



# **Disability Discrimination and Other Human Rights Legislation Amendment Act 2009**

**No. 70, 2009**

**An Act to amend the *Disability Discrimination Act 1992* and other laws relating to human rights, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Disability Discrimination and Other Human Rights Legislation Amendment Act 2009**

**No. 70, 2009**

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**An Act to amend the *Disability Discrimination Act 1992* and other laws relating to human rights, and for related purposes**

[Assented to 8 July 2009]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009*.

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## 2 Commencement

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	8 July 2009
2. Schedule 1	The 28th day after the day on which this Act receives the Royal Assent.	5 August 2009
3. Schedule 2, Part 1	The 28th day after the day on which this Act receives the Royal Assent.	5 August 2009
4. Schedule 2, items 101 and 102	At the same time as Schedule 5 to the <i>Workplace Relations Amendment (Work Choices) Act 2005</i> .	27 March 2006
5. Schedule 2, items 103 to 105	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	8 January 2010
6. Schedule 2, item 106	Immediately before the commencement of Schedule 35 to the <i>Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)</i> .	27 March 2006
7. Schedule 3, Part 1, Division 1	The 28th day after the day on which this Act receives the Royal Assent.	5 August 2009
8. Schedule 3, items 111 to 114	The later of: (a) the start of the 28th day after the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of paragraph 135(1)(b) of the <i>Fair Work</i>	1 January 2010

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
	<i>Act 2009.</i> However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
9. Schedule 3, items 115 and 116	The later of: (a) the start of the 28th day after the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of item 82 of Schedule 2 to the <i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008.</i> However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	5 August 2009
10. Schedule 3, Part 2	The 28th day after the day on which this Act receives the Royal Assent.	5 August 2009
11. Schedule 4	The 28th day after the day on which this Act receives the Royal Assent.	5 August 2009

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

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

- (1) Each Act, and each set of regulations, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.

## Schedule 1—Age discrimination

### *Age Discrimination Act 2004*

#### **1 Section 16**

Repeal the section, substitute:

#### **16 Act done because of age and for other reason**

- (1) This section applies if:
  - (a) an act is done for 2 or more reasons; and
  - (b) one of the reasons (whether or not it is the dominant or a substantial reason) is:
    - (i) the age of a person; or
    - (ii) a characteristic that appertains generally to persons of the age of a person; or
    - (iii) a characteristic that is generally imputed to persons of the age of a person.
- (2) For the purposes of this Act, the act referred to in paragraph (1)(a) is taken to be done because of the age of the person.

#### **2 Application**

The amendment of section 16 of the *Age Discrimination Act 2004* made by this Schedule applies in relation to acts done after the commencement of this Schedule.

#### **3 Subsection 39(6)**

Omit “section 49A of the *Acts Interpretation Act 1901*”, substitute “section 14 of the *Legislative Instruments Act 2003*”.



## **Schedule 2—Disability discrimination**

### **Part 1—Amendments commencing 28 days after Royal Assent**

#### *Disability Discrimination Act 1992*

##### **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:

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.

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### **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:

- (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.

- (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).

**Schedule 2** Disability discrimination

**Part 1** Amendments commencing 28 days after Royal Assent

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

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<b>Item</b>	<b>For the purposes of this Act, a person with a disability has ...</b>	<b>if the person ...</b>
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.

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**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:
- (a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
  - (b) the effect of the disability of any person concerned;
  - (c) the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;
  - (d) the availability of financial and other assistance to the first person;
  - (e) any relevant action plans given to the Commission under section 64.
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**Schedule 2** Disability discrimination

**Part 1** Amendments commencing 28 days after Royal Assent

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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”.

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**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:

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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

- (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”.

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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”.

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**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;

(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;
-

- (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.

### **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.

### **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:

- (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.

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.

**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”.

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**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.

**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
  - (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.

**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”.

***Human Rights and Equal Opportunity Commission Act 1986***

**91 Paragraph 11(1)(a)**

After “*Age Discrimination Act 2004*,”, insert “the *Disability Discrimination Act 1992*,”.

**92 At the end of paragraphs 11(1)(a) to (n)**

Add “and”.

