Queensland

Anti-Discrimination Act 1991

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Anti-Discrimination Act 1991

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Anti-Discrimination Act 1991

An Act to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct

Preamble

Parliament's reasons for enacting this Act are—

1 The international community has long recognised the need to protect and preserve the principles of dignity and equality for everyone.

2 This is reflected in a number of international human rights instruments that the Commonwealth has ratified, including—

- the International Convention on the Elimination of All Forms of Racial Discrimination
- the Convention on the Elimination of All Forms of Discrimination Against Women
- the International Labour Organisation Convention No. 111—Discrimination (Employment and Occupation)
- the International Labour Organisation Convention No. 156—Workers with Family Responsibilities
- the International Covenant on Civil and Political Rights
- the Convention on the Rights of the Child
- the Declaration on the Rights of Mentally Retarded Persons
- the Declaration on the Rights of Disabled Persons.

3 The Parliament is supportive of the Commonwealth's ratification of these international instruments.

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4 In fulfilling its obligations under these international instruments the Commonwealth has enacted certain human rights legislation.

5 The Parliament is satisfied that there is a need—

(a) to extend the Commonwealth legislation; and

(b) to apply anti-discrimination law consistently throughout the State; and

(c) to ensure that determinations of unlawful conduct are enforceable in the courts of law.

6 The Parliament considers that—

(a) everyone should be equal before and under the law and have the right to equal protection and equal benefit of the law without discrimination; and

(b) the protection of fragile freedoms is best effected by legislation that reflects the aspirations and needs of contemporary society; and

(c) the quality of democratic life is improved by an educated community appreciative and respectful of the dignity and worth of everyone.

7 It is, therefore, the intention of the Parliament to make provision, by the special measures enacted by the Act, for the promotion of equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct.

Chapter 1 Preliminary

1 Short title

This Act may be cited as the *Anti-Discrimination Act 1991*.

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3 Act binds Crown

This Act binds—

(a) the Crown in right of Queensland; and

(b) the Crown in all its other capacities so far as the legislative power of the Parliament allows.

3A Application of Act to ships connected with Queensland

(1) Without limiting the extent to which this Act may otherwise apply, it is declared that this Act applies to acts done on ships connected with Queensland.

(2) However, subsection (1) does not limit the laws of Queensland providing for the application of the criminal law to offences committed at sea.

(3) For this section, a ship is a ship connected with Queensland if—

(a) it is registered under the *Shipping Registration Act 1981* (Cwlth) with a home port in Queensland; or

(b) it is, or is required to be, registered or licensed under the *Transport Operations (Marine Safety) Act 1994* or another Act; or

(c) it is owned or chartered by—

(i) an individual whose place of residence, or principal place of residence, is in Queensland; or

(ii) a person whose place of business, or principal place of business, is in Queensland; or

(iii) a person whose principal place of business for managing the ship's operations is in Queensland.

4 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

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5 Meaning of *unjustifiable hardship*

Whether the supply of special services or facilities would impose ***unjustifiable hardship*** on a person depends on all the relevant circumstances of the case, including, for example—

(a) the nature of the special services or facilities; and

(b) the cost of supplying the special services or facilities and the number of people who would benefit or be disadvantaged; and

(c) the financial circumstances of the person; and

(d) the disruption that supplying the special services or facilities might cause; and

(e) the nature of any benefit or detriment to all people concerned.

Example of application in the work area (section 35)—

Company R refuses to employ A who uses a wheelchair because there is no appropriate access to the place of employment. R may only discriminate against A on the basis of impairment if supplying access would be very expensive or would impose another significant hardship on R.

Chapter 2 Discrimination prohibited by this Act (complaint)

Part 1 Act's anti-discrimination purpose

6 Act's anti-discrimination purpose and how it is to be achieved

(1) One of the purposes of the Act is to promote equality of opportunity for everyone by protecting them from unfair

discrimination in certain areas of activity, including work, education and accommodation.

(2) This purpose is to be achieved by—

(a) prohibiting discrimination that is—

(i) on a ground set out in part 2; and

(ii) of a type set out in part 3; and

(iii) in an area of activity set out in part 4;

unless an exemption set out in part 4 or 5 applies; and

(b) allowing a complaint to be made under chapter 7 against the person who has unlawfully discriminated; and

(c) using the agencies and procedures established under chapter 7 to deal with the complaint.

Part 2 Prohibited grounds of discrimination

7 Discrimination on the basis of certain attributes prohibited

The Act prohibits discrimination on the basis of the following attributes—

(a) sex;

(b) relationship status;

(c) pregnancy;

(d) parental status;

(e) breastfeeding;

(f) age;

(g) race;

(h) impairment;

(i) religious belief or religious activity;

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(j) political belief or activity;

(k) trade union activity;

(l) sex work activity;

(m) gender identity;

(n) sexuality;

(o) sex characteristics;

(p) family responsibilities;

(q) association with, or relation to, a person identified on the basis of any of the above attributes.

8 Meaning of *discrimination on the basis of an attribute*

Discrimination on the basis of an attribute includes direct and indirect discrimination on the basis of—

(a) a characteristic that a person with any of the attributes generally has; or

(b) a characteristic that is often imputed to a person with any of the attributes; or

(c) an attribute that a person is presumed to have, or to have had at any time, by the person discriminating; or

(d) an attribute that a person had, even if the person did not have it at the time of the discrimination.

Example of paragraph (c)—

If an employer refused to consider a written application from a person called Viv because it assumed Viv was female, the employer would have discriminated on the basis of an attribute (female sex) that Viv (a male) was presumed to have.

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Part 3 Prohibited types of discrimination

9 Discrimination of certain types prohibited

The Act prohibits the following types of discrimination—

(a) direct discrimination;

(b) indirect discrimination.

10 Meaning of *direct discrimination*

(1) ***Direct discrimination*** on the basis of an attribute happens if a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different.

Example—

R refuses to rent a flat to C because—

- C is English and R doesn't like English people
- C's friend, B, is English and R doesn't like English people
- R believes that English people are unreliable tenants.

In each case, R discriminates against C, whether or not R's belief about C's or B's nationality, or the characteristics of people of that nationality, is correct.

(2) It is not necessary that the person who discriminates considers the treatment is less favourable.

(3) The person's motive for discriminating is irrelevant.

Example—

R refuses to employ C, who is Chinese, not because R dislikes Chinese people, but because R knows that C would be treated badly by other staff, some of whom are prejudiced against Asian people. R's conduct amounts to discrimination against C.

(4) If there are 2 or more reasons why a person treats, or proposes to treat, another person with an attribute less favourably, the person treats the other person less favourably on the basis of

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the attribute if the attribute is a substantial reason for the treatment.

(5) In determining whether a person treats, or proposes to treat a person with an impairment less favourably than another person is or would be treated in circumstances that are the same or not materially different, the fact that the person with the impairment may require special services or facilities is irrelevant.

11 Meaning of *indirect discrimination*

(1) ***Indirect discrimination*** on the basis of an attribute happens if a person imposes, or proposes to impose, a term—

(a) with which a person with an attribute does not or is not able to comply; and

(b) with which a higher proportion of people without the attribute comply or are able to comply; and

(c) that is not reasonable.

(2) Whether a term is reasonable depends on all the relevant circumstances of the case, including, for example—

(a) the consequences of failure to comply with the term; and

(b) the cost of alternative terms; and

(c) the financial circumstances of the person who imposes, or proposes to impose, the term.

(3) It is not necessary that the person imposing, or proposing to impose, the term is aware of the indirect discrimination.

(4) In this section—

term includes condition, requirement or practice, whether or not written.

Example 1—

An employer decides to employ people who are over 190cm tall, although height is not pertinent to effective performance of the work. This disadvantages women and people of Asian origin, as there are more men of non-Asian origin who can comply. The discrimination is

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unlawful because the height requirement is unreasonable, there being no genuine occupational reason to justify it.

Example 2—

An employer requires employees to wear a uniform, including a cap, for appearance reasons, not for hygiene or safety reasons. The requirement is not directly discriminatory, but it has a discriminatory effect against people who are required by religious or cultural beliefs to wear particular headdress.

Part 4 Areas of activity in which discrimination is prohibited

Division 1 Part's structure

12 Explanatory provision (structure)

(1) This part specifies the areas of activity in which discrimination is prohibited and the exemptions that apply in relation to those areas.

(2) Part 5 specifies general exemptions that apply to all the areas.

Division 2 Work and work-related areas

Subdivision 1 Prohibitions in work and work-related areas

13 Explanatory provision (prohibitions)

(1) A person must not discriminate in the work or work-related area if a prohibition in sections 14 to 23 applies.

(2) This subdivision does not apply to discrimination in connection with superannuation or insurance.

(3) Discrimination in connection with superannuation or insurance is dealt with in sections 52 to 75.

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14 Discrimination in the pre-work area

A person must not discriminate—

(a) in the arrangements made for deciding who should be offered work; or

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

(c) in the terms of work that is offered, including, for example, a term about when the work will end because of a person's age; or

(d) in failing to offer work; or

(e) by denying a person seeking work access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or

(f) in developing the scope or range of such a program.

15 Discrimination in work area

(1) A person must not discriminate—

(a) in any variation of the terms of work; or

(b) in denying or limiting access to opportunities for promotion, transfer, training or other benefit to a worker; or

(c) in dismissing a worker; or

(d) by denying access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or

(e) in developing the scope or range of such a program; or

(f) by treating a worker unfavourably in any way in connection with work.

(2) In this section—

dismissing includes ending the particular work of a person by forced retirement, failure to provide work or otherwise.

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15A Discrimination by principals

(1) This section applies if a person (the ***worker***) does work, or is to do work, for another person (the ***principal***) under or because of—

(a) a contract between the principal and a third person; or

(b) another arrangement, or a series of arrangements, involving the principal and a third person, whether or not the arrangement or series of arrangements also involves other persons.

(2) The principal must not discriminate against the worker—

(a) in the terms in which the principal allows the worker to work; or

(b) by not allowing the worker to work or continue to work; or

(c) by denying or limiting access by the worker to any benefits connected with the work; or

(d) by treating the worker unfavourably in any way in connection with the work.

(3) This section does not limit section 15.

16 Discrimination by proposed partnership in pre-partnership area

Six or more people who propose to form themselves into a partnership must not discriminate—

(a) in deciding who should be invited to become a partner; or

(b) in the terms on which a person is invited to become a partner.

17 Discrimination by existing partnership in pre-partnership area

A partner in a partnership that consists of 6 or more people must not discriminate—

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(a) in deciding who should be invited to become a partner; or

(b) in the terms on which a person is invited to become a partner.

18 Discrimination by existing partnership in partnership area

A partner in a partnership that consists of 6 or more people must not discriminate—

(a) in any variation of the terms of the partnership; or

(b) in denying or limiting access by another partner to any benefit arising from the partnership; or

(c) in expelling another partner from the partnership; or

(d) by treating another partner unfavourably in any way in connection with the partnership.

19 Discrimination by industrial, professional, trade or business organisation in pre-membership area

(1) An organisation of workers, employers, or people who carry on an industry, profession, trade or business must not discriminate—

(a) in failing to accept a person's application for membership of the organisation; or

(b) in the arrangements made for deciding who may join; or

(c) in deciding who may join; or

(d) in the terms on which a person may join.

(2) Subsection (1) does not apply to discrimination on the basis of trade union activity if the *Industrial Relations Act 2016*, chapter 12, part 9, division 2 or part 10 applies.

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20 Discrimination by industrial, professional, trade or business organisation in membership area

(1) An organisation of workers, employers, or people who carry on an industry, profession, trade or business must not discriminate—

(a) in any variation of the terms of membership of the organisation; or

(b) in denying or limiting access to any benefit arising from the membership; or

(c) in depriving a person of membership; or

(d) by treating a person unfavourably in any way in connection with the membership.

(2) Subsection (1) does not apply to discrimination on the basis of trade union activity if the *Industrial Relations Act 2016*, chapter 12, part 9, division 2 or part 10 applies.

21 Discrimination by qualifying body in pre-qualification area

A person who has power to grant, renew or extend a qualification or authorisation that (whether by itself or together with other qualifications or authorisations) is needed for, or facilitates, the practice of a profession, or the carrying on of a trade or business must not discriminate—

(a) in granting, renewing or extending a qualification or authorisation or failing to do so; or

(b) in the terms on which a qualification or authorisation is granted, renewed or extended.

22 Discrimination by qualifying body in qualification area

A person who has power to grant, renew or extend a qualification or authorisation that (whether by itself or together with other qualifications or authorisations) is needed for, or facilitates, the practice of a profession, or the carrying

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on of a trade or business must not discriminate against another person—

(a) in any variation of the terms on which a qualification or authorisation was granted, renewed or extended; or

(b) in revoking or withdrawing a qualification or authorisation or failing to do so; or

(c) by treating the other person unfavourably in any way in connection with the grant, renewal or extension of a qualification or authorisation.

23 Discrimination in employment agency area

A person who carries on a business (whether or not for reward or profit) of introducing people seeking work to employers must not discriminate—

(a) by failing to supply a service of the business, whether to a person seeking work or an employer seeking a worker; or

(b) in the terms on which a service is offered or supplied; or

(c) in the way in which a service is supplied; or

(d) by treating a person seeking work or an employer seeking a worker unfavourably in any way in connection with a service.

Subdivision 2 Exemptions for discrimination in work and work-related areas

24 Explanatory provision (exemptions)

It is not unlawful to discriminate in the work or work-related area if an exemption in sections 25 to 36 or part 5 applies.

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25 Genuine occupational requirements

(1) A person may impose genuine occupational requirements for a position.

Examples of genuine requirements for a position—

Example 1—

selecting an actor for a dramatic performance on the basis of age, race or sex for reasons of authenticity

Example 2—

using membership of a particular political party as a criterion for a position as an adviser to a political party or a worker in the office of a member of Parliament

Example 3—

considering only women applicants for a position involving body searches of women

Example 4—

employing persons of a particular religion to teach in a school established for students of the particular religion

(2) Subsection (3) applies in relation to—

(a) work for an educational institution (an ***employer***) under the direction or control of a body established for religious purposes; or

(b) any other work for a body established for religious purposes (also an ***employer***) if the work genuinely and necessarily involves adhering to and communicating the body's religious beliefs.

(3) It is not unlawful for an employer to discriminate with respect to a matter that is otherwise prohibited under section 14 or 15, in a way that is not unreasonable, against a person if—

(a) the person openly acts in a way that the person knows or ought reasonably to know is contrary to the employer's religious beliefs—

(i) during a selection process; or

(ii) in the course of the person's work; or

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(iii) in doing something connected with the person's work; and

Example for paragraph (a)—

A staff member openly acts in a way contrary to a requirement imposed by the staff member's employer in his or her contract of employment, that the staff member abstain from acting in a way openly contrary to the employer's religious beliefs in the course of, or in connection with the staff member's employment.

(b) it is a genuine occupational requirement of the employer that the person, in the course of, or in connection with, the person's work, act in a way consistent with the employer's religious beliefs.

(4) Subsection (3) does not authorise the seeking of information contrary to section 124.

(5) For subsection (3), whether the discrimination is not unreasonable depends on all the circumstances of the case, including, for example, the following—

(a) whether the action taken or proposed to be taken by the employer is harsh or unjust or disproportionate to the person's actions;

(b) the consequences for both the person and the employer should the discrimination happen or not happen.

