the purposes of this paragraph; or
  - (c) trained:
    - (i) to assist a person with a disability to alleviate the effect of the disability; and
    - (ii) to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.
- Note: For exemptions from Part 2 for discrimination in relation to assistance animals, see section 54A.
- (3) For the purposes of this Act, a ***disability aid***, in relation to a person with a disability, is equipment (including a palliative or therapeutic device) that:
- (a) is used by the person; and
  - (b) provides assistance to alleviate the effect of the disability.

#### *Having a carer, assistant, assistance animal or disability aid*

- (4) The following table has effect:
-

**Having a carer, assistant, assistance animal or disability aid**

Item	For the purposes of this Act, a person with a disability has ...	if the person ...
1	a carer or assistant	(a) is presently accompanied by the carer or assistant; or (b) was previously accompanied by the carer or assistant; or (c) may be accompanied by the carer or assistant in the future; or (d) is imputed to be accompanied by the carer or assistant.
2	an assistance animal or disability aid	(a) is presently accompanied by, or possesses, the animal or aid; or (b) was previously accompanied by, or possessed, the animal or aid; or (c) may be accompanied by, or possess, the animal or aid in the future; or (d) is imputed to be accompanied by, or to possess, the animal or aid.

**18 Section 11**

Repeal the section, substitute:

**11 Unjustifiable hardship**

- (1) For the purposes of this Act, in determining whether a hardship that would be imposed on a person (the *first person*) would be an *unjustifiable hardship*, all relevant circumstances of the particular case must be taken into account, including the following:
- the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
  - the effect of the disability of any person concerned;
  - the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;
  - the availability of financial and other assistance to the first person;
  - any relevant action plans given to the Commission under section 64.

#### **Note 4**

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Example: One of the circumstances covered by paragraph (1)(a) is the nature of the benefit or detriment likely to accrue to, or to be suffered by, the community.

- (2) For the purposes of this Act, the burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.

#### **19 Subsection 12(1) (definition of *limited application provisions*)**

After “Divisions 1, 2”, insert “, 2A”.

#### **20 After paragraph 12(8)(b)**

Insert:

(ba) give effect to the Disabilities Convention; or

#### **21 After subsection 13(3)**

Insert:

(3A) Subsection (3) does not apply in relation to Division 2A of Part 2 (Disability standards).

#### **22 Paragraphs 13(4)(a) and (5)(a)**

After “this Act”, insert “(including a matter dealt with by a disability standard)”.

#### **23 Subsection 15(1)**

Omit “or a disability of any of that other person’s associates”.

#### **24 Subsection 15(2)**

Omit “or a disability of any of that employee’s associates”.

#### **25 Subsection 15(4)**

Repeal the subsection.

#### **26 Subsection 16(1)**

Omit “or a disability of any of that person’s associates”.

#### **27 Subsection 16(2)**

Omit “or a disability of any of the person’s associates”.

**28 Subsection 16(3)**

Repeal the subsection.

**29 Subsection 17(1)**

Omit “(1)”.

**30 Subsection 17(1)**

Omit “or a disability of any of the contract worker’s associates”.

**31 Subsection 17(2)**

Repeal the subsection.

**32 Subsections 18(1), (2) and (3)**

Omit “or a disability of any of the other person’s associates”.

**33 Subsection 18(4)**

Repeal the subsection.

**34 Subsection 19(1)**

Omit “(1)”.

**35 Subsection 19(1)**

Omit “or a disability of any of the person’s associates”.

**36 Subsection 19(2)**

Repeal the subsection.

**37 Subsection 20(1)**

Omit “or a disability of any of the person’s associates”.

**38 Subsection 20(2)**

Omit “or a disability of any of the member’s associates”.

**39 Subsection 21(1)**

Omit “or a disability of any of the person’s associates”.

**40 Subsection 21(2)**

Repeal the subsection, substitute:

#### Note 4

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- (2) This Part does not require an employment agency to ensure that an employer complies with this Act.
- (3) Subsection (2) does not affect the operation of section 122 (which applies if an employment agency causes, instructs, induces, aids or permits an employer to do an unlawful act).