***Inspector-General of Intelligence and Security Act 1986***

**93 At the end of subparagraphs 8(1)(a)(i), (ii) and (iii)**

Add “or”.

**94 Subparagraph 8(1)(a)(v)**

After “the *Age Discrimination Act 2004*,”, insert “the *Disability Discrimination Act 1992*,”.

**95 At the end of paragraphs 8(1)(a) and (b)**

Add “and”.

**96 At the end of subparagraphs 8(2)(a)(i) and (ii)**

Add “or”.

**97 Subparagraph 8(2)(a)(iv)**

After “the *Age Discrimination Act 2004*,”, insert “the *Disability Discrimination Act 1992*,”.

**98 At the end of paragraph 8(2)(a)**

Add “and”.

**99 At the end of subparagraph 8(3)(a)(i)**

Add “or”.

**100 Subparagraph 8(3)(b)(i)**

After “the *Age Discrimination Act 2004*,”, insert “the *Disability Discrimination Act 1992*,”.

## **Part 2—Other amendments**

### ***Disability Discrimination Act 1992***

#### **101 Paragraph 47(1)(c)**

Repeal the paragraph, substitute:

- (c) any of the following instruments (an *industrial instrument*) within the meaning given by the *Workplace Relations Act 1996*:
  - (i) an award or a variation or order affecting an award;
  - (ii) a transitional award or a variation or order affecting a transitional award;
  - (iii) a pre-reform certified agreement;
  - (iv) a notional agreement preserving State awards;  
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:
    - (v) if the persons were not in receipt of the salary or wages, they would be eligible for a disability support pension;  
and
    - (vi) the salary or wages payable to each person are determined by reference to the capacity of that 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.

#### **102 At the end of subsection 47(1)**

Add:

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## **Schedule 2** Disability discrimination

### **Part 2** Other amendments

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Note: A person does not comply with an industrial instrument for the purpose of subsection (1) if that person purports to comply with a provision of that instrument that is void (for example, a term of a pre-reform certified agreement is void to the extent that it contains prohibited content prescribed for section 356 of the *Workplace Relations Act 1996* (see section 358 of that Act)). Accordingly, the exemption under this subsection for acting in direct compliance with such an instrument would not apply in such circumstances.

#### **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”.

### ***Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)***

#### **106 Item 3 of Schedule 35**

Repeal the item.

## **Schedule 3—Australian Human Rights Commission**

### **Part 1—Name of the Commission**

#### **Division 1—Amendments commencing 28 days after Royal Assent**

##### *Age Discrimination Act 2004*

###### **1 Section 4**

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

###### **2 Section 5 (definition of *Commission*)**

Repeal the definition, substitute:

*Commission* means the Australian Human Rights Commission.

###### **3 Paragraphs 10(7)(a) and (b)**

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

###### **4 Subsection 12(4)**

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

###### **5 Subsection 50(1) (note)**

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

###### **6 Subparagraphs 51(1)(e)(i) to (vi)**

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

###### **7 Subsection 51(1) (note)**

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

**8 Subsection 51(2) (note)**

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

**9 Part 6 (heading)**

Repeal the heading, substitute:

**Part 6—Functions of the Australian Human Rights Commission**

**10 Subsection 53(1) (note)**

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

**11 Subsection 53(2) (definition of *enactment*)**

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

**12 Subsection 53(2) (definition of *proposed enactment*)**

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

**13 Paragraph 60(3)(b)**

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

***Australian Crime Commission Act 2002***

**14 Subsection 19A(8) (definition of *prescribed agency*)**

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

***Civil Aviation Act 1988***

**15 Subsection 98(6C)**

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

### ***Commonwealth Electoral Act 1918***

#### **16 Subsection 7A(1F) (note)**

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

### ***Crimes (Torture) Act 1988***

#### **17 Subsection 3(1) (definition of act of torture)**

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

### ***Criminal Code Act 1995***

#### **18 Dictionary in the *Criminal Code* (definition of Covenant)**

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

### ***Defence Act 1903***

#### **19 Subsection 58HA(1)**

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

#### **20 Paragraph 58HB(1)(a)**

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

#### **21 Subsection 58HB(2) (paragraph (a) of the definition of *discriminatory determination*)**

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

## ***Disability Discrimination Act 1992***

### **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*)**

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*”.