(6) Subsection (3) does not apply to discrimination on the basis of age, race or impairment.

(7) To remove any doubt, it is declared that subsection (3) does not affect a provision of an agreement with respect to work to which subsection (3) applies, under which the employer agrees not to discriminate in a particular way.

(8) In this section—

religion includes religious affiliation, beliefs and activities.

selection process means a process the purpose of which is to consider whether to offer a person work.

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26 Residential domestic services

(1) It is not unlawful for a person to discriminate—

(a) in the arrangements made for deciding who should be offered work; or

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

(c) in failing to offer work; or

(d) in dismissing a worker;

if the work is to perform domestic services at the person's home.

(2) Subsection (1) does not apply to discrimination on the basis of race.

27 Residential childcare services

(1) It is not unlawful for a person to discriminate—

(a) in the arrangements made for deciding who should be offered work; or

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

(c) in failing to offer work; or

(d) in dismissing a worker;

if the work is to care for the person's children at the person's home.

(2) Subsection (1) does not apply to discrimination on the basis of race.

30 Single sex accommodation

(1) It is not unlawful for a person to discriminate on the basis of sex against another person with respect to a matter that is otherwise prohibited under subdivision 1 if the other person is required to live in accommodation supplied by the first person and—

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(a) the accommodation is not equipped with separate sleeping accommodation for people of each sex; and

(b) the accommodation is already occupied by a person or people of one sex and is not occupied by anyone of the opposite sex; and

(c) the supply of separate sleeping accommodation for people of each sex would impose unjustifiable hardship on the first person.

(2) Whether the supply of separate sleeping accommodation for people of each sex would impose unjustifiable hardship on a person depends on all the relevant circumstances of the case, including, for example—

(a) the nature of the accommodation; and

(b) the cost of supplying the separate sleeping accommodation and the number of people who would benefit or be disadvantaged; and

(c) the financial circumstances of the person; and

(d) the disruption that supplying the separate sleeping accommodation might cause; and

(e) the nature of any benefit or detriment to all people concerned.

31 Workers are to be married couple

It is not unlawful for a person to discriminate on the basis of relationship status—

(a) in the arrangements made for deciding who should be offered work; or

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

(c) in the terms of work that is offered; or

(d) in failing to offer work; or

(e) in dismissing a worker;

if—

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(f) the work is for one of 2 positions that the person wants held concurrently by—

(i) a married couple; or

(ii) 2 persons each of whom is the de facto partner of the other; or

(iii) 2 persons each of whom is the civil partner of the other; and

(g) the workers are required to live in accommodation supplied by the person.

32 Retiring age for partners

(1) It is not unlawful in deciding who should be invited to become a partner in a partnership for a person to discriminate on the basis of age against someone else through a requirement that the other person—

(a) must not be more than a specified age; or

(b) must retire from a partnership at a specified age.

(2) It is not unlawful in any variation of the terms of a partnership for a person to discriminate on the basis of age against someone else through a requirement that the other person—

(a) must not be more than a specified age; or

(b) must retire from a partnership at a specified age.

33 Youth wages

A person may remunerate a worker who is under 21 years of age according to the worker's age.

34 Special terms if job capacity is restricted by impairment

A person may fix reasonable terms in relation to the holder or prospective holder of a position who, because of an impairment—

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(a) has a restricted capacity to do work genuinely and reasonably required for the position; or

(b) requires special conditions in order to be able to do the work.

35 Special services or facilities required

(1) It is not unlawful for a person to discriminate on the basis of impairment against another person with respect to a matter that is otherwise prohibited under subdivision 1 if—

(a) the other person would require special services or facilities; and

(b) the supply of special services or facilities would impose unjustifiable hardship on the first person.

(2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5.

36 Circumstances of impairment

(1) It is not unlawful for a person to discriminate on the basis of impairment against another person with respect to a matter that is otherwise prohibited under subdivision 1 if the circumstances of the impairment would impose unjustifiable hardship on the first person.

(2) Whether the circumstances of the impairment would impose unjustifiable hardship on a person depends on all the relevant circumstances of the case, including, for example—

(a) the nature of the impairment; and

(b) the nature of the work or partnership.

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Division 3 Education area

Subdivision 1 Prohibitions in education area

37 Explanatory provision (prohibitions)

An educational authority must not discriminate in the education area if a prohibition in section 38 or 39 applies.

38 Discrimination by educational authority in prospective student area

An educational authority must not discriminate—

(a) in failing to accept a person's application for admission as a student; or

(b) in the way in which a person's application is processed; or

(c) in the arrangements made for, or the criteria used in, deciding who should be offered admission as a student; or

(d) in the terms on which a person is admitted as a student.

39 Discrimination by educational authority in student area

An educational authority must not discriminate—

(a) in any variation of the terms of a student's enrolment; or

(b) by denying or limiting access to any benefit arising from the enrolment that is supplied by the authority; or

(c) by excluding a student; or

(d) by treating a student unfavourably in any way in connection with the student's training or instruction.

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Subdivision 2 Exemptions for discrimination in education area

40 Explanatory provision (exemptions)

It is not unlawful for an educational authority to discriminate in the education area if an exemption in sections 41 to 44 or part 5 applies.

41 Single sex, religion, etc. educational institution

An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment may exclude—

(a) applicants who are not of the particular sex or religion; or

(b) applicants who do not have a general, or the specific, impairment.

43 Age-based admission scheme

An educational authority may select students for an education program on the basis of an admission scheme that has a minimum qualifying age.

44 Special services or facilities required

(1) Subject to the *Education (General Provisions) Act 2006*, it is not unlawful for an educational authority to discriminate on the basis of impairment against a person with respect to a matter that is otherwise prohibited under subdivision 1 if—

(a) the person would require special services or facilities; and

(b) the supply of special services or facilities would impose unjustifiable hardship on the educational authority.

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(2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5.

Division 4 Goods and services area

Subdivision 1 Prohibition in goods and services area

45 Explanatory provision (prohibition)

(1) A person must not discriminate in the goods and services area if the prohibition in section 46 applies.

(2) This subdivision does not apply to discrimination in connection with superannuation or insurance.

(3) Discrimination in connection with superannuation or insurance is dealt with in sections 52 to 75.

46 Discrimination in goods and services area

(1) A person who supplies goods or services (whether or not for reward or profit) must not discriminate against another person—

(a) by failing to supply the goods or services; or

(b) in the terms on which goods or services are supplied; or

(c) in the way in which goods or services are supplied; or

(d) by treating the other person unfavourably in any way in connection with the supply of goods and services.

(2) In this section, a reference to a person who supplies goods and services does not include an association that—

(a) is established for social, literary, cultural, political, sporting, athletic, recreational, community service or any other similar lawful purposes; and

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(b) does not carry out its purposes for the purpose of making a profit.

Subdivision 2 Exemptions for discrimination in goods and services area

47 Explanatory provision (exemptions)

It is not unlawful to discriminate in the goods and services area if an exemption in sections 48 to 51 or part 5 applies.

48 Sites of cultural or religious significance

A person may restrict access to land or a building of cultural or religious significance by people who are not of a particular sex, age, race or religion if the restriction—

(a) is in accordance with the culture concerned or the doctrine of the religion concerned; and

(b) is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion.

49 Age-based benefits

A person may supply benefits and concessions on the basis of age with respect to a matter that is otherwise prohibited under subdivision 1.

Example 1—

A bus operator may give travel concessions to people under the age of 12 or over the age of 70.

Example 2—

The Government may supply, on an age basis, Seniors' Cards that give entitlements to concessions.

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50 Children to be accompanied by an adult

A person may require, as a term of supplying goods and services to a minor, that a minor be accompanied by an adult if there would be a reasonable risk that a minor may cause a disruption or endanger himself or herself or others if not accompanied by an adult.

Example—

The operator of a rifle range may require a minor who wants to use the range to be accompanied by an adult.

51 Special services or facilities required

(1) It is not unlawful for a person to discriminate on the basis of impairment against another person with respect to a matter that is otherwise prohibited under subdivision 1 if—

(a) the other person would require special services or facilities; and

(b) the supply of special services or facilities would impose unjustifiable hardship on the person supplying the goods or services.

(2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5.

Division 5 Superannuation area

Subdivision 1 Prohibitions in superannuation area

52 Explanatory provision (prohibitions)

A person must not discriminate in the superannuation area if a prohibition in sections 53 to 57 applies.

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53 Discrimination in superannuation area (goods and services)

A person must not discriminate—

(a) by failing to supply superannuation; or

(b) in the terms on which superannuation is supplied; or

(c) in the way in which superannuation is supplied.

54 Discrimination in superannuation area (pre-work)

A person must not discriminate against another person, who is seeking work with the person, in the terms of any work that is offered that relate to superannuation.

55 Discrimination in superannuation area (work)

A person must not discriminate against another person who works for the person—

(a) in any variation of the terms of the work that relate to superannuation; or

(b) in denying or limiting the other person's access to any benefit to a worker that relates to superannuation; or

(c) by treating the other person unfavourably in any way in connection with superannuation.

56 Discrimination in superannuation area (pre-partnership)

A person must not discriminate against another person, who is invited to become a partner of the person in a partnership that consists, or will consist, of 6 or more people, in the terms relating to superannuation on which the other person is invited to become a partner.

57 Discrimination in superannuation area (partnership)

A partner in a partnership that consists of 6 or more people must not discriminate against another partner—

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(a) in any variation of the terms of the partnership that relate to superannuation; or

(b) in denying or limiting the other partner's access to any benefit arising from the partnership that relates to superannuation; or

(c) by treating the other partner unfavourably in any way in connection with superannuation.

Subdivision 2 Exemptions for discrimination in superannuation area

58 Explanatory provision (exemptions)

It is not unlawful to discriminate in the superannuation area if an exemption in sections 59 to 65 or part 5 applies.

59 Commonwealth exemption (sex or relationship status)

It is not unlawful to discriminate on the basis of sex or relationship status with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination is permitted under the *Sex Discrimination Act 1984* (Cwlth).

60 Retention of existing superannuation fund conditions (age or impairment)

(1) It is not unlawful to discriminate on the basis of age or impairment by retaining an existing superannuation fund condition in relation to a person who became a member of the fund before the commencement of section 53.

(2) In this section—

existing superannuation fund condition means a superannuation fund condition in existence at the commencement of section 53.

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61 New superannuation fund conditions—actuarial or statistical data (age or impairment)

It is not unlawful for a person to discriminate on the basis of age or impairment by imposing a superannuation fund condition after the commencement of section 53 in relation to another person, irrespective of—

(a) whether the superannuation fund was in existence before the commencement of section 53; and

(b) when the other person became, or becomes, a member of the fund;

if—

(c) the condition is based on reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and

(d) the condition is reasonable having regard to the data and any other relevant factors.

62 New superannuation fund conditions—other data (age or impairment)

It is not unlawful for a person to discriminate on the basis of age or impairment by imposing a superannuation fund condition after the commencement of section 53 in relation to another person, irrespective of—

(a) whether the superannuation fund was in existence before the commencement of section 53; and

(b) when the other person became, or becomes, a member of the fund;

if—

(c) there is no reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and

(d) the condition is based on other reasonable data from a source on which it is reasonable for the person to rely; and

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(e) the condition is reasonable having regard to the other data and any other relevant factors.

63 New superannuation fund conditions—no data (age or impairment)

It is not unlawful for a person to discriminate on the basis of age or impairment by imposing a superannuation fund condition after the commencement of section 53 in relation to another person, irrespective of—

(a) whether the superannuation fund was in existence before the commencement of section 53; and

(b) when the other person became, or becomes, a member of the fund;

if—

(c) there is no reasonable actuarial, statistical or other data from a source on which it is reasonable for the person to rely; and

(d) the condition is reasonable having regard to any other relevant factors.

64 Application of Commonwealth occupational superannuation standard

It is not unlawful to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination happens because of the application of a standard prescribed under the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

65 Compliance etc. with Commonwealth legislation

It is not unlawful to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination happens in order—

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(a) to comply with a Commonwealth Act (other than the *Superannuation Industry (Supervision) Act 1993*); or

(b) to obtain a benefit or avoid a penalty under such an Act.

Division 6 Insurance area

Subdivision 1 Prohibitions in insurance area

66 Explanatory provision (prohibitions)

A person must not discriminate in the insurance area if a prohibition in sections 67 to 71 applies.

67 Discrimination in insurance area (goods and services)

A person must not discriminate—

(a) by failing to supply insurance; or

(b) in the terms on which insurance is supplied; or

(c) in the way in which insurance is supplied.

68 Discrimination in insurance area (pre-work)

A person must not discriminate against another person, who is seeking work with the person, in the terms of any work that is offered that relate to insurance.

69 Discrimination in insurance area (work)

A person must not discriminate against another person who works for the person—

(a) in any variation of the terms of the work that relate to insurance; or

(b) in denying or limiting the other person's access to any benefit to a worker that relates to insurance; or

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(c) by treating the person unfavourably in any way in connection with insurance.

70 Discrimination in insurance area (pre-partnership)

A person must not discriminate against another person, who is invited to become a partner of the person in a partnership that consists, or will consist, of 6 or more people, in the terms relating to insurance on which the other person is invited to become a partner.

71 Discrimination in insurance area (partnership)

A partner in a partnership that consists of 6 or more people must not discriminate against another partner—

(a) in any variation of the terms of the partnership that relate to insurance; or

(b) in denying or limiting the other partner's access to any benefit arising from the partnership that relates to insurance; or

(c) by treating the other partner unfavourably in any way in connection with insurance.

Subdivision 2 Exemptions for discrimination in insurance area

72 Explanatory provision (exemptions)

It is not unlawful to discriminate in the insurance area if an exemption in sections 73 to 75 or part 5 applies.

73 Commonwealth exemption (sex)

It is not unlawful to discriminate on the basis of sex with respect to a matter that is otherwise prohibited under

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subdivision 1 if the discrimination is permitted under the *Sex Discrimination Act 1984* (Cwlth).

74 Actuarial or statistical data (age or impairment)

It is not unlawful for a person to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination—

(a) is based on reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and

(b) is reasonable having regard to the data and any other relevant factors.

75 No actuarial or statistical data (age or impairment)

It is not unlawful for a person to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if—

(a) there is no reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and

(b) the discrimination is reasonable having regard to any other relevant factors.

Division 7 Disposition of land area

Subdivision 1 Prohibition in disposition of land area

76 Explanatory provision (prohibition)

A person must not discriminate in the disposition of land area if the prohibition in section 77 applies.

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77 Discrimination in disposition of land area

A person must not discriminate against another person—

(a) by failing to dispose of an interest in land to the other person; or

(b) in the terms on which an interest in land is offered to the other person.

Subdivision 2 Exemptions for discrimination in disposition of land area

78 Explanatory provision (exemptions)

It is not unlawful to discriminate in the disposition of land area if an exemption in section 79 or 80 or part 5 applies.

79 Disposition by will or gift

It is not unlawful to discriminate with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination is by way of a testamentary disposition or gift.

80 Sites of cultural or religious significance

It is not unlawful to discriminate on the basis of sex, age, race or religion with respect to a matter that is otherwise prohibited under subdivision 1 if—

(a) the relevant interest in land is an interest in land or a building of cultural or religious significance; and

(b) the discrimination—

(i) is in accordance with the culture concerned or the doctrine of the religion concerned; and

(ii) is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion.