#### 41 At the end of Division 1 of Part 2

Add:

#### 21A Exception—inherent requirements

##### *Inherent requirements*

- (1) This Division does not render it unlawful for a person (the ***discriminator***) to discriminate against another person (the ***aggrieved person***) on the ground of a disability of the aggrieved person if:
  - (a) the discrimination relates to particular work (including promotion or transfer to particular work); and
  - (b) because of the disability, the aggrieved person would be unable to carry out the inherent requirements of the particular work, even if the relevant employer, principal or partnership made reasonable adjustments for the aggrieved person.
- (2) For the purposes of paragraph (1)(b), the following factors are to be taken into account in determining whether the aggrieved person would be able to carry out the inherent requirements of the particular work:
  - (a) the aggrieved person's past training, qualifications and experience relevant to the particular work;
  - (b) if the aggrieved person already works for the discriminator—the aggrieved person's performance in working for the discriminator;
  - (c) any other factor that it is reasonable to take into account.
- (3) For the purposes of this section, the aggrieved person ***works*** for another person if:
  - (a) the other person employs the aggrieved person; or
  - (b) the other person engages the aggrieved person as a commission agent; or

**Note 4**

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- (c) the aggrieved person works for the other person as a contract worker; or
- (d) the other person and the aggrieved person are members of a partnership; or
- (e) both of the following apply:
  - (i) the other person is an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation;
  - (ii) the aggrieved person is a member of that profession, carrying on that trade or engaged in that occupation.

*Opportunities for promotion, transfer and training and registered organisations*

- (4) This section does not apply in relation to:
  - (a) discrimination referred to in paragraph 15(2)(b) or (d), 16(2)(b) or (d), 17(1)(c) or (d) or 18(3)(c), other than discrimination in determining who should be offered promotion or transfer; or
  - (b) discrimination referred to in section 20 (registered organisations under the *Workplace Relations Act 1996*).

**21B Exception—unjustifiable hardship**

This Division does not render it unlawful for a person (the *discriminator*) to discriminate against another person on the ground of a disability of the other person if avoiding the discrimination would impose an unjustifiable hardship on the discriminator.

**42 Subsection 22(1)**

Omit “or a disability of any of the other person’s associates”.

**43 Subsection 22(2)**

Omit “or a disability of any of the student’s associates”.

**44 Subsection 22(2A)**

Omit “or a disability of any of the person’s associates”.

**Note 4**

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**45 Subsection 22(4)**

Repeal the subsection.

**46 Subsection 23(1)**

Omit “(1)”.

**47 Subsection 23(1)**

Omit “or a disability of any of that other person’s associates”.

**48 Subsection 23(2)**

Repeal the subsection.

**49 Subsection 24(1)**

Omit “(1)”.

**50 Subsection 24(1)**

Omit “or a disability of any of that other person’s associates”.

**51 Subsection 24(2)**

Repeal the subsection.

**52 Subsection 25(1)**

Omit “or a disability of any of that other person’s associates”.

**53 Subsection 25(2)**

Omit “or a disability of any of the other person’s associates”.

**54 Paragraphs 25(3)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) the provision of accommodation if:
  - (i) the accommodation is provided by a charitable or other voluntary body solely for persons who have a particular disability; and
  - (ii) the person discriminated against does not have that particular disability.

**55 Subsections 26(1) and 27(1)**

Omit “or a disability of any of that person’s associates”.

**56 Subsection 27(2)**

Omit “or a disability of any of the member’s associates”.

**57 Subsection 27(3)**

Repeal the subsection.

**58 Subsection 28(1)**

Omit “or a disability of any of the other person’s associates”.

**59 Section 29**

Omit “, or a disability of any of the other person’s associates”.

**60 Section 30**

Repeal the section, substitute:

**29A Unjustifiable hardship**

This Division (other than section 30) does not render it unlawful for a person (the *discriminator*) to discriminate against another person on the ground of a disability of the other person if avoiding the discrimination would impose an unjustifiable hardship on the discriminator.

**30 Requests for information**

- (1) This section applies in relation to a person (the *first person*) if, under Division 1 or this Division, it would be unlawful for the first person, in doing a particular act, to discriminate against another person on the ground of a disability of the other person.
- (2) It is unlawful for the first person to request or require the other person to provide information (whether by completing a form or otherwise) if:
  - (a) the first person requests or requires the information in connection with, or for the purposes of, doing the act referred to in subsection (1); and
  - (b) either or both of the following applies:
    - (i) persons who do not have the disability would not be requested or required to provide the information in circumstances that are not materially different;

## Note 4

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(ii) the information relates to the disability.