## ***Evidence Act 1995***

### **32 Subsection 138(3) (note)**

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

## ***Housing Assistance Act 1996***

### **33 Preamble**

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

## ***Human Rights and Equal Opportunity Commission Act 1986***

### **34 Title**

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

### **35 Section 1**

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

Note: This item amends the short title of the Act. If another amendment of the Act is described by reference to the Act’s previous short title, that other amendment has effect after the commencement of this item as an amendment of the Act under its amended short title (see section 10 of the *Acts Interpretation Act 1901*).

**36 Subsection 3(1) (definition of *Commission*)**

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

**37 Part II (heading)**

Repeal the heading, substitute:

**Part II—Australian Human Rights Commission**

**38 Subsection 7(1)**

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

Note: The heading to section 7 is replaced by the heading “**Australian Human Rights Commission**”.

***Human Rights (Sexual Conduct) Act 1994***

**39 Subsection 4(1) (note)**

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

***Inspector-General of Intelligence and Security Act 1986***

**40 Subsection 3(1) (definition of *discrimination*)**

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

**41 Subsection 3(1) (definition of *human rights*)**

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

**42 Subparagraphs 8(1)(a)(v), (2)(a)(iv) and (3)(b)(i)**

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

***Migration Act 1958***

**43 Paragraph 193(3)(a)**

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

**44 Paragraph 193(3)(a)**

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

***Native Title Act 1993***

**45 Preamble**

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

**46 Subsection 209(1)**

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

***Privacy Act 1988***

**47 Preamble**

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

**48 Subsection 50(1)**

Insert:

*Australian Human Rights Commission* includes a person performing functions of that Commission.

**49 Subsection 50(1) (definition of *Human Rights and Equal Opportunity Commission*)**

Repeal the definition.

**50 Subparagraph 50(2)(a)(i)**

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

**51 Subparagraph 50(2)(a)(i)**

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

**52 Subsection 50(2)**

Omit “by the Human Rights and Equal Opportunity Commission”, substitute “by the Australian Human Rights Commission”.

**53 Paragraph 50(2)(c)**

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

**54 At the end of paragraph 50(2)(c)**

Add “and”.

**55 Paragraph 50(2)(e)**

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

**56 Subparagraph 50(3)(a)(i)**

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

**57 Subparagraph 50(3)(a)(i)**

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

***Privacy Amendment (Office of the Privacy Commissioner)  
Act 2000***

**58 Clause 15 of Schedule 1 (note)**

After “Note”, insert “1”.

**59 At the end of clause 15 of Schedule 1**

Add:

Note 2: The *Human Rights and Equal Opportunity Act 1986* has been renamed the *Australian Human Rights Commission Act 1986*. See Part 1 of Schedule 3 to the *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009*.

## ***Racial Discrimination Act 1975***

### **60 Subsection 3(1) (definition of *Commission*)**

Repeal the definition, substitute:

*Commission* means the Australian Human Rights Commission.

### **61 Subsection 6A(2)**

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

### **62 Subsection 18C(1) (note)**

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

### **63 Subsection 18C(1) (note)**

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

### **64 Section 20**

Omit “(1)”.

### **65 Section 20 (note)**

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

### **66 At the end of paragraphs 27(2)(a) and (b)**

Add “or”.

### **67 Paragraph 27(2)(e)**

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

### **68 Paragraphs 27(2)(f) and (g)**

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

### **69 At the end of paragraph 27F(3)(a)**

Add “or”.

**70 Paragraph 27F(3)(b)**

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

***Remuneration Tribunal Act 1973***

**71 Subsection 8B(1)**

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

**72 Paragraph 8C(1)(a)**

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

**73 Subsection 8C(2) (paragraph (a) of the definition of *discriminatory determination*)**

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

***Sex Discrimination Act 1984***

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

Repeal the definition, substitute:

*Commission* means the Australian Human Rights Commission.

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

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

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

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

**77 Subsections 10(4) and 11(4)**

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

**78 Part III (heading)**

Repeal the heading, substitute:

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

**79 Subsection 48(1) (note)**

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

Note: The heading to section 48 is replaced by the heading “**Functions of the Commission**”.