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Division 8 Accommodation area

Subdivision 1 Prohibitions in accommodation area

81 Explanatory provision (prohibitions)

A person must not discriminate in the accommodation area if a prohibition in sections 82 to 85 applies.

82 Discrimination in pre-accommodation area

A person must not discriminate against another person—

(a) by failing to accept an application for accommodation; or

(b) by failing to renew or extend the supply of accommodation; or

(c) in the way in which an application is processed; or

(d) in the terms on which accommodation is offered, renewed or extended.

83 Discrimination in accommodation area

A person must not discriminate against another person—

(a) in any variation of the terms on which accommodation is supplied; or

(b) in denying or limiting access to any benefit associated with the accommodation; or

(c) in evicting the other person from the accommodation; or

(d) by treating the other person unfavourably in any way in connection with the accommodation.

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84 Discrimination by refusing to allow reasonable alterations

A person must not discriminate by refusing to allow another person with an impairment to alter accommodation to meet the other person's special needs if—

(a) the alteration is at the expense of the other person; and

(b) the alteration does not require an alteration to the premises of another occupier; and

(c) the action required to restore the accommodation to its previous condition is reasonably practicable; and

(d) the other person undertakes to restore the accommodation to its previous condition before leaving it, and it is reasonably likely that the other person will do so.

85 Discrimination by refusing to allow guide, hearing or assistance dog

(1) A person must not discriminate by doing any of the following—

(a) refusing to rent accommodation to another person because the other person has an impairment and relies on a guide, hearing or assistance dog;

(b) requiring the other person to keep the dog elsewhere;

(c) requesting or requiring the other person to pay an extra charge because the dog lives at the accommodation.

(2) This section does not affect the liability of the person with the dog for any damage caused by the dog.

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Subdivision 2 Exemptions for discrimination in accommodation area

86 Explanatory provision (exemptions)

It is not unlawful to discriminate in the accommodation area if an exemption in sections 87 to 92 or part 5 applies.

87 Shared accommodation

It is not unlawful for a person to discriminate in deciding who is to reside in accommodation that—

(a) forms part of, and is intended to continue to form part of, the main home of the person or a near relative; and

(b) is for no more than 3 people other than a person mentioned in paragraph (a) or near relatives of such a person.

88 Accommodation for workers

A person who supplies accommodation for the person's workers may provide accommodation of different standards to different workers if—

(a) it is not reasonable to expect the person to supply accommodation of the same standard for all workers; and

(b) the standard of the accommodation supplied to each worker is determined having regard to—

(i) the number of people in the worker's household; or

(ii) the class of work performed, or the nature of the position held, by the worker.

89 Accommodation for students

An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a

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particular sex or religion, or who have a general or specific impairment, may provide accommodation wholly or mainly for—

(a) students of the particular sex or religion; or

(b) students who have a general, or the specific, impairment.

90 Accommodation with religious purposes

It is not unlawful to discriminate with respect to a matter that is otherwise prohibited under subdivision 1 if—

(a) the accommodation concerned is under the direction or control of a body established for religious purposes; and

(b) the discrimination—

(i) is in accordance with the doctrine of the religion concerned; and

(ii) is necessary to avoid offending the religious sensitivities of people of the religion.

91 Accommodation with charitable purposes

It is not unlawful to discriminate on the basis of sex, relationship status or age with respect to a matter that is otherwise prohibited under subdivision 1 if—

(a) the accommodation concerned is under the direction or control of a body established for charitable purposes; and

(b) the discrimination is in accordance with the particular purposes for which the accommodation was established by the body.

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92 Special services or facilities required

(1) A person may discriminate on the basis of impairment against another person with respect to a matter that is otherwise prohibited under subdivision 1 if—

(a) the other person would require special services or facilities; and

(b) the supply of special services or facilities would impose unjustifiable hardship on the first person.

(2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5.

Division 9 Club membership and affairs area

Subdivision 1 Prohibitions in club membership and affairs area

93 Explanatory provision (prohibitions)

A club must not discriminate in the club membership and affairs area if a prohibition in section 94 or 95 applies.

94 Discrimination by club in prospective membership area

A club must not discriminate—

(a) in determining the terms of a particular category or type of membership of the club; or

(b) in failing to accept a person's application for membership of the club; or

(c) in the way in which a person's application is processed; or

(d) in the arrangements made for deciding who should be offered membership; or

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(e) in the terms on which a person is admitted as a member.

95 Discrimination by club in membership and affairs area

A club must not discriminate—

(a) in any variation of the terms of membership of the club; or

(b) in failing to accept a member's application for a different category or type of membership; or

(c) by denying or limiting access to any benefit, arising from membership, that is supplied by the club; or

(d) in depriving a member of membership; or

(e) by treating a member unfavourably in any way in connection with the membership or the affairs of the club.

Subdivision 2 Exemptions for discrimination in club membership and affairs area

96 Explanatory provision (exemptions)

It is not unlawful to discriminate in the club membership and affairs area if an exemption in sections 97 to 100 or part 5 applies.

97 Club established for minority cultures and disadvantaged people

A club may exclude applicants for membership of the club who are not members of the group of people with an attribute for whom the club was established if the club operates wholly or mainly—

(a) to preserve a minority culture; or

(b) to prevent or reduce disadvantage suffered by people of that group.

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98 Reasonable sex discrimination permitted

It is not unlawful for a club to discriminate on the basis of sex by limiting access to any benefit, arising from membership, that is provided by the club if—

(a) it is not practicable for males and females to enjoy the benefit at the same time; and

(b) either of the following subparagraphs apply—

(i) access to the same or an equivalent benefit is supplied for the use of males and females separately;

(ii) access arrangements offer males and females a reasonably equivalent opportunity to enjoy the benefit.

99 Reasonable risk of injury

A club may exclude an applicant for membership who is a minor if there is a reasonable risk of injury to a minor or other people.

100 Special services or facilities required

(1) It is not unlawful for a club to discriminate on the basis of impairment in failing to accept a person's application for membership if—

(a) the person would require special services or facilities; and

(b) the supply of special services or facilities would impose unjustifiable hardship on the club.

(2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5.

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Division 10 Administration of State laws and programs area

101 Discrimination in administration of State laws and programs area

A person who—

(a) performs any function or exercises any power under State law or for the purposes of a State Government program; or

(b) has any other responsibility for the administration of State law or the conduct of a State Government program;

must not discriminate in—

(c) the performance of the function; or

(d) the exercise of the power; or

(e) the carrying out of the responsibility.

Division 11 Local government area

102 Discrimination by local government member

(1) A member of a local authority must not discriminate against another member in the performance of official functions.

(2) Subsection (1) does not apply to discrimination on the basis of political belief or activity.

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Part 5 General exemptions for discrimination

103 Explanatory provision (exemptions)

It is not unlawful to discriminate with respect to a matter that is otherwise prohibited under part 4 if an exemption in sections 104 to 113 applies.

104 Welfare measures

A person may do an act to benefit the members of a group of people with an attribute for whose welfare the act was designed if the purpose of the act is not inconsistent with this Act.

Example 1—

It is not unlawful for a bus operator to give travel concessions to pensioners or to give priority in seating to people who are pregnant or frail.

Example 2—

It is not unlawful to restrict special accommodation to women who have been victims of domestic violence or to frail, older people.

Example 3—

It is not unlawful to establish a high security patrolled car park exclusively for women that would reduce the likelihood of physical attacks.

105 Equal opportunity measures

(1) A person may do an act to promote equal opportunity for a group of people with an attribute if the purpose of the act is not inconsistent with this Act.

(2) Subsection (1) applies only until the purpose of equal opportunity has been achieved.

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106 Acts done in compliance with legislation etc.

(1) A person may do an act that is necessary to comply with, or is specifically authorised by—

(a) an existing provision of another Act; or

(b) an order of a court; or

(c) an existing provision of an order or award of a court or tribunal having power to fix minimum wages and other terms of employment; or

(d) an existing provision of an industrial agreement under the repealed *Industrial Relations Act 1999*; or

(e) an order of the Anti-Discrimination Tribunal.

(2) In this section—

existing provision means a provision in existence at the commencement of this section.

106A Compulsory retirement age under legislation etc.

(1) This Act has no effect on the imposition of a compulsory retirement age on—

(a) a Supreme Court judge; or

(b) a District Court judge; or

(c) a magistrate; or

(d) a member of the Land Court; or

(e) the president, the vice-president or a deputy president (court) of the Industrial Court; or

(f) a deputy president appointed under the *Industrial Relations Act 2016*, section 441 or an industrial commissioner; or

(h) a fire officer within the meaning of the *Fire Services Act 1990*; or

(k) a police officer; or

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(m) a director of a public company or subsidiary of a public company; or

(n) another person prescribed by regulation.

(2) Subsection (1) applies if the compulsory retirement age is imposed on or before 30 June 1994 under—

(a) an Act; or

(b) an industrial instrument under the *Industrial Relations Act 2016*; or

(c) a policy, standard or other instrument of a previous unit of the public sector applying to an employee of the unit.

(3) If the compulsory retirement age is imposed under something mentioned in subsection (2)(b) or (c), then, by force of this subsection, a person mentioned in subsection (1) is required, and is taken always to have been required, to retire in accordance with the compulsory retirement age imposed.

(4) In this section—

previous unit of the public sector means an entity that was a unit of the public sector on 30 June 1994 under the repealed *Public Sector Management Commission Act 1990*.

106B Citizenship or visa requirements imposed under State government policies etc.

(1) This Act does not apply in relation to—

(a) the inclusion of a prescribed eligibility provision in a relevant policy; or

(b) the performance of a function by a person in connection with a prescribed eligibility provision.

(2) In this section, a reference to performing a function includes a reference to exercising a power or carrying out a responsibility.

(3) In this section—

government entity—

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(a) means an entity mentioned in the *Public Sector Act 2022*, section 276(1); but

(b) does not include—

(i) a GOC, other than to the extent the GOC is directed to perform an obligation under the *Government Owned Corporations Act 1993* or another Act; or

(ii) an entity mentioned in the *Public Sector Act 2022*, section 276(2)(a), (b), (c), (d), (e), (f), (g), (i) or (j).

prescribed eligibility provision, of a relevant policy, means—

(a) a provision requiring that a person must have a particular citizenship or visa status to be eligible for financial or other assistance, services or support under the policy; or

(b) a provision under which persons who have a particular citizenship or visa status are treated more favourably than other persons in relation to their eligibility for financial or other assistance, services or support under the policy.

relevant policy means a policy of a government entity—

(a) that relates to any area of activity set out in part 4; and

(b) under which persons are provided with financial or other assistance, services or support.

visa see the *Migration Act 1958* (Cwlth), section 5.

107 Public health

A person may do an act that is reasonably necessary to protect public health.

108 Workplace health and safety

A person may do an act that is reasonably necessary to protect the health and safety of people at a place of work.

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109 Religious bodies

(1) The Act does not apply in relation to—

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

(b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; or

(c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice; or

(d) unless section 90 (Accommodation with religious purposes) applies—an act by a body established for religious purposes if the act is—

(i) in accordance with the doctrine of the religion concerned; and

(ii) necessary to avoid offending the religious sensitivities of people of the religion.

(2) An exemption under subsection (1)(d) does not apply in the work or work-related area or in the education area.

110 Charities

A person may include a discriminatory provision in a document that provides exclusively for charitable benefits, and may do an act that is required to give effect to such a provision.

111 Sport

(1) A person may restrict participation in a competitive sporting activity—

(a) to either males or females, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity; or

(b) to people who can effectively compete; or

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(c) to people of a specified age or age group; or

(d) to people with a specific or general impairment.

(2) Subsection (1)(a) does not apply to a sporting activity for children who are less than 12 years of age.

(3) Subsection (1) does not stop participation in a competitive sporting activity being restricted on the basis of gender identity, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity.

(4) In this section—

competitive sporting activity does not include—

(a) the coaching of people engaged in a sporting activity; or

(b) the umpiring or refereeing of a sporting activity; or

(c) the administration of a sporting activity; or

(d) a sporting activity prescribed by regulation.

112 Legal incapacity

A person may discriminate against another person because the other person is subject to a legal incapacity if the incapacity is relevant to the transaction in which they are involved.

Example—

It is not unlawful for a person to refuse to enter into a contract with a minor, or a person who has impaired capacity for the contract within the meaning of the *Guardianship and Administration Act 2000*, if the contract can not be legally enforced.

113 Tribunal

(1) The tribunal, on application by—

(a) a person, on the person's own behalf, or on behalf of the person and another person or other people; or

(b) 2 or more people, on their own behalf, or on behalf of themselves and another person or other people; or

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(c) a person or people included in a class of people on behalf of the people in that class;

may grant an exemption to the person, people or class of people from the operation of a specified provision of the Act.

Note—

See also section 174C in relation to the tribunal's powers for deciding the application.

(2) Before deciding an application, the tribunal must—

(a) give the commissioner a copy of the application and a copy of the material filed in support of the application; and

(b) have regard to any submission made by the commissioner on the application, including a submission on the process for considering the application.

(3) Matters the commissioner may make a submission on in relation to the process for considering an application include, but are not limited to, the following—

(a) whether the application should be considered by way of public hearing;

(b) identification of persons who may be affected by a decision to grant the application;

(c) whether the public should be consulted;

(d) how consultation with identified persons or the public should be conducted.

(4) The commissioner must give a copy of a written submission the commissioner makes on an application to the applicant.

(5) The tribunal may request that the commissioner—

(a) inquire into an application; and

(b) report to the tribunal the results of the inquiry and a recommendation about the application.

(6) An exemption—

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(a) may be granted subject to such terms as the tribunal provides; and

(b) may be granted so that it applies only in such circumstances, or in connection with such activities, as the tribunal determines; and

(c) is to be granted for a specified period of not more than 5 years.

(7) An exemption under subsection (1) may be renewed for further periods of not more than 5 years, on application by the person or people to whom, or in respect of whom, the exemption was granted.

113AA Transfer of application from industrial relations commission to QCAT

(1) This section applies if—

(a) an application is made under section 113 to the industrial relations commission; and

(b) the commission considers the exemption sought relates or includes a matter other than a work-related matter.

Note—

For an application made to QCAT, see the QCAT Act, section 52 in relation to the power to transfer the application.

(2) The commission may, by order, transfer the application to QCAT.

(3) If the commission makes an order under subsection (2)—

(a) an application for the exemption is taken to have been made to QCAT when the application mentioned in subsection (1) was referred to the commission; and

(b) the commission may make the orders, or give the directions, it considers appropriate to facilitate the transfer, including an order that a party is taken to have complied with the requirements under this Act, the QCAT Act or another law for referring the application to QCAT; and

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(c) QCAT may deal with the application as if the exemption sought did not relate to a work-related matter.

(4) An order under subsection (3)(b) has effect despite any other Act or law.

(5) The commission may act under subsection (2) or (3)(b) on its own initiative or on application by the applicant.

(6) If the commission does not make an order under subsection (2), the commission may deal with the application as if the exemption sought did not relate to a matter that is not a work-related matter.

113A Appeal from tribunal decision

(1) The commissioner, or a person with a relevant interest, may appeal, as provided under the relevant tribunal Act, against the tribunal's decision on an application mentioned in section 113.

(2) For the appeal, if the commissioner or person was not a party to the application, the commissioner or person is taken to have been a party to it.