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

- (a) evidence is produced to the effect that none of the purposes for which the first person requested or required the information was the purpose of unlawfully discriminating against the other person on the ground of the disability; and
- (b) the evidence is not rebutted.

Example: An employer may not require a prospective employee to provide genetic information if the employer intends to use that information to unlawfully discriminate against the employee on the ground of a disability of the employee.

However, the employer may require such information in order to determine if the prospective employee would be able to carry out the inherent requirements of the employment or to determine what reasonable adjustments to make for the employee.

(4) This section has effect subject to subsection 54A(5) (evidence that an animal is an assistance animal).

## 61 Before section 31

Insert:

## Division 2A—Disability standards

### 62 Section 31

Repeal the section, substitute:

### 31 Disability standards

- (1) The Minister may, by legislative instrument, formulate standards, to be known as *disability standards*, in relation to any area in which it is unlawful under this Part for a person to discriminate against another person on the ground of a disability of the other person.
- (2) Without limiting subsection (1), a disability standard may:
  - (a) deal with the following:
    - (i) reasonable adjustments;
    - (ii) strategies and programs to prevent harassment or victimisation of persons with a disability;
    - (iii) unjustifiable hardship;

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**Note 4**

- (iv) exemptions from the disability standard, including the power (if any) of the Commission to grant such exemptions; or
  - (b) provide that the disability standard, in whole or in part, is or is not intended to affect the operation of a law of a State or Territory.
- (3) Before making a disability standard, the Minister must take into consideration any comments made to the Minister by a Minister of a State or Territory who is responsible for matters relating to disability discrimination.
- (4) A legislative instrument made under this section does not take effect before the end of the period in which it could be disallowed in either House of the Parliament.

**64 Section 34**

After “this Part”, insert “(other than this Division)”.

**65 Sections 36, 38 and 40**

Repeal the sections.

**66 Paragraph 43(a)**

Omit “Divisions 1, 2”, substitute “Division 1, 2, 2A”.

**67 Subsection 44(1)**

After “Division 1, 2”, insert “, 2A”.

**68 Subsection 44(1) (penalty)**

Omit “\$1,000”, substitute “10 penalty units”.

**69 Section 45**

Before “This Part”, insert “(1)”.

**70 Subparagraph 45(b)(i)**

Omit “and”, substitute “or”.

**71 At the end of section 45**

Add:

#### **Note 4**

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- (2) However, subsection (1) does not apply:
- (a) in relation to discrimination in implementing a measure referred to in that subsection if the discrimination is not necessary for implementing the measure; or
  - (b) in relation to the rates of salary or wages paid to persons with disabilities.

Note: For discrimination in relation to the rates of salary or wages paid to persons with disabilities, see paragraphs 47(1)(c) and (d).

#### **72 Subsection 47(3)**

Repeal the subsection.

#### **73 At the end of section 48**

Add:

Note: For discrimination in relation to an assistance animal that has an infectious disease, see subsection 54A(4).

#### **74 Section 50**

Repeal the section.

#### **75 Section 52**

Repeal the section, substitute:

#### **52 Migration**

Divisions 1, 2 and 2A do not:

- (a) affect discriminatory provisions in:
  - (i) the *Migration Act 1958*; or
  - (ii) a legislative instrument made under that Act; or
- (b) render unlawful anything that is permitted or required to be done by that Act or instrument.

#### **76 After section 54**

Insert:

#### **54A Assistance animals**

- (1) This section applies in relation to a person with a disability who has an assistance animal.

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**Note 4**

Note: For when a person with a disability *has an assistance animal*, see subsections 9(2) and (4).

- (2) This Part does not render it unlawful for a person to request or to require that the assistance animal remain under the control of:
  - (a) the person with the disability; or
  - (b) another person on behalf of the person with the disability.
- (3) For the purposes of subsection (2), an assistance animal may be under the control of a person even if it is not under the person's direct physical control.
- (4) This Part does not render it unlawful for a person (the *discriminator*) to discriminate against the person with the disability on the ground of the disability, if:
  - (a) the discriminator reasonably suspects that the assistance animal has an infectious disease; and
  - (b) the discrimination is reasonably necessary to protect public health or the health of other animals.
- (5) This Part does not render it unlawful for a person to request the person with the disability to produce evidence that:
  - (a) the animal is an assistance animal; or
  - (b) the animal is trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.
- (6) This Part does not render it unlawful for a person (the *discriminator*) to discriminate against the person with the disability on the ground that the person with the disability has the assistance animal, if:
  - (a) the discriminator requests or requires the person with the disability to produce evidence referred to in subsection (5); and
  - (b) the person with the disability neither:
    - (i) produces evidence that the animal is an assistance animal; nor
    - (ii) produces evidence that the animal is trained to meet standards of hygiene and behaviour that are appropriate for an animal in a public place.
- (7) This Part does not affect the liability of a person for damage to property caused by an assistance animal.