**80 Subsection 92(1)**

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

**81 At the end of paragraph 92(1)(a)**

Add “or”.

**82 Paragraphs 92(1)(ab) and (b)**

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

**83 At the end of paragraph 92(2)(a)**

Add “or”.

**84 Paragraph 92(2)(b)**

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

**85 At the end of subparagraphs 92(2)(c)(i), (ii) and (iv), (d)(i), (ii) and (iv) and (e)(i) and (ii)**

Add “or”.

**86 Paragraph 94(2)(a)**

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

**87 Paragraph 94(2)(b)**

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

**88 At the end of paragraph 94(2)(b)**

Add “or”.

**89 Paragraphs 94(2)(c), (d) and (e)**

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

**90 Paragraph 94(2)(f)**

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

**91 At the end of paragraph 112(3)(a)**

Add “or”.

**92 Paragraph 112(3)(b)**

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

***Supported Accommodation Assistance Act 1994***

**93 Preamble**

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

***Workplace Relations Act 1996***

**94 Subsection 4(1) (paragraph (c) of the definition of  
*Anti-Discrimination Conventions*)**

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

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**95 Paragraph 120(1)(e)**

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

**96 Subsection 554(2)**

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

**97 Subsection 554(7) (paragraph (a) of the definition of  
*discriminatory award*)**

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

**98 Paragraph 659(1)(a)**

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

**99 Subsection 672(4)**

Omit “(the *HREOC complaint*)”.

**100 Paragraph 672(4)(a)**

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

**101 Paragraphs 672(5)(a) and (b)**

Omit “HREOC”.

**102 Subsection 674(4)**

Omit “(the *HREOC complaint*)”.

**103 Paragraph 674(4)(a)**

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

**104 Paragraphs 674(5)(a) and (b)**

Omit “HREOC”.

**105 Subclause 30(2) of Schedule 6**

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

**106 Subclause 30(7) of Schedule 6 (paragraph (a) of the definition of *discriminatory award*)**

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

**107 Subclause 18(1) of Schedule 8**

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

**108 Paragraph 18(4)(a) of Schedule 8**

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

**109 Subclause 41(1) of Schedule 8**

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

**110 Paragraph 41(4)(a) of Schedule 8**

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

**Division 2—Other amendments**

***Fair Work Act 2009***

**111 Paragraph 135(1)(b)**

Omit “HREOC”, substitute “the Australian Human Rights Commission”.

**112 Subsection 161(1)**

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

Note: The heading to section 161 is altered by omitting “**HREOC**” and substituting “**Australian Human Rights Commission**”.

**113 Subsection 218(1)**

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

Note: The heading to section 218 is altered by omitting “**HREOC**” and substituting “**Australian Human Rights Commission**”.

**114 Subsection 732(3)**

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

***Sex Discrimination Act 1984***

**115 Paragraphs 9(10A)(a) and (c)**

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

**116 Subsection 11A(4)**

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

## Part 2—Other amendments

### *Disability Discrimination Act 1992*

#### **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
  - (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.

### *Human Rights and Equal Opportunity Commission Act 1986*

#### **119 Subsection 8B(2)**

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

#### **120 At the end of subparagraphs 14(2)(b)(i) and (ii)**

Add “or”.

#### **121 Paragraph 14(2)(b)**

After “person acting”, insert “for or”.

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**122 Subsection 14(7) (penalty)**

Repeal the penalty, substitute:

Penalty: 10 penalty units.

**123 Section 17**

Repeal the section.

**124 At the end of paragraph 20(1)(a)**

Add “or”.

**125 Paragraph 20(1)(b)**

Omit “alleging that an”, substitute “, by or on behalf of one or more persons aggrieved by an act or practice, alleging that the”.

**126 At the end of paragraph 20(2)(a)**

Add “or”.

**127 Paragraph 20(2)(b)**

Omit “desire that the inquiry be held or continued”, substitute “want the Commission to inquire, or to continue to inquire, into the act or practice”.

**128 At the end of subparagraphs 20(2)(c)(i) to (iv)**

Add “or”.

**129 At the end of paragraph 20(2)(c)**

Add:

; or (vii) the Commission is satisfied that the complaint has been settled or resolved.