Part 6 Discrimination by worker, agent, member etc. also prohibited

114 Discrimination by worker or agent

If discrimination by a person or body is unlawful under this chapter, discrimination by a worker or agent of such a person or body is also unlawful.

115 Discrimination by member of industrial, professional, trade or business organisation

If discrimination by an organisation of workers, employers, or people who carry on an industry, profession, trade or business

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is unlawful under this chapter, discrimination by a member of such an organisation is also unlawful.

116 Discrimination by club's committee of management etc.

If discrimination by a club is unlawful under this chapter, discrimination by—

(a) a committee of management of a club; or

(b) a member of such a committee;

is also unlawful.

Chapter 3 Sexual harassment prohibited by this Act (complaint)

Part 1 Act's freedom from sexual harassment purpose

117 Act's freedom from sexual harassment purpose and how it is to be achieved

(1) One of the purposes of the Act is to promote equality of opportunity for everyone by protecting them from sexual harassment.

(2) This purpose is to be achieved by—

(a) prohibiting sexual harassment; and

(b) allowing a complaint to be made under chapter 7 against a person who has sexually harassed; and

(c) using the agencies and procedures established under chapter 7 to deal with the complaint.

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Part 2 Prohibition of sexual harassment

118 Sexual harassment

A person must not sexually harass another person.

119 Meaning of *sexual harassment*

Sexual harassment happens if a person—

(a) subjects another person to an unsolicited act of physical intimacy; or

(b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or

(c) makes a remark with sexual connotations relating to the other person; or

(d) engages in any other unwelcome conduct of a sexual nature in relation to the other person;

and the person engaging in the conduct described in paragraphs (a), (b), (c) or (d) does so—

(e) with the intention of offending, humiliating or intimidating the other person; or

(f) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

Examples for paragraph (a)—

- physical contact such as patting, pinching or touching in a sexual way
- unnecessary familiarity such as deliberately brushing against a person

Example for paragraph (b)—

sexual propositions

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Examples for paragraph (c)—

- unwelcome and uncalled for remarks or insinuations about a person's sex or private life
- suggestive comments about a person's appearance or body

Examples for paragraph (d)—

- offensive telephone calls
- indecent exposure

120 Meaning of relevant circumstances

The circumstances that are relevant in determining whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct include—

(a) the sex of the other person; and

(b) the age of the other person; and

(c) the race of the other person; and

(d) any impairment that the other person has; and

(e) the relationship between the other person and the person engaging in the conduct; and

(f) any other circumstance of the other person.

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Chapter 4 Associated objectionable conduct (complaint)

Part 1 Act's freedom from associated objectionable conduct purpose

121 Act's freedom from associated objectionable conduct purpose and how it is to be achieved

(1) One of the purposes of the Act is to promote equality of opportunity for everyone by prohibiting certain objectionable conduct that is inconsistent with the other purposes of the Act.

(2) This purpose is to be achieved by—

(a) prohibiting certain conduct; and

(b) allowing a complaint to be made under chapter 7 against a person who has engaged in that conduct; and

(c) using the agencies and procedures established under chapter 7 to deal with the complaint.

Part 2 Requesting and encouraging contravention of the Act

122 Request or encouragement of contravention

A person must not request or encourage another person to contravene the Act.

123 Liability for contravention

If—

(a) a person requests or encourages another person to contravene the Act; and

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(b) the other person acts, or attempts to act, on the request or encouragement;

both are jointly and severally civilly liable for the contravention, and a proceeding under the Act may be taken against either or both.

Part 3 Unlawful requests for information

124 Unnecessary information

(1) A person must not ask another person, either orally or in writing, to supply information on which unlawful discrimination might be based.

(2) Subsection (1) does not apply to a request that is necessary to comply with, or is specifically authorised by—

(a) an existing provision of another Act; or

(b) an order of a court; or

(c) an existing provision of an order or award of a court or tribunal having power to fix minimum wages and other terms of employment; or

(d) an existing provision of an industrial agreement under the repealed *Industrial Relations Act 1999*; or

(e) an order of QCAT or the industrial relations commission.

(3) It is a defence to a proceeding for a contravention of subsection (1) if the respondent proves, on the balance of probabilities, that the information was reasonably required for a purpose that did not involve discrimination.

(4) In this section—

existing provision means a provision in existence at the commencement of this section.

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Example—

An employer would contravene the Act by asking applicants for all jobs whether they have any impairments, but may ask applicants for a job involving heavy lifting whether they have any physical condition that indicates they should not do that work.

Part 4 Racial and religious vilification

124A Vilification on grounds of race, religion, sexuality, sex characteristics or gender identity unlawful

(1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race, religion, sexuality, sex characteristics or gender identity of the person or members of the group.

(2) Subsection (1) does not make unlawful—

(a) the publication of a fair report of a public act mentioned in subsection (1); or

(b) the publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or

(c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.

(3) In this section—

***public act*—**

(a) includes—

(i) any form of communication to the public, including by speaking, writing, printing, displaying notices, broadcasting, telecasting, screening or playing of tapes or other recorded material, or by electronic means; and

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(ii) any conduct that is observable by the public, including actions, gestures and the wearing or display of clothing, signs, flags, emblems or insignia; but

(b) does not include the distribution or dissemination of any matter by a person to the public if the person does not know, and could not reasonably be expected to know, the content of the matter.

Chapter 5 Associated highly objectionable conduct (complaint and penalty)

Part 1 Act's freedom from associated highly objectionable conduct purpose

125 Act's freedom from associated highly objectionable conduct purpose and how it is to be achieved

(1) One of the purposes of the Act is to promote equality of opportunity for everyone by prohibiting and penalising certain highly objectionable conduct that is inconsistent with the other purposes of the Act.

(2) This purpose is to be achieved by—

(a) prohibiting certain conduct; and

(b) allowing a complaint under chapter 7 to be made against a person who has engaged in that conduct; and

(c) making that conduct an offence; and

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(d) using the agencies and procedures established under chapter 7 and the relevant tribunal Act to deal with the complaint or offence.

Part 3 Discriminatory advertising

127 Discriminatory advertisements

(1) A person must not publish or display an advertisement, or authorise its publication or display, if the advertisement indicates that a person intends to act in a way that contravenes the Act.

Maximum penalty—

(a) in the case of an individual—35 penalty units; or

(b) in the case of a corporation—170 penalty units.

(1A) To remove any doubt, subsection (1) does not apply to an advertisement so far as it advertises for a worker who is under 21 years of age, whether by specifying a particular age, a particular age group or otherwise.

Example—

An employer may advertise for an 18 year old sales assistant or for a 15 to 17 year old sales assistant.

(2) It is a defence to a complaint made under the Act for a contravention of subsection (1) if the respondent proves, on the balance of probabilities, that the respondent took reasonable precautions to prevent the publication or display happening.

(3) It is an excuse to an offence against subsection (1) if the defendant took reasonable precautions to prevent the publication or display happening.

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128 Inducement

A person must not knowingly or recklessly make a false or misleading statement to another person in order to induce the publication or display of an unlawful advertisement.

Maximum penalty—

(a) in the case of an individual—35 penalty units; or

(b) in the case of a corporation—170 penalty units.

Part 4 Victimisation

129 Victimisation

A person must not victimise another person.

Maximum penalty—

(a) in the case of an individual—45 penalty units or imprisonment for 3 months; or

(b) in the case of a corporation—170 penalty units.

130 Meaning of *victimisation*

(1) ***Victimisation*** happens if a person (the ***respondent***) does an act, or threatens to do an act, to the detriment of another person (the ***complainant***)—

(a) because the complainant, or a person associated with, or related to, the complainant—

(i) refused to do an act that would amount to a contravention of the Act; or

(ii) in good faith, alleged, or intends to allege that a person committed an act that would amount to a contravention of the Act; or

(iii) is, has been, or intends to be, involved in a proceeding under the Act against any person; or

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(b) because the respondent believes that the complainant, or a person associated with, or related to, the complainant is doing, has done, or intends to do one of the things mentioned in paragraph (a)(i), (ii) or (iii).

(2) In this section, a reference to involvement in a proceeding under the Act includes—

(a) making a complaint under the Act and continuing with the complaint, whether by investigation, conciliation, hearing or otherwise; and

(b) involvement in a prosecution for an offence against the Act; and

(c) supplying information and producing documents to a person who is performing a function under the Act; and

(d) appearing as a witness in a proceeding under the Act.

131 Victimisation continues even if proceedings etc. do not

The application or continued application of section 129 (Victimisation) is not affected by—

(a) the failure or otherwise of the complainant or the person associated with, or related to, the complainant, to do 1 of the things mentioned in section 130(1)(a)(i),(ii) or (iii) (Meaning of victimisation); or

(b) the withdrawal, failure to pursue, or determination of a proceeding under the Act.

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Chapter 5B Discrimination against residents of regional communities (complaint)

131B Definitions for chapter

In this chapter—

EIS see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

fly-in fly-out worker, for a large resource project, see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

large resource project see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

nearby regional community, for a large resource project, see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

owner, of a large resource project, see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

principal contractor see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

recruitment process, for a large resource project, means any process for considering and selecting a person for employment for the project.

related body corporate see the Corporations Act, section 50.

resident, of a nearby regional community, see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

resource project has the meaning given in the *Environmental Protection Act 1994*, section 112.

worker, for a large resource project, see the *Strong and Sustainable Resource Communities Act 2017*, schedule 1.

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131C Prohibition on discrimination against persons in nearby regional communities in relation to work on large resource projects

(1) This section applies to the owner, or the principal contractor, of a large resource project that has a nearby regional community.

(2) The owner or principal contractor must not—

(a) discriminate against a resident of the nearby regional community when recruiting workers for the project; or

(b) discriminate against a worker by terminating the worker's employment because the worker is, or becomes, a resident of the nearby regional community and chooses to travel to the project other than as a fly-in fly-out worker.

(3) The owner is taken to contravene subsection (2) whether it is the owner, a related body corporate of the owner, or an agent of the owner or related body corporate, that discriminates against a resident or worker.

(4) The principal contractor is taken to contravene subsection (2) whether it is the principal contractor, a related body corporate of the principal contractor, or an agent of the principal contractor or related body corporate, that discriminates against a resident or worker.

(5) For subsections (2)(a), (3) and (4), a person is taken to discriminate against a resident of the nearby regional community if—

(a) the person is recruiting workers for the project; and

(b) the resident is not offered work on the project, or is disadvantaged in the recruitment process for the project, because of being a resident of the nearby regional community.

(6) If the principal contractor contravenes this section, both the owner and principal contractor are jointly and severally civilly liable for the contravention, and a proceeding under the Act may be taken against either or both of them.

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131D Provisions of this Act that do not apply for this chapter

Sections 9, 10, 11, 124, 132, 133, 204 and 205 do not apply for this chapter.

131E Burden of proof—general principle

(1) For this chapter, it is for the complainant to prove, on the balance of probabilities, that the respondent contravened a provision of the chapter.

(2) However, this section applies subject to section 131F.

131F Reason for action to be presumed unless proved otherwise

(1) This section applies if a complaint about discrimination under this chapter alleges that—

(a) the complainant was not offered work during recruitment for a large resource project because the complainant was a resident of a nearby regional community for the project; or

(b) the complainant's employment on a large resource project was terminated because the complainant was, or became, a resident of a nearby regional community for the project and chose to travel to the project other than as a fly-in fly-out worker.

(2) It is presumed the action mentioned in subsection (1)(a) or (b) was taken for the alleged reason, unless the respondent proves otherwise.

131G Evidentiary aid

In a proceeding about discrimination mentioned in section 131C, the matters published under the *Strong and Sustainable Resource Communities Act 2017*, section 13 are evidence of the matters.

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Chapter 6 Liability for contraventions of workers and agents (complaint)

132 Act's vicarious liability purpose and how it is to be achieved

(1) One of the purposes of the Act is to promote equality of opportunity for everyone by making a person liable for certain acts of the person's workers or agents.

(2) This purpose is to be achieved by making a person civilly liable for a contravention of the Act by the person's workers or agents.

133 Vicarious liability

(1) If any of a person's workers or agents contravenes the Act in the course of work or while acting as agent, both the person and the worker or agent, as the case may be, are jointly and severally civilly liable for the contravention, and a proceeding under the Act may be taken against either or both.

(2) It is a defence to a proceeding for a contravention of the Act arising under subsection (1) if the respondent proves, on the balance of probabilities, that the respondent took reasonable steps to prevent the worker or agent contravening the Act.

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Chapter 7 Enforcement

Part 1 What the Queensland Human Rights Commission may do

Division 1 The complaint process

Subdivision 1 All complaints

134 Who may complain

(1) Any of the following people may complain to the commissioner about an alleged contravention of the Act—

(a) a person who was subjected to the alleged contravention;

(b) an agent of the person;

(c) a person authorised in writing by the commissioner to act on behalf of a person who was subjected to the alleged contravention and who is unable to make or authorise a complaint.

Note—

See also section 146 in relation to representative complaints.

(2) Two or more people may make a complaint jointly.

(3) A relevant entity may complain to the commissioner about a relevant alleged contravention.

(4) However, the commissioner may accept the relevant entity's complaint under section 141 only if the commissioner is satisfied that—

(a) the complaint is made in good faith; and

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(b) the relevant alleged contravention is about conduct that has affected or is likely to affect relevant persons for the relevant entity; and

(c) it is in the interests of justice to accept the complaint.

(5) In this section—

relevant alleged contravention means an alleged contravention of section 124A.

relevant entity means a body corporate or an unincorporated body, a primary purpose of which is the promotion of the interests or welfare of persons of a particular race, religion, sexuality or gender identity or having particular sex characteristics.

relevant persons, for a relevant entity, means persons the promotion of whose interests or welfare is a primary purpose of the relevant entity.

135 Complaint may allege more than 1 contravention

A person may make a complaint alleging more than 1 contravention of the Act.

Example—

C applies to real estate agent R to rent a house and is asked to fill out a form which includes a question about his country of birth. C is not offered a house, and believes this is on the basis of his national origin. C may make a complaint about being required to answer a question about his national origin contrary to section 124 (Unnecessary information), or a complaint about unlawful discrimination under section 82 (Discrimination in pre-accommodation area), or both.

136 Making a complaint

A complaint must—

(a) be in writing; and

(b) set out reasonably sufficient details to indicate an alleged contravention of the Act; and

(c) state the complainant's address for service; and

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(d) be lodged with, or sent by post to, the commissioner.

137 Unfair agreements not to complain are not binding

(1) The commissioner may accept a complaint from a person who had previously agreed with another person not to complain, if the commissioner is of the reasonable opinion that it is fair to accept the complaint.

(2) In assessing whether it is fair to accept the complaint, the commissioner is to consider all the relevant circumstances of the case including—

(a) the knowledge of the parties who made the agreement; and

(b) what the person who wishes to complain received in return for the agreement.

138 Time limit on making complaints

(1) Subject to subsection (2), a person is only entitled to make a complaint within 1 year of the alleged contravention of the Act.

(2) If a complaint is made more than 1 year after the alleged contravention of the Act, the commissioner must decide—

(a) to accept the complaint, but only if the commissioner is satisfied the complainant has shown good cause; or

(b) otherwise—not to accept the complaint.

(3) Subsection (2) applies subject to section 141A.

139 Commissioner must reject frivolous, trivial etc. complaints

The commissioner must reject a complaint if the commissioner is of the reasonable opinion that the complaint is—

(a) frivolous, trivial or vexatious; or

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(b) misconceived or lacking in substance.