**Note 4**

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**77 Subsection 55(1)**

Omit “(other than section 31 or 32)”.

**78 Subsection 55(1B)**

Omit “covered by paragraph 31(1)(d)”.

**79 Section 58**

Omit “Division 1 or 2”, substitute “Division 1, 2 or 2A”.

**80 Section 59**

Repeal the section, substitute:

**59 Scope**

This Part applies in relation to a person (the *action planner*) who, under Part 2, is prohibited from discriminating against another person on the ground of a disability of the other person.

**81 Section 60**

Omit “A service provider”, substitute “The action planner”.

**82 Section 61**

Omit “of a service provider”.

**83 Paragraphs 61(b), (c) and (f)**

Omit “service provider”, substitute “action planner”.

**84 Section 62**

Omit “of a service provider”.

**85 Sections 63, 64 and 65**

Repeal the sections, substitute:

**63 Amendment of action plans**

The action planner may, at any time, amend the action plan.

**64 Action plans may be given to Commission**

- (1) The action planner may give a copy of the action plan, or of any amendments to the action plan, to the Commission.
- (2) If the action planner does so, the Commission must make the copy available to the public.

**87 Subsection 67(2)**

Omit “section 45”, substitute “subsection 45(1) (special measures)”.

**88 Subsection 107(1) (penalty)**

Omit “\$1,000”, substitute “10 penalty units”.

**89 Section 122**

After “Division 1, 2”, insert “, 2A”.

**90 Subsection 132(2)**

Omit “31 or”.

**Schedule 3**

**22 Subsection 4(1) (definition of *Commission*)**

Repeal the definition, substitute:

*Commission* means the Australian Human Rights Commission.

**23 Subsection 4(1) (definition of *Convention*)**

Omit “*Human Rights and Equal Opportunity Commission Act 1986*”, substitute “*Australian Human Rights Commission Act 1986*”.

**24 Subsection 4(1) (definition of *Covenant on Civil and Political Rights*)**

Omit “*Human Rights and Equal Opportunity Commission Act 1986*”, substitute “*Australian Human Rights Commission Act 1986*”.

**25 Subsection 4(1) (definition of *enactment*)**

Omit “*Human Rights and Equal Opportunity Commission Act 1986*”, substitute “*Australian Human Rights Commission Act 1986*”.

**26 Subsection 4(1) (definition of *proposed enactment*)**

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**Note 4**

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Omit “*Human Rights and Equal Opportunity Commission Act 1986*”, substitute “*Australian Human Rights Commission Act 1986*”.

**27 Subsection 13(4)**

Omit “*Human Rights and Equal Opportunity Commission Act 1986*” (wherever occurring), substitute “*Australian Human Rights Commission Act 1986*”.

**28 Paragraphs 42(2)(a) to (f)**

Omit “*Human Rights and Equal Opportunity Commission Act 1986*”, substitute “*Australian Human Rights Commission Act 1986*”.

**29 Part 4 (heading)**

Repeal the heading, substitute:

**Part 4—Functions of the Australian Human Rights Commission**

**30 Subsection 67(1) (note)**

Omit “*Human Rights and Equal Opportunity Commission Act 1986*”, substitute “*Australian Human Rights Commission Act 1986*”.

Note: The heading to section 67 is replaced by the heading “**Functions of the Commission**”.

**31 Paragraph 127(3)(b)**

Omit “*Human Rights and Equal Opportunity Commission Act 1986*”, substitute “*Australian Human Rights Commission Act 1986*”.

**117 Subsection 113(2)**

Omit “Governor-General”, substitute “Minister”.

**118 Subsection 126(1)**

Repeal the subsection, substitute:

- (1A) Subsection (1) applies in relation to any of the following persons:
- (a) the Commission;
  - (b) the Commissioner or another member of the Commission;
  - (c) a person acting under the direction or authority of:
    - (i) the Commission; or

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**Note 4**

- (ii) the Commissioner or another member of the Commission;
  - (d) a person acting under a delegation under section 121.
- (1) The person is not liable to an action or other proceeding for damages for or in relation to an act done, or omitted to be done, in good faith in the performance, or purported performance, of any function, or in the exercise or purported exercise of any power or authority, conferred on the Commission, the Commissioner or the other member of the Commission.