**130 Application**

Subparagraph 20(2)(c)(vii) of the *Human Rights and Equal Opportunity Commission Act 1986*, as added by this Part, applies in relation to complaints made to the Commission before, on or after the commencement of this Part.

**131 Subsection 23(1) (penalty)**

Repeal the penalty, substitute:

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Penalty: 10 penalty units.

**132 Subsection 23(2)**

Repeal the subsection, substitute:

- (2) A person commits an offence if:
- (a) the person has been served with a notice under subsection 21(5); and
  - (b) the person:
    - (i) refuses or fails to comply with the notice; or
    - (ii) when attending before a member in compliance with the notice, refuses or fails to answer a question that is required by the member to be answered.

Penalty: 10 penalty units.

**133 Subsection 24(1)**

After “person acting” (wherever occurring), insert “for or”.

**134 At the end of paragraphs 24(1)(a) to (f)**

Add “or”.

**135 Subsection 24(2)**

After “person acting” (wherever occurring), insert “for or”.

**136 Paragraph 26(1)(b)**

After “person acting”, insert “for or”.

**137 Subsection 26(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 10 penalty units.

**138 At the end of paragraphs 26(2)(a), (b), (e) and (f)**

Add “or”.

**139 Paragraph 26(2)(g)**

After “person acting”, insert “for or”.

**140 Paragraph 26(2)(j)**

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Omit “\$2,500”, substitute “25 penalty units”.

**141 Paragraph 26(2)(k)**

Omit “\$10,000”, substitute “100 penalty units”.

**142 At the end of paragraph 32(1)(a)**

Add “or”.

**143 Paragraph 32(1)(b)**

Omit “alleging that an”, substitute “, by or on behalf of one or more persons aggrieved by an act or practice, alleging that the”.

**144 At the end of paragraph 32(3)(a)**

Add “or”.

**145 Paragraph 32(3)(b)**

Omit “desire that the inquiry be held or continued”, substitute “want the Commission to inquire, or to continue to inquire, into the act or practice”.

**146 At the end of subparagraphs 32(3)(c)(i) to (iv)**

Add “or”.

**147 At the end of paragraph 32(3)(c)**

Add:

; or (vii) the Commission is satisfied that the complaint has been settled or resolved.

**148 Application**

Subparagraph 32(3)(c)(vii) of the *Human Rights and Equal Opportunity Commission Act 1986*, as added by this Part, applies in relation to complaints made to the Commission before, on or after the commencement of this Part.

**149 Subsection 46B(2)**

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

**150 At the end of subsection 46C(1)**

Add:

Note: Functions are also conferred on the Commission under section 209 of the *Native Title Act 1993*.

**151 Subsection 46PF(1)**

Omit “If”, substitute “Subject to subsection (5), if”.

**152 At the end of section 46PF**

Add:

- (5) The President may decide not to inquire into the complaint, or, if the President has started inquiring into the complaint, may decide not to continue to inquire into the complaint, if:
- (a) the President is satisfied that the person aggrieved by the alleged unlawful discrimination does not want the President to inquire, or to continue to inquire, into the complaint; or
  - (b) the President is satisfied that the complaint has been settled or resolved.

**153 Application**

Subsection 46PF(5) of the *Human Rights and Equal Opportunity Commission Act 1986*, as added by this Part, applies in relation to complaints referred to the President before, on or after the commencement of this Part.

**154 Subsection 46PO(2)**

Omit “28 days”, substitute “60 days”.

**155 Application**

The amendment of subsection 46PO(2) of the *Human Rights and Equal Opportunity Commission Act 1986* made by this Part applies in relation to a notice issued under subsection 46PH(2) of that Act:

- (a) within 28 days before the commencement of this Part; or
- (b) on or after the commencement of this Part.

**156 Subsection 47(1)**

Omit “writing”, substitute “legislative instrument”.

**157 Subsections 47(2) to (4)**

Repeal the subsections, substitute:

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- (2) The declaration must include:
  - (a) a copy of the international instrument; and
  - (b) a copy of whichever of the following is applicable:
    - (i) Australia's instrument of ratification of, or accession to, the international instrument;
    - (ii) the terms of any explanation given by Australia of its vote in respect of the international instrument.
- (3) Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not apply to the declaration.