140 Commissioner may reject or stay complaints dealt with elsewhere

(1) The commissioner may reject or stay a complaint if—

(a) there are concurrent proceedings in a court or tribunal in relation to the act or omission the subject of the complaint; or

(b) the commissioner reasonably considers the act or omission that is the subject of the complaint may be effectively or conveniently dealt with by another entity.

(2) The commissioner may also reject a complaint if the commissioner reasonably considers the act or omission the subject of the complaint has been adequately dealt with by another entity.

(3) A time limit for doing anything under this Act in relation to a complaint does not run while a complaint is stayed.

140A Dealing with complaint under Human Rights Act 2019

(1) This section applies if the commissioner considers a complaint made or referred to the commissioner under this Act would be more appropriately dealt with by the commission as a complaint about an alleged contravention of the *Human Rights Act 2019*.

(2) The commissioner may, with the consent of the complainant, deal with the complaint under the *Human Rights Act 2019* as an alleged contravention of that Act.

(3) For dealing with the complaint as mentioned in subsection (2), the complaint—

(a) is taken to be a complaint about an alleged contravention of the *Human Rights Act 2019* that is accepted by the commissioner under section 76 of that Act; and

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(b) is taken to be made on the day the complaint was made or referred under this Act.

141 Time limit on acceptance or rejection of complaints

(1) The commissioner must decide whether to accept or reject a complaint within 28 days of receiving the complaint.

(2) The commissioner must promptly notify the complainant of the decision.

(3) This section applies subject to section 141A.

141A Deferral of acceptance of complaint for out-of-time contravention

(1) This section applies if—

(a) a complaint relates to—

(i) at least 1 alleged contravention of the Act that happened within 1 year before the complaint was made (a ***within-time contravention***); and

(ii) at least 1 alleged contravention of the Act that happened more than 1 year before the complaint was made (an ***out-of-time contravention***); and

(b) the commissioner decides to accept the complaint under section 141 to the extent it relates to the within-time contravention.

(2) The commissioner may defer deciding under section 138(2) whether or not to accept the complaint to the extent it relates to the out-of-time contravention until the commissioner has tried to resolve the complaint by conciliation under division 3.

142 Reasons for rejected complaints

(1) If a complaint is rejected, it lapses and the complainant is not entitled to make a further complaint relating to the act or omission that was the subject of the complaint.

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(2) If a complaint is rejected, the complainant may, within 28 days of receiving notice of the rejection, ask the commissioner for written reasons.

(3) If requested, the commissioner must promptly give the complainant written reasons for the rejection.

(4) To remove any doubt, it is declared that a reference in this section to rejecting a complaint includes a reference to deciding not to accept a complaint under section 137(1) or 138(2)(b).

(5) In this section—

complaint includes a complaint mentioned in section 141A to the extent it relates to an out-of-time contravention.

143 Respondent is to be notified of accepted complaint

(1) If a complaint is accepted, the commissioner must promptly notify the respondent in writing of the substance of the complaint.

(2) The notice to the respondent must also state the following—

(a) the complainant's address for service;

(b) that the respondent must advise the commissioner of the respondent's address for service;

(c) that the respondent may give a written response to the allegations included in the complaint;

(d) that within 28 days after the respondent receives the notice, the respondent must, if giving a written response—

(i) give the written response to the commissioner; and

(ii) give a copy of the written response to the complainant and any other respondent;

(e) that the respondent must include, with the written response given to the commissioner, advice as to whether it has been given to the complainant and any other respondent;

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(f) that the respondent may ask the commissioner for an early conciliation conference whether or not the respondent gives a written response;

(g) that if the respondent does not, within the 28 days mentioned in paragraph (d), give the commissioner a written response or ask the commission to arrange for an early conciliation conference, a conciliation conference will be held on a date stated in the notice.

(2A) The respondent must advise the commissioner in writing of the respondent's address for service.

(2B) If the respondent is giving a written response, the respondent must also—

(a) give the written response to the commissioner and give a copy of the written response to the complainant and any other respondent; and

(b) advise the commissioner whether the written response, or a copy of the written response, has been given to the complainant and any other respondent.

(3) If the respondent does not, within the 28 days mentioned in subsection (2)(d), give the commissioner a written response or ask the commission to arrange for an early conciliation conference, the notice has effect as a direction under section 159(1) to the respondent to take part in a conciliation conference on the date stated in the notice under subsection (2)(g).

(4) The giving of the notice to the respondent does not stop the commissioner from exercising, at any time, the commissioner's power under section 159(1) to direct the complainant and the respondent to take part in a conciliation conference—

(a) whether or not the 28 days mentioned in subsection (2)(d) has expired; and

(b) whether or not the commissioner has received any communication from the respondent.

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(5) The stated date for subsection (2)(g) must be not more than 14 days after the 28 days mentioned in subsection (2)(d).

144 Applications for orders protecting complainant's interests (before reference to tribunal)

(1) At any time before a complaint is referred to the tribunal, the complainant or the commissioner may apply, as provided under the relevant tribunal Act, to the tribunal for an order prohibiting a person from doing an act that might prejudice—

(a) the investigation or conciliation of the complaint; or

(b) an order that the tribunal might make after a hearing.

(2) A party or the commissioner may apply, as provided under the relevant tribunal Act, to the tribunal for an order varying or revoking an order made under subsection (1).

(3) If the tribunal is satisfied it is in the interests of justice, an application for an order under subsection (1) may be heard in the absence of the respondent to the application.

145 Anonymity

(1) If, any time before a complaint is referred to the tribunal, the commissioner is of the reasonable opinion that the preservation of anonymity of a person who is, or has been, involved in a proceeding under the Act is necessary to protect the work security, privacy or any human right of the person, the commissioner may give a direction prohibiting the disclosure of the person's identity.

(2) A person must comply with a direction.

Maximum penalty—

(a) in the case of an individual—35 penalty units; or

(b) in the case of a corporation—170 penalty units.

(3) It is an excuse to an offence against subsection (2) if the defendant has a reasonable excuse.

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(4) In this section, a reference to involvement in a proceeding under the Act includes—

(a) making a complaint under the Act and continuing with the complaint, whether by investigation, conciliation, hearing or otherwise; and

(b) being a respondent to such a complaint; and

(c) involvement in a prosecution for an offence against the Act; and

(d) supplying information and producing documents to a person who is performing a function under the Act; and

(e) appearing as a witness in a proceeding under the Act.

Subdivision 2 Representative complaints

146 Who may make representative complaint

(1) A person may make a complaint about an alleged contravention of the Act as a representative complaint on behalf of a class of persons of which the person is a member if—

(a) all members of the class may make a complaint under section 134(1)(a) about the alleged contravention; and

(b) all of the complaints the members of the class may make under section 134(1)(a) about the alleged contravention—

(i) relate to, or arise out of, conduct of the same person; and

(ii) relate to, or arise out of, the same, similar or related circumstances; and

(iii) give rise to a substantial common issue of law or fact.

(2) Also, a registered employee organisation may make a representative complaint about an alleged contravention of the

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Act as a representative complaint on behalf of a class of persons if—

(a) all members of the class are members of the organisation; and

(b) the alleged contravention is a work-related matter; and

(c) subsection (1)(a) and (b) apply in relation to the members of the class.

(3) A complaint may be made under subsection (1) or (2) on behalf of a class of persons without the consent of the members of the class.

147 Additional requirements for form of representative complaint

(1) A representative complaint must—

(a) describe or otherwise identify the members of the class of persons for which the complaint is made; and

(b) specify the nature of the complaints made on behalf of the members of the class; and

(c) specify the nature of the relief sought.

(2) In describing or otherwise identifying the members of the class of persons, it is not necessary to name them or specify how many there are.

148 Effect of representative complaint on persons who are members of class represented

(1) A person who is a member of a class of persons to which a representative complaint relates—

(a) may, by written notice given to the commissioner at any time before the complaint is finally dealt with by the commissioner, opt out of the representative complaint; and

(b) is not entitled to make a separate complaint in relation to the conduct constituting the alleged contravention of the

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Act to which the representative complaint relates, unless the person opts out under paragraph (a).

(2) Subsection (1)(b) does not apply or stops applying to a class member for a representative complaint, other than the complainant, if—

(a) the commissioner amends the representative complaint under section 151; or

(b) the representative complaint lapses under section 142 or 167(4)(c) or division 5.

(3) Also, subsection (1)(b) does not apply to a class member for a representative complaint, other than the complainant, if—

(a) the representative complaint is referred to the tribunal; and

(b) any of the following happens—

(i) the complaint lapses under section 193;

(ii) the tribunal decides not to deal with the complaint as a representative complaint under section 194;

(iii) the class member opts out of the representative complaint under section 195;

(iv) the tribunal orders that the representative complaint no longer continue as a representative complaint under section 198 or 199.

149 Effect of representative complaint on persons who are not members of class represented

(1) The making of a representative complaint about an alleged contravention of the Act does not prevent a person who is not a member of the class of persons to which the representative complaint relates making a complaint in relation to the conduct constituting the alleged contravention.

(2) To remove any doubt, it is declared that subsection (1) also applies to a person who has opted out of the representative complaint under section 148 or 195.

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150 Complaint may be amended to be representative complaint

(1) If the commissioner is satisfied that a complaint made by or on behalf of a number of persons could be dealt with as a representative complaint if the persons on whose behalf the complaint is made are increased, reduced or otherwise altered, the commissioner may amend the complaint so that the complaint can be dealt with as a representative complaint.

(2) However, the commissioner may amend the complaint under subsection (1) only if the person who made the complaint consents to the amendment and to the complaint being dealt with as a representative complaint.

151 Representative complaint may be amended to be non-representative complaint

(1) This section applies if the commissioner is satisfied—

(a) that a complaint has been wrongly made as a representative complaint; or

(b) it is in the interests of justice that the matter the subject of a complaint made as a representative complaint be dealt with other than as a representative complaint because—

(i) the complaint will not provide an efficient and effective way of dealing with the complaints of the class members for the complaint; or

(ii) the complainant is not able to adequately represent the interests of the class members for the complaint.

(2) The commissioner may amend the complaint so that the complaint can be dealt with as a complaint other than as a representative complaint.

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152 Substitution of complainant

(1) This section does not apply in relation to a representative complaint made by a registered employee organisation as provided under section 146(2).

(2) If the complainant for a representative complaint gives the commissioner written notice under section 170 that the complainant does not want to continue with the complaint, the commissioner may substitute another class member as the complainant with the consent of the other class member.

(3) If the commissioner considers that the complainant is not able to adequately represent the interests of the class members for the complaint, the commissioner may substitute another class member as the complainant with the consent of the other class member.

152A Commissioner may give directions

The commissioner may give directions about the conduct of a representative complaint while it is being dealt with by the commissioner.

Subdivision 3 Complaints by dismissed workers

153 Dismissed worker lodges complaint first

If, but for this section—

(a) a worker is dismissed in circumstances entitling the worker to—

(i) lodge a complaint with the commissioner under the Act; and

(ii) apply for industrial relief; and

(b) the worker does not apply for industrial relief before lodging a complaint and being notified under section 141 that the complaint has been accepted;

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the worker may only proceed with the complaint and may not later apply for industrial relief in respect of the circumstances.

154 Dismissed worker applies for industrial relief first

If—

(a) a worker is dismissed in circumstances entitling the worker to—

(i) lodge a complaint with the commissioner under the Act; and

(ii) apply for industrial relief; and

(b) the worker applies for industrial relief before lodging a complaint;

the worker may proceed with both the complaint and the application for industrial relief, but the tribunal may not make an order in respect of the complaint requiring the reinstatement or re-employment of the worker.

Division 2 The investigation process

154A Investigation of complaint

The commissioner may investigate a complaint at any time after the complaint is received by the commissioner.

155 Requirement to initiate investigation

(1) The commissioner must initiate an investigation if—

(a) requested to do so by the Minister; or

(b) QCAT or the industrial relations commission becomes aware of circumstances that may constitute a contravention of the Act and refers the matter to the commissioner.

(2) The commissioner may initiate an investigation if—

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(a) during the course of carrying out the commission's functions, a possible case of a contravention of the Act against a group or class of people is discovered, the matter is of public concern and the Minister agrees; or

(b) an allegation is made that an offence against the Act has been committed; or

(c) during the course of carrying out the commission's functions, a possible offence against the Act is discovered.

(3) In conducting an investigation, the commissioner has the same powers as the commissioner has in dealing with a complaint of a contravention of the Act.

(4) If a matter investigated under subsection (1)(a), (1)(b) or (2)(a) can not be resolved by conciliation, the commissioner may refer the matter to the tribunal as if it were a complaint.

(5) If the commissioner refers the matter to the tribunal under subsection (4), the commissioner is, for the purposes of the relevant tribunal Act, the applicant.

(6) This section does not apply to complaints accepted under section 141.

156 Commissioner may obtain information and documents

(1) If the commissioner has reason to believe that a person—

(a) published or displayed an advertisement that contravenes the Act; or

(b) is able to provide information or produce documents relevant to an investigation;

the commissioner may direct the person in writing—

(c) to give to the commissioner by writing signed by the person, or, in the case of a body corporate, by an officer of the body corporate, the specified information; or

(d) to give to the commissioner the specified documents or documents of a specified class;

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at such place, and within such reasonable period or on such reasonable day and at such time, as are specified in the direction.

(2) If documents are given to the commissioner, the commissioner—

(a) may take possession of, and may copy or take extracts from, the documents; and

(b) may retain possession of the documents for such reasonable period as is necessary for the investigation to which the documents relate; and

(c) during that period must allow a person who, if they were not in the possession of the commissioner, would be entitled to inspect any of the documents, to inspect that document at all reasonable times.

(3) The commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction.

(4) The direction is then enforceable as if it were an order of the court.

(5) A person is not required to give information or a document if the person objects on the ground of legal professional privilege that the person would be entitled to claim if—

(a) the person were a witness in a prosecution for an offence in the Supreme Court; and

(b) the person were required to give the information or document in the prosecution.

157 Commissioner may obtain actuarial, statistical or other data

(1) If a person has done an act of discrimination that would, but for section 61, 62, 63, 74 or 75, be unlawful, the commissioner may direct the person to give the commissioner, within 21 days after service of the direction, any source of the actuarial, statistical or other data on which the act of discrimination was based.

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(2) The commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction.

(3) The direction is then enforceable as if it were an order of the court.

Division 3 The conciliation process

158 Conciliation of complaints

(1) If the commissioner believes that a complaint may be resolved by conciliation, the commissioner must try to resolve it in that way.

(2) Subsection (1) applies in relation to a complaint even if the commissioner has, under section 141A(2), deferred deciding whether or not to accept the complaint under section 138(2) to the extent it relates to an out-of-time contravention.

159 Attendance at conciliation conference

(1) The commissioner may direct a person to take part in a conciliation conference.

(2) The commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction.

(3) The direction is then enforceable as if it were an order of the court.

160 Party fails to attend conference

(1) If a complainant, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may dismiss the complaint and direct the complainant to pay costs to the respondent.

(2) If a respondent, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may direct the respondent to pay costs to the complainant.

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(3) A party may enforce a direction as to costs by filing a copy of it with a court of competent jurisdiction.

(4) The direction is then enforceable as if it were an order of the court.

161 Conference to be held in private

A conciliation conference must be held in private.