The following amendments commence on 8 January 2010 unless proclaimed earlier:

**Schedule 2**

**103 Subsections 55(1A) to (1D)**

Repeal the subsections.

**104 Subsections 55(2) and (3)**

Omit “or (1A)”.

**105 Section 58**

Omit “Division 1, 2 or 2A”, substitute “Division 1 or 2”.

As at 20 July 2009 the amendments are not incorporated in this compilation.

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Human Rights Legislation Amendment Act (No. 1) 1999* (No. 133, 1999)

**4 Interpretation**

In this Part:

***appropriate Commissioner*** means:

- (a) in relation to a complaint lodged under the old DDA—the Disability Discrimination Commissioner; and
- (b) in relation to a complaint lodged under the old RDA—the Race Discrimination Commissioner; and
- (c) in relation to a complaint lodged under the old SDA—the Sex Discrimination Commissioner.

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

***holding of an inquiry*** means a holding of an inquiry referred to in a notice given under:

- (a) section 83 of the old DDA; or
- (b) section 25E of the old RDA; or
- (c) section 63 of the old SDA.

***new HREOCA*** means the *Human Rights and Equal Opportunity Commission Act 1986* as amended by Schedule 1 to this Act.

***old DDA*** means the *Disability Discrimination Act 1992* before being amended by Schedule 1 to this Act.

***old RDA*** means the *Racial Discrimination Act 1975* before being amended by Schedule 1 to this Act.

***old SDA*** means the *Sex Discrimination Act 1984* before being amended by Schedule 1 to this Act.

***purported complaint*** means a document purporting to be a complaint.

***starting day*** means the day on which this Part commences.

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**Table A****5 Purported complaint lodged but no decision as to whether it is a complaint**

- (1) A purported complaint is treated in the way set out in subsection (2) if, before the starting day:
  - (a) it was lodged with the Commission; and
  - (b) the Commission had not decided whether it was a complaint within the meaning of the old DDA, old RDA or old SDA.
- (2) On the starting day:
  - (a) the purported complaint is taken to have been lodged under section 46P of the new HREOCA; and
  - (b) the Commission must then decide whether it is a complaint within the meaning of the new HREOCA.

**6 Administrative appeal on Commission's decision as to whether complaint**

- (1) A purported complaint is treated in the way set out in subsection (2) if:
  - (a) before the starting day, the Commission decided that it was, or was not, a complaint within the meaning of the old DDA, old RDA or old SDA; and
  - (b) on or after the starting day, the Court makes an order under the *Administrative Decisions (Judicial Review) Act 1977* to refer the matter to which the decision relates to the Commission for further consideration.
- (2) On the day on which the order is made:
  - (a) the purported complaint is taken to have been lodged under section 46P of the new HREOCA; and
  - (b) the Commission must then decide whether it is a complaint within the meaning of the new HREOCA.

**7 Complaint lodged but Commissioner not notified of it**

- (1) A purported complaint is treated in the way set out in subsection (2) if, before the starting day:
  - (a) it was lodged with the Commission; and
  - (b) the Commission decided that it was a complaint within the meaning of the old DDA, old RDA or old SDA; and

**Table A**

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- (c) the Commission had not notified the appropriate Commissioner of it.
- (2) On the starting day:
  - (a) the purported complaint is taken to have been lodged under section 46P of the new HREOCA; and
  - (b) the Commission is taken to have decided that it is a complaint within the meaning of the new HREOCA.

**8 Commissioner notified of complaint but had not decided to dismiss or refer it**

- (1) A complaint is treated in the way set out in subsection (2) if, before the starting day:
  - (a) the Commission had notified the appropriate Commissioner of the complaint; and
  - (b) the appropriate Commissioner had not made a decision not to inquire, or not to continue to inquire, into the complaint; and
  - (c) the appropriate Commissioner had not referred the complaint to the Commission.
- (2) On the starting day, the complaint is taken to have been referred to the President under section 46PD of the new HREOCA.