### **158 Application**

- (1) Subsection 47(2) of the *Human Rights and Equal Opportunity Commission Act 1986*, as amended by this Part, applies to declarations made after the commencement of this Part.
- (2) Subsection 47(3) of the *Human Rights and Equal Opportunity Commission Act 1986*, as amended by this Part, applies to declarations made before, on or after the commencement of this Part.

### **159 Subsection 48(1)**

Repeal the subsection, substitute:

- (1) Subsection (2) applies in relation to any of the following persons:
  - (a) the Commission;
  - (b) a member of the Commission;
  - (c) a person acting for or on behalf of:
    - (i) the Commission; or
    - (ii) a member of the Commission.
- (2) 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 performance, or purported performance, of any function, or in exercise or purported exercise of any power, conferred on the Commission or the member.

### **160 Subsection 49(1)**

After "at any time acted,", insert "for or".

### **161 Paragraph 49(1)(a)**

After “having acted,”, insert “for or”.

**162 At the end of paragraph 49(1)(a)**

Add “or”.

**163 Subsection 49(1) (penalty)**

Omit “\$5,000”, substitute “50 penalty units”.

**164 Subsection 49(2)**

After “at any time acted,”, insert “for or”.

**165 Paragraphs 49(2)(a) and (b)**

After “having acted,”, insert “for or”.

**166 Subsection 49(4A)**

After “person acting”, insert “for or”.

***Racial Discrimination Act 1975***

**167 Subsection 3(1) (definition of *Chair*)**

Repeal the definition.

**168 Subsection 3(1) (definition of *conciliation committee*)**

Repeal the definition.

**169 Subsection 3(1) (definition of *Council*)**

Repeal the definition.

**170 Subsection 3(1) (definition of *Deputy Chair*)**

Repeal the definition.

**171 Subsection 3(1) (definition of *member*)**

Repeal the definition.

**172 Part V**

Repeal the Part.

**173 Part VI (heading)**

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Repeal the heading, substitute:

## **Part VI—Race Discrimination Commissioner**

### **174 Division 1 of Part VI (heading)**

Repeal the heading.

### **175 Subsection 29(2)**

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

### **176 Division 2 of Part VI**

Repeal the Division.

### **177 Subsection 45(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
  - (ii) the Commissioner or another member of the Commission;
- (d) a person acting under a delegation under section 40.

(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.

### **178 Section 47**

Omit all the words after “giving effect to this Act”.

## ***Sex Discrimination Act 1984***

### **179 Subsection 96(2)**

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

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**180 Subsection 111(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
  - (ii) the Commissioner or another member of the Commission;
- (d) a person acting under a delegation under section 104.

(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.

## **Schedule 4—Other amendments**

### ***Racial Discrimination Act 1975***

#### **1 Subsection 27(1) (penalty)**

Repeal the penalty, substitute:

Penalty for an offence against subsection (1): 10 penalty units.

#### **2 Subsection 27(2) (paragraph (a) of the penalty)**

Omit “\$2,500”, substitute “25 penalty units”.

#### **3 Subsection 27(2) (paragraph (b) of the penalty)**

Omit “\$10,000”, substitute “100 penalty units”.

#### **4 At the end of paragraph 27F(1)(a)**

Add “or”.

#### **5 Subsection 27F(1) (penalty)**

Omit “\$5,000”, substitute “50 penalty units”.

### ***Sex Discrimination Act 1984***

#### **6 Section 40A**

Repeal the section.

#### **7 Subsection 86(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 10 penalty units.

#### **8 Subsection 87(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 10 penalty units.

#### **9 Subsection 92(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 10 penalty units.

**10 Subsection 94(1) (paragraph (a) of the penalty)**

Omit "\$2,500", substitute "25 penalty units".

**11 Subsection 94(1) (paragraph (b) of the penalty)**

Omit "\$10,000", substitute "100 penalty units".

**12 Subsection 95(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 10 penalty units.

**13 At the end of paragraph 112(1)(a)**

Add "or".

**14 Subsection 112(1) (penalty)**

Omit "\$5,000", substitute "50 penalty units".

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*[Minister's second reading speech made in—  
House of Representatives on 3 December 2008  
Senate on 13 February 2009]*