162 Interpreter may be used

A person has a right to use a professional or voluntary interpreter at a conciliation conference.

163 Representative may be used with permission

A person may be represented by another person at a conciliation conference, with the commissioner's permission.

164 Resolution by conciliation

(1) If the complaint is resolved by conciliation, the commissioner must record the terms of the agreement and have the document signed by the complainant and the respondent.

(2) The commissioner must provide a copy of the document to each party and file the document with the tribunal.

(3) The agreement is then enforceable as if it were an order of the tribunal.

164AA Confidentiality of conciliation

Nothing said or done in the course of conciliation of a complaint may be included in any document prepared by the commission when referring the complaint to the tribunal.

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Division 4 Unconciliated complaints

164A Right of complainant to seek referral to tribunal after conciliation conference

(1) This section applies if—

(a) a conciliation conference has been held under division 3 in relation to a complaint; and

(b) the complaint has not been resolved by conciliation.

(2) The complainant may give the commissioner a written notice requiring the commissioner to refer the complaint to—

(a) if the complaint is or includes a work-related matter—the industrial relations commission; or

(b) otherwise—QCAT.

Note—

If the complaint includes a work-related matter and a matter other than a work-related matter, the complaint must be referred to the industrial relations commission. However, the commission may transfer the complaint to QCAT under section 193A.

(3) The commissioner must promptly—

(a) refer the complaint to the tribunal; and

(b) give the respondent a copy of the complaint.

(4) However the commissioner is not required to act under subsection (3) if the commissioner decides to act under section 168 in relation to the complaint.

(5) If the commissioner has, under section 141A(2), deferred deciding whether or not to accept the complaint under section 138(2) to the extent it relates to an out-of-time contravention, the commissioner must make that decision before acting under subsection (3).

(6) If the complainant acts under subsection (2), sections 165 to 167 stop applying in relation to the complaint.

(7) The complainant is the applicant for the purposes of the relevant tribunal Act.

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165 Complaints which are not resolved by conciliation

(1) If the commissioner believes that a complaint can not be resolved by conciliation, the commissioner must promptly tell the complainant and the respondent by written notice.

(2) The obligation in subsection (1) arises whether or not conciliation has been attempted.

(3) If the commissioner gives notice under subsection (1), sections 164A and 167 stop applying in relation to the complaint.

166 Complainant may obtain referral of unconciliated complaint

(1) Within 28 days of being notified that the complaint can not be resolved by conciliation, a complainant may, by written notice, require the commissioner to refer the complaint to—

(a) if the complaint is or includes a work-related matter—the industrial relations commission; or

(b) otherwise—QCAT.

Note—

If the complaint includes a work-related matter and a matter other than a work-related matter, the complaint must be referred to the industrial relations commission. However, the commission may transfer the complaint to QCAT under section 193A.

(2) The commissioner may extend the time limit if—

(a) the complainant asks the commissioner, in writing, for an extension within the 28 days; and

(b) the commissioner considers that there are reasonable grounds for the request; and

(c) the commissioner considers that the extension will not cause undue hardship to the respondent.

(3) If the complainant asks for the extension, the day the complainant asks for the extension, the day the complainant is given written notice of the commissioner's decision about the extension and any period between those days, is not included

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in the period mentioned in subsection (1) within which the complaint may be referred to the tribunal.

(4) However, if the complainant asks for the extension on the last day of the period mentioned in subsection (1) and the extension is subsequently refused, the complainant may require the commissioner to refer the complaint to the tribunal by making a written request on the day the complainant receives written notice of the refusal or on the next day that is a business day.

(5) The complainant is the applicant for the purposes of the relevant tribunal Act.

167 Complainant or respondent may seek referral after 6 months

(1) If the commissioner has not finished dealing with a complaint 6 months after informing the complainant and the respondent that the complaint has been accepted, either the complainant or the respondent may, by written notice, request the commissioner to refer the complaint to—

(a) if the complaint is or includes a work-related matter—the industrial relations commission; or

(b) otherwise—QCAT.

Note—

If the complaint includes a work-related matter and a matter other than a work-related matter, the complaint must be referred to the industrial relations commission. However, the commission may transfer the complaint to QCAT under section 193A.

(2) The commissioner may defer acting on a request for up to 28 days, if there is a significant prospect that the matter can be resolved by conciliation within that period.

(3) If the matter is not resolved at the end of 28 days, the procedures in subsection (4) or (5) apply.

(4) If the respondent requests the commissioner to refer the complaint—

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(a) the commissioner must ask the complainant whether the complainant agrees to the complaint being referred; and

(b) if the complainant agrees in writing—the commissioner must refer the complaint to the tribunal; and

(c) if the complainant does not agree in writing within 28 days—the complaint lapses, and the complainant can not make a further complaint relating to the act or omission that was the subject of the complaint; and

(d) the commissioner may extend the 28 day period, but only if the complainant asks, in writing, for an extension before the 28 days have passed.

(5) If the complainant requests the commissioner in writing, to refer the complaint, the commissioner must comply.

(6) If the commissioner refers the complaint to the tribunal, the commissioner must promptly give the respondent a copy of the complaint.

(7) The complainant is the applicant for the purposes of the relevant tribunal Act.

Division 5 Lapsed or withdrawn complaints or authorisation

168 Frivolous etc. complaint lapses

(1) This section applies if, at any time after a complaint is accepted and before it is referred to the tribunal, the commissioner is of the reasonable opinion that the complaint is—

(a) frivolous, trivial or vexatious; or

(b) misconceived or lacking in substance.

(2) The commissioner must tell the complainant in writing that, unless the complainant is able to show to the commissioner's satisfaction within 28 days that the complaint is not frivolous, trivial, vexatious, misconceived or lacking in substance—

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(a) the complaint will lapse; and

(b) if the complaint lapses, the complainant can not make a further complaint relating to the act or omission that was the subject of the complaint.

(3) If, at the end of 28 days, the commissioner is of the reasonable opinion that the complaint is—

(a) frivolous, trivial or vexatious; or

(b) misconceived or lacking in substance;

the commissioner must write to the complainant and respondent as soon as practicable to tell them that the complaint has lapsed.

(4) The complaint then lapses, and the complainant can not make a further complaint relating to the act or omission that was the subject of the complaint.

168A Complaint may lapse if dealt with elsewhere

(1) This section applies if after a complaint is accepted and before it is referred to the tribunal, the commissioner reasonably considers the act or omission the subject of the complaint—

(a) has been adequately dealt with by another entity; or

(b) may be effectively or conveniently dealt with by another entity.

(2) The commissioner may give the complainant a notice (a ***show cause notice***) inviting the complainant to show cause why the complaint should not lapse.

(3) A show cause notice must—

(a) be in writing; and

(b) state that the complaint may lapse unless the complainant is able to show to the commissioner's satisfaction that the act or omission that is the subject of the complaint has not been adequately dealt with, or may not be effectively or conveniently dealt with, by another entity; and

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(c) state that if the complaint lapses, the complainant can not make a further complaint relating to the act or omission the subject of the complaint; and

(d) state that the complainant may, within 28 days after receipt of the notice, make written representations to the commissioner about why the complaint should not lapse.

(4) If, after considering any submissions made within the show cause period, the commissioner reasonably considers either of the following applies, the commissioner must give the complainant written notice that the complaint has lapsed—

(a) the act or omission the subject of the complaint has been adequately dealt with by another entity;

(b) the act or omission the subject of the complaint may be more effectively or conveniently dealt with by another entity.

(5) If the commissioner gives the complainant a notice under subsection (4)—

(a) the complaint lapses; and

(b) the complainant can not make a further complaint relating to the act or omission the subject of the complaint.

169 Complaint may lapse if complainant loses interest

(1) If the commissioner is of the reasonable opinion that a complainant has lost interest in continuing with a complaint, the commissioner must tell the complainant in writing that—

(a) the complaint will lapse unless the complainant indicates that the complainant wishes to continue with it; and

(b) if the complaint lapses, the complainant can not make a further complaint relating to the act or omission that was the subject of the complaint.

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(2) If the complainant does not give the indication within 28 days, the complaint lapses, and the commissioner must write to the complainant and the respondent as soon as practicable to tell them that the complaint has lapsed.

(3) Within 28 days of being notified that the complaint has lapsed, the complainant may apply to the tribunal to review the commissioner's decision.

(4) If the tribunal is satisfied that the complainant has a genuine interest in continuing with the complaint, the commissioner must resume dealing with the complaint.

(5) The complainant can not make a further complaint relating to the act or omission that was the subject of the complaint.

170 Complainant may withdraw complaint

(1) This section applies if a complainant gives the commissioner written notice that the complainant does not want to continue with the complaint.

(2) The commissioner must—

(a) give the complainant a written notice stating that—

(i) the complaint will lapse at the end of 28 days after the notice is given (the ***relevant period***) unless the complainant gives the commissioner another written notice (a ***continuation notice***) that the complainant intends to continue with the complaint; and

(ii) if the complaint lapses, the complainant can not make a further complaint relating to the act or omission the subject of the complaint; and

(b) cease dealing with the complaint.

(3) If the complainant gives the commissioner a continuation notice within the relevant period, the commissioner must resume dealing with the complaint.

(4) If the complainant does not give the commissioner a continuation notice within the relevant period—

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(a) the complaint lapses on the day after the relevant period ends; and

(b) the complainant can not make a further complaint relating to the act or omission the subject of the complaint.

(5) If a complaint lapses under subsection (4), the commissioner must, as soon as practicable after the lapse, give the respondent written notice the complaint has lapsed.

(6) If the complaint is a representative complaint and the commissioner substitutes another class member as the complainant for the complaint under section 152(2)—

(a) subsections (2) to (5) do not apply; and

(b) the commissioner must give the person seeking withdrawal of the complaint a written notice stating—

(i) the complaint has not been withdrawn; and

(ii) that another class member has been substituted as the complainant for the complaint; and

(iii) the person may opt out of the complaint under section 148.

171 Commissioner may withdraw authorisation

(1) The commissioner may withdraw an authorisation for a person to act on behalf of another person who could not make a complaint if the commissioner believes there is good reason to do so.

(2) The commissioner may, in writing, authorise another person to act on behalf of the complainant.

(3) If no further authorisation has been requested within 28 days of the withdrawal of the original authorisation—

(a) the complaint lapses; and

(b) the commissioner must tell the complainant and the respondent in writing that the complaint has lapsed.

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Division 6 Miscellaneous

172 Commissioner may extend time limits

(1) The commissioner may extend a time limit specified in this part for the doing of anything (whether by a party or the commissioner) if the commissioner is of the reasonable opinion that—

(a) the extension will not cause undue hardship to any party; and

(b) there are reasonable grounds for granting the extension.

(2) In this section, a reference to a party in relation to a representative complaint includes a reference to a class member for the complaint.

173 Authentication of documents

A document requiring authentication by the commission or commissioner is sufficiently authenticated if signed by the commissioner.

174 Judicial notice of commissioner's signature

Judicial notice must be taken of the signature of the commissioner if it appears on a document issued by the commission or commissioner.

Part 2 What the tribunal may do

Division 1A Functions and powers of tribunal

174A Functions of QCAT

QCAT has the following functions—

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(a) in relation to complaints about contraventions of this Act that are referred, or to be referred, to QCAT under this Act—

(i) to make orders under section 144 before the complaints are referred to the tribunal; and

(ii) to review decisions of the commissioner under section 169 about lapsing of the complaints; and

(iii) to enforce agreements for resolution of the complaints by conciliation; and

(iv) to hear and decide the complaints;

(b) to grant exemptions from this Act, other than in relation to work-related matters;

(c) to provide opinions about the application of this Act, other than in relation to work-related matters;

(d) any other function conferred on QCAT by this Act;

(e) to take any other action incidental or conducive to the discharge of a function mentioned in paragraphs (a) to (d).

174B Functions of industrial relations commission

The industrial relations commission has the following functions—

(a) in relation to complaints about contraventions of this Act that are referred, or to be referred, to the commission under this Act—

(i) to make orders under section 144 before the complaints are referred to the tribunal; and

(ii) to review decisions of the commissioner under section 169 about lapsing of the complaints; and

(iii) to enforce agreements for resolution of the complaints by conciliation; and

(iv) to hear and decide the complaints;

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(b) to grant exemptions from this Act in relation to work-related matters;

(c) to provide opinions about the application of this Act in relation to work-related matters;

(d) any other function conferred on the commission by this Act;

(e) to take any other action incidental or conducive to the discharge of a function mentioned in paragraphs (a) to (d).

174C Powers of tribunal under relevant tribunal Act

(1) If this Act confers jurisdiction on the tribunal in relation to a complaint or other matter, the tribunal may exercise the powers conferred on it under this Act or the relevant tribunal Act.

(2) Nothing in this Act limits the industrial relations commission's powers under the IR Act, section 539.

Division 1 The pre-hearing process

Subdivision 1 All complaints

175 Time limit on referred complaints

(1) The tribunal must accept a complaint that is referred to it by the commissioner, unless the complaint was made to the commissioner more than 1 year after the alleged contravention of the Act.

(2) If the complaint was made more than 1 year after the alleged contravention, the tribunal may deal with the complaint if the tribunal considers that, on the balance of fairness between the parties, it would be reasonable to do so.

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176 Constitution of tribunal—QCAT

(1) This section applies to a hearing conducted by the tribunal in relation to a complaint, if the tribunal is QCAT.

(2) Subject to section 228A, the tribunal is constituted by a legally qualified member for conducting the hearing.

177 Tribunal may join a person as a party

(1) The tribunal may join a person as a party to a proceeding whether or not the person was a complainant for, or respondent to, the complaint to which the proceeding relates.

(2) This section does not limit a provision of the relevant tribunal Act about joining a party to a proceeding.

178 Complaints may be amended

(1) The tribunal may allow a complainant to amend a complaint.

(2) Subsection (1) applies even if the amendment concerns matters not included in the complaint.

185 Solicitor or counsel assisting the tribunal

The tribunal may make arrangements for a solicitor or counsel to appear at a proceeding to assist the tribunal.

186 Officer assisting the tribunal

(1) The tribunal may make arrangements for an officer of the commission to appear at a proceeding to assist the tribunal.

(2) An officer assisting the tribunal is subject to the tribunal's direction and control.

189 Resolution before tribunal order

(1) If the complainant and the respondent resolve the complaint before it has been determined by the tribunal, they must

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record the terms of the agreement in a document signed by the complainant and the respondent and file the document with the tribunal.

(2) The tribunal must provide a copy of the document to each party.

(3) The agreement is then enforceable as if it were an order of the tribunal.

190 Interim orders protecting complainant's interests (tribunal)

(1) This section applies if a complaint has been referred to, but not yet determined by, the tribunal.

(2) The complainant may apply to the tribunal for an order prohibiting a person from doing an act that might prejudice an order the tribunal might make after a hearing.

(3) A party may apply to the tribunal for an order varying or revoking an order made under subsection (2).

(4) This section does not limit the tribunal's powers under the relevant tribunal Act.

191 Anonymity

(1) If the tribunal is of the reasonable opinion that the preservation of anonymity of a person who has been involved in a proceeding under the Act is necessary to protect the work security, privacy or any human right of the person, the tribunal may make an order prohibiting the disclosure of the person's identity.

(2) A person must comply with an order.

Maximum penalty—100 penalty units.