**9 Commissioner decided to dismiss complaint**

- (1) A complaint is treated in the way set out in subsection (2) if:
  - (a) before the starting day, the appropriate Commissioner decided not to inquire, or not to continue to inquire, into the complaint; and
  - (b) on the starting day, the complainant could have required the appropriate Commissioner to:
    - (i) refer the complaint to the President under section 71 of the old DDA if that section had not been repealed by this Act; or
    - (ii) refer the Commissioner's decision to the President, or refer the complaint to the Commission, under section 24 of the old RDA if that section had not been repealed by this Act; or
    - (iii) refer the Commissioner's decision to the President, or refer the complaint to the Commission, under section 52

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**Table A**

of the old SDA if that section had not been repealed by this Act.

- (2) On the starting day, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

**10 Presidential review of Commissioner's decision to dismiss complaint**

- (1) A complaint is treated in the way set out in subsection (2) if, before the starting day:

- (a) the appropriate Commissioner decided not to inquire, or not to continue to inquire, into the complaint; and
- (b) the complainant required the appropriate Commissioner to refer the complaint, or the Commissioner's decision, to the President; and
- (c) the President had not made a decision under whichever of the following sections is applicable:
  - (i) section 101 of the old DDA;
  - (ii) section 24AA of the old RDA;
  - (iii) section 52A of the old SDA.

- (2) On the starting day, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

**11 Administrative review of President's decision**

- (1) A complaint is treated in the way set out in subsection (2) if:
- (a) before the starting day, the President made a decision in relation to the complaint under:
    - (i) section 101 of the old DDA; or
    - (ii) section 24AA of the old RDA; or
    - (iii) section 52A of the old SDA; and
  - (b) on or after the starting day, the Court makes an order under the *Administrative Decisions (Judicial Review) Act 1977* to refer the matter to which the decision relates to the Commission for further consideration.

**Table A**

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- (2) On the day the order is made, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

**12 Complaint referred to Commission but inquiry not started**

- (1) A complaint is treated in the way set out in subsection (2) if, before the starting day:
- (a) the appropriate Commissioner referred the complaint to the Commission; and
  - (b) a holding of an inquiry into the complaint had not started under the old DDA, old RDA or old SDA; and
  - (c) the complaint had not been withdrawn under whichever of the following sections is applicable:
    - (i) section 79 of the old DDA;
    - (ii) section 25A of the old RDA;
    - (iii) section 59 of the old SDA.

- (2) On the starting day, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

**13 Inquiry started**

- (1) A complaint is treated in the way set out in subsection (2) if, before the starting day:
- (a) a holding of an inquiry into the complaint had started under the old DDA, old RDA or old SDA; and
  - (b) the complaint had not been withdrawn under whichever of the following sections is applicable:
    - (i) section 79 of the old DDA;
    - (ii) section 25A of the old RDA;
    - (iii) section 59 of the old SDA.
- (2) The amendments made by Schedule 1 to this Act do not apply in relation to the complaint.

#### **14 Notice of termination**

- (1) If the President is taken to have terminated a complaint under section 9, 10, 11 or 12, then the President must notify the complainants in writing of the termination and the reasons for the termination.
- (2) Subsection (1) does not apply if all the complainants requested the appropriate Commissioner not to inquire into the complaint.
- (3) The President must give a person a copy of the notice that was given to the complainants under subsection (1) if:
  - (a) the person was a person on whose behalf the complaint was lodged; and
  - (b) the person requested the President for a copy of the notice.
- (4) The President is not required to notify any person under section 46PH of the new HREOCA.

#### **15 Work done by Commissioner is taken to have been done by President**

Any thing done, or information obtained, by the appropriate Commissioner in relation to a complaint that is referred to the President under section 8 is taken to have been done or obtained by the President.

#### **16 Special rules apply to proceedings to enforce a determination**

Sections 46PQ, 46PR and 46PT of the new HREOCA apply for the purposes of proceedings in the Court:

- (a) for an order to enforce a determination in relation to a complaint; or
  - (b) for an order directing a Commonwealth agency (or the principal executive of a Commonwealth agency) to comply;
- if the proceedings started on or after the starting day under:
- (c) section 105A or 106F of the old DDA; or
  - (d) section 25ZC or 25ZI of the old RDA; or
  - (e) section 83A or 84F of the old SDA.

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**Table A**

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**17 Protection from civil actions**

The amendments made by items 30, 31, 83, 84, 119 and 120 of Schedule 1 do not apply to a complaint lodged before the starting day under the old DDA, old RDA or old SDA.