(3) In this section, a reference to involvement in a proceeding under the Act includes—

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(a) making a complaint under the Act and continuing with the complaint, whether by investigation, conciliation, hearing or otherwise; and

(b) being a respondent to such a complaint; and

(c) involvement in a prosecution for an offence against the Act; and

(d) giving information or documents to a person who is performing a function under the Act; and

(e) appearing as a witness in a proceeding under the Act.

193 Complainant may withdraw complaint

(1) The tribunal is not to continue to deal with a complaint if the complainant, or the person who authorised the complaint to be made, gives written notice that the person does not want to continue with the complaint.

(2) The complaint then lapses.

(3) The tribunal is to write to the respondent as soon as practicable to tell the respondent that the complaint has lapsed.

(4) Subsections (1) to (3) apply in relation to a representative complaint only if the tribunal approves the withdrawal of the complaint.

(5) Also, for a representative complaint, subsections (1) to (3) do not apply if the tribunal—

(a) substitutes another class member as the complainant for the complaint under section 201(2); and

(b) notifies the person seeking withdrawal of the complaint—

(i) of the substitution; and

(ii) that the person may opt out of the complaint under section 195.

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193A Transfer of complaints from industrial relations commission to QCAT

(1) This section applies if—

(a) a complaint is referred to the industrial relations commission; and

(b) the commission considers the complaint includes a matter that is not a work-related matter.

Note—

For a complaint referred to QCAT, see the QCAT Act, section 52 in relation to the power to transfer the complaint.

(2) The commission may, by order, transfer the complaint to QCAT.

(3) If the commission makes an order under subsection (2)—

(a) a complaint relating to the matter is taken to have been referred to QCAT when the complaint mentioned in subsection (1) was referred to the commission; and

(b) the commission may make the orders, or give the directions, it considers appropriate to facilitate the transfer, including an order that a party is taken to have complied with the requirements under this Act, the QCAT Act or another law for referring the complaint to QCAT; and

(c) QCAT may deal with the work-related matter included in the complaint as if the complaint did not include a work-related matter.

(4) An order under subsection (3)(b) has effect despite any other Act or law.

(5) The commission may act under subsection (2) or (3)(b) on its own initiative or on an application of a party to the proceeding to which the complaint relates.

(6) If the commission does not make an order under subsection (2), the commission may deal with the complaint as if it did not relate to a matter that is not a work-related matter.

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Subdivision 2 Representative complaints

194 Tribunal may deal with complaint as representative complaint

(1) The tribunal may deal with a complaint referred to it as a representative complaint if—

(a) before the referral, the complaint was being dealt with by the commissioner as a representative complaint; or

(b) the tribunal decides to deal with the complaint as a representative complaint.

(2) The tribunal may decide to deal with a complaint made by or on behalf of a class of persons as a representative complaint if the tribunal is satisfied—

(a) all members of the class may make a complaint under section 134(1)(a) about the alleged contravention to which the complaint relates; and

(b) all of the complaints the members of the class may make under section 134(1)(a) about the alleged contravention to which the complaint relates—

(i) relate to, or arise out of, conduct of the same person; and

(ii) relate to, or arise out of, the same, similar or related circumstances; and

(iii) give rise to a substantial common issue of law or fact; and

(c) either—

(i) the complainant is a member of the class; or

(ii) the alleged contravention to which the complaint relates is a work-related matter, the complainant is a registered employee organisation and all members of the class are members of the organisation.

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195 Effect of representative complaint on persons who are members of class represented

(1) A person who is a member of a class of persons to which a representative complaint before the tribunal relates—

(a) may, by giving written notice to the tribunal before the date fixed under subsection (3), opt out of the representative complaint; and

(b) is not entitled to make a separate complaint in relation to the conduct constituting the alleged contravention of the Act to which the representative complaint relates, unless the person opts out under paragraph (a).

(2) Subsection (1)(b) is subject to section 148(3).

(3) The tribunal must fix a date (the ***opt-out date***) before which a person may opt out of a representative complaint under subsection (1).

(4) On the application of the complainant, respondent or a class member for a representative complaint, the tribunal may fix a later date as the opt-out date.

(5) Except by leave of the tribunal, the hearing of a representative complaint must not start earlier than the opt-out date.

196 Effect of representative complaint on persons who are not members of class represented

(1) The tribunal dealing with a complaint as a representative complaint in relation to an alleged contravention of the Act does not prevent a person who is not a member of the class of persons to which the representative complaint relates making a complaint in relation to the conduct constituting the alleged contravention.

(2) To remove any doubt, it is declared that subsection (1) also applies to a person who has opted out of the representative complaint under section 195.

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197 Tribunal may order complaint to be dealt with as representative complaint

If the tribunal is satisfied that a complaint made by or on behalf of a number of persons could be dealt with as a representative complaint if the persons on whose behalf the complaint is made are increased, reduced or otherwise altered, the tribunal may, by order, direct—

(a) that the complaint be dealt with as a representative complaint; and

(b) the complainant to amend the complaint to allow the complaint to be dealt with as a representative complaint.

198 Excessive distribution costs

(1) This section applies if—

(a) the relief sought in a representative complaint is or includes payment of money to the class members for the complaint, other than for costs; and

(b) on application by the respondent, the tribunal considers it is likely that, if an order were to be made in favour of the complainant, the cost to the respondent of identifying the class members for the complaint and distributing to them the amounts ordered to be paid to them would be excessive, having regard to the likely total of those amounts.

(2) The tribunal may, by order—

(a) direct that the complaint no longer continue as a representative complaint; or

(b) stay the complaint so far as it relates to relief of the kind mentioned in subsection (1)(a).

199 Tribunal may discontinue representative complaint in particular circumstances

(1) The tribunal may, on application by the respondent or on its own initiative, order that a complaint no longer continue as a

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representative complaint if the tribunal considers it is in the interests of justice to do so because—

(a) the complaint will not provide an efficient and effective way of dealing with the complaints of the class members for the complaint; or

(b) the complainant is not able to adequately represent the interests of the class members for the complaint; or

(c) it is otherwise inappropriate that the complaint continue as a representative complaint.

(2) If the tribunal dismisses an application by the respondent made under this section, the tribunal may order that no further application under this section may be made by the respondent in relation to the representative complaint except with the leave of the tribunal.

(3) For subsection (2), leave may be granted subject to the conditions about costs the tribunal considers just.

200 Effect of representative complaint being discontinued

(1) This section does not apply in relation to a representative complaint made by a registered employee organisation as provided under section 146(2).

(2) If the tribunal makes an order under section 198 or 199 that a complaint no longer continue as a representative complaint—

(a) the complaint may be continued as a complaint by the person who made the complaint on the person's own behalf against the respondent; and

(b) on the application of a class member for the complaint, the tribunal may order that the person be joined as a joint complainant in the continued complaint.

201 Substitution of complainant

(1) This section does not apply in relation to a representative complaint made by a registered employee organisation as provided under section 146(2).

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(2) If the complainant for a representative complaint gives the tribunal written notice under section 193 that the complainant does not want to continue with the complaint, the tribunal may substitute another class member as the complainant with the consent of the other class member.

(3) If the tribunal considers that the complainant is not able to adequately represent the interests of the class members for the complaint, the tribunal may substitute another class member as the complainant with the consent of the other class member.

202 Tribunal approval needed for settlement or withdrawal of representative complaint

(1) A representative complaint may be settled or withdrawn only with the approval of the tribunal.

(2) If the tribunal gives approval under subsection (1), the tribunal may make any orders it considers just for the distribution of money paid under a settlement or paid to the tribunal.

203 Notices for representative complaint

(1) For a representative complaint, each class member for the complaint must be given notice of the following matters—

(a) the making of the complaint and the right of the member to opt out of the complaint before the date fixed by the tribunal under section 195;

(b) the giving of a written notice of not continuing with the complaint to the tribunal under section 193;

(c) an application to the tribunal for the dismissal of the complaint;

(d) an application to the tribunal for approval of a settlement of the complaint.

(2) The notice must be given by the person, in the way and within the time directed by the tribunal.

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(3) The tribunal may, by order, direct the person who is required to give the notice to include other information in the notice.

(4) A notice about a matter for which the tribunal's leave or approval is required must state the period within which a person may apply to the tribunal, or take some other step, in relation to the matter.

(5) The tribunal may direct that notice be given by publishing a notice on a website or in another place likely to be accessible to the class members for the representative complaint.

(6) The tribunal must not direct that notice be given personally to each class member for the representative complaint unless the tribunal considers that giving personal notice to each class member would be reasonably practicable and not unduly expensive.

(7) The failure of a class member for the representative complaint to receive or respond to a notice does not affect a step taken, or an order made, in the representative complaint.

203A Directions about conduct of representative complaint

The tribunal may give directions about the conduct of a representative complaint before the tribunal.

Division 2 The hearing process

204 Burden of proof—general

(1) In a complaint proceeding, if there are facts from which it could be decided, in the absence of any other explanation, that the respondent contravened the provision of the Act the subject of the alleged contravention, the respondent is taken to have contravened the provision.

(2) Subsection (1) does not apply if the respondent proves, on the balance of probabilities, that the respondent did not contravene the provision.

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(3) Subsection (1) and (2) apply in addition to any other provision of the Act that provides for who has the onus of proving a particular matter.

Note—

See, for example, section 11(3) and 205.

205 Burden of proof—exemption

(1) An exemption is a defence to discrimination, and the person seeking to rely on the exemption has the onus of proving, on the balance of probabilities, that the exemption applies.

(2) In this section—

exemption means an exemption under chapter 2, part 4 or 5 that applies to discrimination.

207 Commissioner may provide investigation reports

(1) The commissioner may give the tribunal a report relating to the investigation of a complaint which the tribunal is hearing.

(2) The report must not contain a record of oral statements made by any person in the course of conciliation.

(3) The tribunal must give a copy of the report to the complainant and the respondent.

208 Evaluation of evidence

(1) The tribunal is not bound by the rules of evidence and—

(a) must have regard to the reasons for the enactment of this Act as stated in the preamble; and

(b) may draw conclusions of fact from any proceeding before a court or tribunal; and

(c) may adopt any findings or decisions of a court or tribunal that may be relevant to the hearing; and

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(d) may receive in evidence a report of the commissioner, but only if each party to the hearing has a copy of the report; and

(e) may permit any person with an interest in the proceeding to give evidence; and

(f) may permit the commissioner to give evidence on any issue arising in the course of a proceeding that relates to the administration of the Act.

(2) Nothing said or done in the course of conciliation can be admitted as evidence in a hearing before the tribunal.

Division 3 The post-hearing process

209 Orders the tribunal may make if complaint is proven

(1) If the tribunal decides that the respondent contravened the Act, the tribunal may make 1 or more of the following orders—

(a) an order requiring the respondent not to commit a further contravention of the Act against an affected person specified in the order;

(b) an order requiring the respondent to pay to an affected person, within a specified period, an amount the tribunal considers appropriate as compensation for loss or damage caused by the contravention;

(c) an order requiring the respondent to do specified things to redress loss or damage suffered by an affected person because of the contravention;

(d) an order requiring the respondent to make a private apology or retraction;

(e) an order requiring the respondent to make a public apology or retraction by publishing the apology or retraction in the way, and in the form, stated in the order;

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(f) an order requiring the respondent to implement programs to eliminate unlawful discrimination;

(g) an order requiring the respondent to pay interest on an amount of compensation;

(h) an order declaring void all or part of an agreement made in connection with a contravention of this Act, either from the time the agreement was made or subsequently.

(2) An order may be made under subsection (1)(b) in favour of a class member for a representative complaint, without the necessity for the class member to make an individual complaint, if on the evidence before it the tribunal is able to assess the loss or damage of the class member.

(3) If, in respect of a representative complaint—

(a) the tribunal decides that the respondent contravened the Act; but

(b) the tribunal is unable, on the evidence before it at the hearing of the representative complaint, to assess the loss or damage of a class member for the complaint;

the class member may subsequently make a request for the tribunal to assess the class member's loss or damage.

(4) In this section, the specified things a respondent may be required to do, include, but are not limited to—

(a) employing, reinstating or re-employing a person; or

(b) promoting a person; or

(c) moving a person to a specified position within a specified time.

(5) The tribunal may order costs in a complaint as follows—

(a) for a representative complaint—against the complainant or the respondent, but not against a class member for the complaint other than the complainant;

(b) otherwise—as provided under the relevant tribunal Act.

(6) In this section—

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affected person, in relation to an order by the tribunal about a complaint, means—

(a) the complainant; or

(b) for a representative complaint, a class member for the complaint; or

(c) another person stated in the order.

damage, in relation to a person, includes the offence, embarrassment, humiliation, and intimidation suffered by the person.

210 Tribunal may dismiss complaint

After a hearing, the tribunal may make an order dismissing a complaint.

Part 4 Offences (no complaint)

Division 1 Creation of offences to assist in enforcement

219 Creation of offences

A number of offences are created under the Act to assist in the enforcement of the Act's purposes.

Division 2 Improper communication offence

220 Improper communication of official information

(1) A person—

(a) who is or has been—

(i) the commissioner; or

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(ii) a member of the former Anti-Discrimination Tribunal; or

(iii) the registrar of the former Anti-Discrimination Tribunal; or

(iv) a member of the staff of the commission or the former Anti-Discrimination Tribunal; or

(v) a person acting under the direction or authority of the commissioner or a member of the former Anti-Discrimination Tribunal; or

(vi) a person acting under a delegation under section 244; and

(b) who, in that capacity, acquired information about a person's affairs or has custody of, or access to, a document about a person's affairs;

must not—

(c) make a record of the information; or

(d) communicate the information or produce the document to another person.

Maximum penalty—

(a) in the case of an individual—85 penalty units or imprisonment for 12 months; or

(b) in the case of a corporation—170 penalty units.

(2) Subsection (1) does not apply to making a record of information, communicating information or producing a document if—

(a) that is required for the performance of a function in connection with this Act; or

(b) that is required or permitted by another Act (whether of the Commonwealth or a State).

(3) Subsection (1) does not apply to communicating information or producing a document to a person in accordance with an arrangement under part 3 of chapter 9 (Commonwealth/State arrangement).

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(4) In this section—

former Anti-Discrimination Tribunal means the Anti-Discrimination Tribunal established under previous section 247.

previous section 247 means section 247 as in force before its repeal by the QCAT Amendment Act.

produce includes permit access to.

QCAT Amendment Act means the *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009*.

Division 3 Offences against the commissioner and staff

221 False or misleading information

A person must not knowingly or recklessly provide false or misleading information to a person performing a function under this Act or the *Human Rights Act 2019*.

Maximum penalty—

(a) in the case of an individual—45 penalty units or imprisonment for 3 months; or

(b) in the case of a corporation—170 penalty units.

222 Obstruction

A person must not consciously hinder or use insulting language towards a person who is performing a function under this Act or the *Human Rights Act 2019*.

Maximum penalty—

(a) in the case of an individual—35 penalty units; or

(b) in the case of a corporation—170 penalty units.

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223 Contempt of commission

(1) In addition to the acts or omissions for which a penalty or civil consequence is expressly provided in part 1, a person must not do another act in relation to the commission that would constitute a contempt of court.

(2) For the purposes of the law relating to contempt of court, the commission is to be treated as a court.

Division 5 Procedure

226 Proceedings for offences

(1) A prosecution for an offence against this Act or the *Human Rights Act 2019* is to be by way of summary proceeding under the *Justices Act 1886* on complaint of—

(a) the commissioner; or

(b) a person authorised by the commissioner for that purpose.