**18 Referrals under the old SDA**

The amendments made by items 1, 2, 85, 86, 97, 100, 122, 123, 124 and 125 of Schedule 1 do not apply to a complaint lodged before the starting day under section 50A, 50C or 50E of the old SDA.

**19 Inquiries started by Human Rights Commissioner**

The amendment made by item 52 of Schedule 1 does not apply in relation to an inquiry that the Human Rights Commissioner started before the starting day.

**20 When a person cannot lodge a complaint under the new HREOCA**

A person cannot lodge a complaint under section 46P of the new HREOCA if:

- (a) the person is a class member for a representative complaint in respect of the same subject matter; and
- (b) a holding of an inquiry into the representative complaint had started under the old DDA, old RDA or old SDA.

**21 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made in relation to matters of a transitional or saving nature arising out of the enactment of this Act.

**22 Transitional—powers of a Secretary**

A thing done by the Commission before the commencement of this section in exercising powers referred to in subsection 43(2) of the *Human Rights and Equal Opportunity Commission Act 1986* has effect, for the purpose of the exercise by the President after the commencement of this section of powers referred to in that subsection, as if the thing had been done by the President.

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*Australian Federal Police Legislation Amendment Act 2000* (No. 9, 2000)

**Schedule 3****20 Definition**

In this Part:

*commencing time* means the time when this Part commences.

**24 Amendment of the *Disability Discrimination Act 1992***

The amendment of the *Disability Discrimination Act 1992* made by Schedule 2 to this Act applies to acts done at or after the commencing time in relation to:

- (a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time); or
- (b) persons seeking to become persons of the kind mentioned in paragraph (a).

**34 Warrants or writs etc. may continue to be executed**

If, immediately before the commencing time, any warrant, writ, order, permission or other instrument (the *authority*) issued under a law of the Commonwealth, a State or a Territory could be executed by a person who was at that time a member, staff member or special member of the Australian Federal Police, the authority continues to be able to be executed at and after the commencing time by the person in his or her capacity as:

- (a) the Commissioner of the Australian Federal Police; or

**Table A**

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- (b) a Deputy Commissioner of the Australian Federal Police; or
- (c) an AFP employee; or
- (d) a special member of the Australian Federal Police;

(all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

Note: A person who is a member or staff member of the Australian Federal Police immediately before the commencing time is taken to be engaged as an AFP employee. Similarly, a person who is a special member of the Australian Federal Police immediately before the commencing time is taken to be appointed as a special member. See item 2 of this Schedule.

**35 Regulations dealing with matters of a transitional or saving nature**

- (1) The Governor-General may make regulations, not inconsistent with any other provision of this Schedule, prescribing matters of a transitional or saving nature in relation to the amendments made by Schedule 1 or 2.
- (2) Regulations made under this item within one year after the commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

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*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (No. 137, 2000)

**Schedule 2**

**418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
  - (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;as if the amendment or repeal had not been made.

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**Table A**

- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

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*Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001* (No. 24, 2001)

**4 Application of amendments**

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

## **Table A**

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*Fair Work (State Referral and Consequential and Other Amendments) Act 2009*  
(No. 54, 2009)

### **4 Definition**

In this Act:

**WR Act repeal day** has the meaning given by Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

### **Schedule 5**

#### **84 Application of item 29**

Despite the amendment made by item 29 of this Schedule, the *Disability Discrimination Act 1992*, as in force immediately before the WR Act repeal day, continues to apply in relation to a decision of the Australian Fair Pay Commission, whether made before or after that day.

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*Disability Discrimination and Other Human Rights Legislation Amendment Act 2009* (No. 70, 2009)

The following provisions commence on 5 August 2009:

### **Schedule 2**

#### **63 Saving—disability standards**

- (1) This item applies in relation to a disability standard:
  - (a) made under section 31 of the *Disability Discrimination Act 1992*; and
  - (b) in force immediately before the commencement of this Part.
- (2) The disability standard has effect, from the commencement of this Part, as if it had been made under that section as amended by this Part.

#### **86 Saving—action plans**

- (1) This item applies in relation to an action plan:
    - (a) given to the Commission under section 64 of the *Disability Discrimination Act 1992*; and
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**Table A**

- (b) in force immediately before the commencement of this Part.
- (2) The action plan has effect, from the commencement of this Part, as if it had been given to the Commission under that section as amended by this Part.