(2) A proceeding for an offence against this Act or the *Human Rights Act 2019* is to be taken—

(a) within 1 year after the offence is committed; or

(b) within 6 months after the offence comes to the commissioner's knowledge;

whichever period ends last, but a proceeding is not to be taken more than 2 years after the offence is committed.

(3) In addition to the places where a complaint for an offence against this Act or the *Human Rights Act 2019* may be heard under section 139 of the *Justices Act 1886*, the complaint may also be heard at a place within the Magistrates Courts' district in which the defendant resides.

(4) The authority of a person referred to in subsection (1)(b) to make a complaint is to be presumed until the contrary is proved.

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226A Continuing prohibition on identity disclosure

(1) This section applies if—

(a) under section 191(1), the tribunal makes an order prohibiting the disclosure of the identity of a person (the ***relevant person***); and

(b) a court is hearing—

(i) a prosecution for an offence under section 191(2) relating to the order; or

(ii) an appeal relating to a prosecution for an offence under section 191(2) relating to the order; and

(c) the court considers that the preservation of the anonymity of the relevant person is necessary to protect the work security, privacy or any human right of the relevant person.

(2) The court may make an order prohibiting the disclosure of the relevant person's identity.

(3) A contravention of an order made under subsection (2) is a contempt of the court.

Part 5 Proceedings involving unincorporated association

227 Unincorporated association represented by committee member

(1) If a proceeding under this Act involves an unincorporated association—

(a) the president; or

(b) the secretary; or

(c) another member of the committee of management;

is to be the nominal party.

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(2) If the nominal party ceases to hold office, the person's successor (whether or not acting) is to be substituted as the nominal party.

Chapter 8 Opinions

228 Commissioner may seek tribunal opinion

If a person asks the commissioner for advice about how the Act applies in a specific situation, the commissioner may ask the tribunal for its opinion.

228A Constitution of tribunal for this chapter

For the purpose of providing an opinion under this chapter, the tribunal must be constituted by—

(a) if the tribunal is the industrial relations commission—a member of the Industrial Court of Queensland; or

(b) if the tribunal is QCAT—a judicial member.

229 Tribunal has discretion

The tribunal has a discretion whether or not to provide an opinion.

230 Tribunal may request further information

If the tribunal decides to provide an opinion, it may require the person who requested the advice to provide information relevant to the matter.

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231 No complaint if compliance with opinion

A person may not make a complaint under the Act against a person acting in accordance with an opinion provided by the tribunal in response to a request for advice from the person.

232 Revocation of opinion

The tribunal may revoke an opinion if—

(a) it formed the opinion on the basis of false or misleading information; or

(b) the Supreme Court or the High Court makes a contrary ruling on a question of law covered by the opinion.

233 Appeal from opinion

(1) The commissioner, or a person with a relevant interest, may appeal, as provided under the relevant tribunal Act, against a tribunal opinion.

(2) For an appeal by a person with a relevant interest, the person is taken to have been a party to the request for the opinion.

Chapter 9 Administration

Part 1 The Queensland Human Rights Commission

234 The Queensland Human Rights Commission and Human Rights Commissioner

(1) The Queensland Human Rights Commission is established.

(2) There is to be a Human Rights Commissioner.

Authorised by the Parliamentary Counsel

(3) The commission consists of the commissioner and the staff of the commission.

235 Commission's functions

The commission has the following functions—

(a) to inquire into complaints and, where possible, to effect conciliation;

(b) to carry out investigations relating to contraventions of the Act;

(c) to examine Acts and, when requested by the Minister, proposed Acts, to determine whether they are, or would be, inconsistent with the purposes of the Act, and to report to the Minister the results of the examination;

(d) to undertake research and educational programs to promote the purposes of the Act, and to coordinate programs undertaken by other people or authorities on behalf of the State;

(e) to consult with various organisations to ascertain means of improving services and conditions affecting groups that are subjected to contraventions of the Act;

(f) when requested by the Minister, to research and develop additional grounds of discrimination and to make recommendations for the inclusion of such grounds in the Act;

(g) such functions as are conferred on the commission under another Act;

(h) such functions as are conferred on the commission under an arrangement with the Commonwealth under part 3;

(i) to promote an understanding and acceptance, and the public discussion, of human rights in Queensland;

(j) if the commission considers it appropriate to do so—to intervene in a proceeding that involves human rights

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issues with the leave of the court hearing the proceeding and subject to any conditions imposed by the court;

(k) such other functions as the Minister determines;

(l) to take any action incidental or conducive to the discharge of the above functions.

236 Commissioner's powers

(1) The commissioner has the powers given by the Act.

(2) The commissioner also has power to do all things that are necessary or convenient to be done for or in connection with the performance of the commission's functions.

(3) If the commissioner, in exercising its powers, asks a person to give the commissioner a document or other material, the commissioner may include with the request a requirement that the giving of the document or other material be done within the time stated in the requirement.

237 Financial administration

For the purposes of the *Financial Accountability Act 2009*, the commission is a statutory body within the meaning of that Act.

237A Commission is statutory body

(1) The commission is a statutory body for the *Statutory Bodies Financial Arrangements Act 1982*.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the commission's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

238 Appointment of commissioner

(1) The commissioner is to be appointed by the Governor in Council.

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(2) Subject to sections 242 and 243, the commissioner holds office for such term (not longer than 7 years) as is specified in the instrument of appointment.

(3) The commissioner is to be appointed under this Act, and not under the *Public Sector Act 2022*.

239 Terms of appointment

(1) The commissioner is to be paid such remuneration and allowances as are determined by the Governor in Council.

(2) The commissioner holds office on such terms, not provided for by the Act, as are determined by the Governor in Council.

240 Preservation of rights

If a public service officer is appointed as the commissioner, the person retains—

(a) any long service leave and other leave entitlements accrued or accruing; and

(b) any other rights and entitlements accrued or accruing under that Act and any other Act;

as if the person's service as commissioner were a continuation of the person's service as a public service officer.

241 Leave of absence

The Minister may grant leave of absence to the commissioner on such terms as the Minister considers appropriate.

242 Resignation

The commissioner may resign by signed notice delivered to the Governor.

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243 Termination of appointment

(1) The Governor in Council may terminate the appointment of the commissioner if the commissioner—

(a) becomes physically or mentally incapable of satisfactorily performing the duties of office; or

(b) is guilty of misconduct of a kind that could warrant dismissal from the public service if the commissioner were an officer of the public service; or

(c) is absent, without the Minister's leave and without reasonable excuse, for 14 consecutive days or 28 days in any 12 months.

(2) The Governor in Council must terminate the appointment of the commissioner if the commissioner—

(a) is convicted of an indictable offence (whether in Queensland or elsewhere); or

(b) 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

(c) engages in paid employment outside the duties of office without the Minister's approval.

244 Delegation of power or function by commissioner

The commissioner may delegate to a person powers or functions under—

(a) this or any other Act; or

(b) an arrangement made by the Minister with a Commonwealth Minister.

245 Acting commissioner

The Governor in Council may appoint a person to act as commissioner—

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(a) during a vacancy in the office; or

(b) during any period, or during all periods, when the commissioner is absent from duty or from the State or is, for any other reason, unable to perform the duties of the office.

246 Commission staff

The staff of the commission are to be employed under the *Public Sector Act 2022*.

Part 2 Strategic reviews

247 Strategic review of commission

(1) Strategic reviews of the commission are to be conducted under this part.

(2) A strategic review is to be conducted at least every 5 years, counting from when the report (the ***earlier report***) for the most recent earlier strategic review was given to the Minister and the commissioner under section 249(4), up to when the reviewer is appointed under subsection (4) to undertake the latest strategic review.

(3) However, if the parliamentary committee reported to the Legislative Assembly about the earlier report, and the committee's report made recommendations to which a Minister was required to respond under the *Parliament of Queensland Act 2001*, section 107, the 5 years is counted from when the Minister's response was tabled under that section.

(4) Each strategic review is to be undertaken by an appropriately qualified person (***reviewer***), appointed by the Governor in Council, who is to give a report on the review under section 249.

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(5) For subsection (4), a corporation is an appropriately qualified person if a director, employee or other staff member of the corporation is appropriately qualified to undertake the review.

(6) The terms of reference for a strategic review are to be decided by the Governor in Council.

(7) Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the commissioner about—

(a) the appointment of the reviewer; and

(b) the terms of reference for the review.

(8) The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.

(9) In this section—

strategic review includes—

(a) a review of the commission's functions; and

(b) a review of the commission's performance of the functions to assess whether they are being performed economically, effectively and efficiently.

248 Conduct of strategic review

In conducting a strategic review—

(a) the reviewer has the powers an authorised auditor has under the *Auditor-General Act 2009* for an audit of an entity; and

(b) that Act and other Acts apply to the reviewer as if the reviewer were an authorised auditor conducting an audit of an entity.

249 Report of strategic review

(1) The reviewer for a strategic review must give a copy of the proposed report on the review to the Minister and the commissioner.

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(2) The commissioner may, within 21 days after receiving the proposed report, give the reviewer written comments on anything in the proposed report.

(3) If the commissioner comments under subsection (2), the reviewer must—

(a) if the reviewer and commissioner can agree about how to dispose of a comment—incorporate into the report any agreed amendment necessary to dispose of the comment; or

(b) if the reviewer and commissioner can not agree about how to dispose of a comment—include the comment, in full, in the report.

(4) After complying with subsections (1) and (3), the reviewer must give the report (***review report***) to the Minister and the commissioner.

(5) The review report must be the same as the proposed report given to the Minister and the commissioner under subsection (1), apart from the changes made under subsection (3).

(6) The Minister must table the review report in the Legislative Assembly within 3 sitting days after the Minister receives the report.

(7) For the *Parliament of Queensland Act 2001*, section 92(2), the report is referred to the parliamentary committee.

Part 3 Commonwealth/State arrangement

258 Performance of functions

The Minister may make an arrangement with a Commonwealth Minister for or in relation to—

(a) the performance on a joint basis of any functions of the commission or the registrar of the tribunal; or

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(b) the performance by the Commonwealth or a Commonwealth instrumentality on behalf of the State of any functions of the commission or the registrar; or

(c) the performance by the commission or the registrar of functions on behalf of the Commonwealth.

259 Necessary provisions

An arrangement under this part may contain such incidental or supplementary provisions as the Minister and the Commonwealth Minister with whom the arrangement is made, consider necessary.

260 Act performed under arrangement

An act done by or in relation to the Commonwealth, or a Commonwealth instrumentality, acting (whether on a joint basis or otherwise) under an arrangement made under this part is taken to have been done by or in relation to the Commission.

261 Alterations

The Minister may arrange with the Commonwealth Minister with whom an arrangement is in force under this part for the variation or revocation of the arrangement.

262 Form of alterations

An arrangement under this part, or the variation or revocation of such an arrangement, is to be in writing, and a copy of each instrument by which an arrangement under this part is made, varied or revoked, is to be published in the gazette.

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263 Arrangement to prevail

To the extent that an arrangement made under this part is inconsistent with sections 237 to 243, 245 and 246, the arrangement is to prevail.

Chapter 10 Miscellaneous

Part 1 Service

263A Definitions for pt 1

In this part—

document includes a copy of a document.

give includes provide.

relevant party, for a complaint, means the complainant or respondent in relation to the complaint.

263B Operation of pt 1

This part, and not the *Acts Interpretation Act 1954*, section 39, applies for the giving of documents under this Act to a relevant party for a complaint.

263C General requirement for address for service

The address for service of a relevant party for a complaint as advised to the commissioner must be a residential or business address, a post office box address or an email address.

263E Change of address for service

(1) A relevant party for a complaint may, at any time before the complaint is finally dealt with by the commissioner, give

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written notice to the commissioner of a change in the relevant party's address for service.

(2) A relevant party for a complaint must give all other relevant parties for the complaint a copy of a written notice given under subsection (1).

263F Use of address for service

(1) For a complaint, the address for service of a relevant party for the complaint is the relevant party's address for service—

(a) for the commissioner—as most recently notified to the commissioner; or

(b) for another relevant party for the complaint—as most recently notified to the other relevant party.

(2) If a document is required or permitted to be given to a relevant party for a complaint, the document is taken to be given to the relevant party if 1 of the following applies—

(a) the relevant party is an individual, and the document is handed to the relevant party personally;

(b) the document is posted to the relevant party's address for service;

(c) the relevant party's address for service is a residential address, and the document is left with someone apparently living at the address who is apparently at least 16 years;

(d) the relevant party is a body corporate, its address for service is a business address, and the document is left at the address for service.

(3) Despite subsection (2)(c) and (d), if the relevant party's address for service is a residential or business address and is a place in a building or area to which a person delivering a document is denied access, the document is taken to be given to the relevant party if it is left at the building or area in a position where it is reasonably likely to come to the attention of the relevant party.

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(4) Subsection (2)(b) does not stop the relevant party from establishing that the relevant party was not given the document by proving that the document was not delivered to the address for service.

(5) If the document is given to a relevant party under subsection (2)(c) or (d) or (3), the giving of the document is taken to have been effected on the business day after the document is left in the way required.

263G Communication effected by giving of document

(1) This section applies if the commissioner is required or permitted under this Act, in relation to a complaint, to communicate with a relevant party for the complaint including, for example, by doing any of the following—

(a) notifying the relevant party of something, whether or not in writing;

(b) asking or telling the relevant party something, whether or not in writing;

(c) giving the relevant party reasons for something, whether or not in writing;

(d) giving the relevant party a direction, or otherwise ordering the relevant party to do something, whether or not in writing;

(e) writing to the relevant party to tell the relevant party something.

(2) The commissioner may effect the communication by—

(a) putting the substance of the communication into a document; and

(b) giving the document to the relevant party in a way provided for under this part for the giving of a document to a relevant party for a complaint.

Example—

Section 169(1) includes a requirement for the commissioner to tell a complainant in writing that a complaint will lapse unless the

complainant indicates that the complainant wishes to continue with it. The commissioner may tell the complainant about the lapsing of the complaint by including the information in a document and posting the document to the complainant's address for service.

263H No address for service advised

(1) This section applies if the address for service of a relevant party for a complaint is not known—

(a) because of the relevant party's failure to comply with a requirement for advising an address for service; or

(b) because the relevant party is a respondent, and has not yet been notified under section 143.

(2) The relevant party's address for service is taken to be—

(a) for an individual—the individual's last known place of business or residence; or

(b) for a body corporate—the body corporate's head office or its principal or registered office.

(3) For subsection (1)(a), a relevant party's failure to comply with a requirement for advising an address for service includes a respondent's failure to advise the commissioner of the respondent's address for service after receiving a notice under section 143.

263I Email or fax address

(1) A relevant party for a complaint may, as well as advising the relevant party's address for service, also advise an email address or fax number for the relevant party.

(2) If a relevant party for a complaint, in advising an address for service, has also advised an email address or fax number and has stated a preference for the use of the email address or fax number for the service of documents, a document to be given to the relevant party in relation to the complaint may be, but is not required to be, given to the relevant party by using the email address or fax number.

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Part 2 Other matters

264 No communication of official information to court

(1) A person—

(a) who is or has been—

(i) the commissioner; or

(ii) a member of the former Anti-Discrimination Tribunal; or

(iii) the registrar of the former Anti-Discrimination Tribunal; or

(iv) a member of the staff of the commission or the former Anti-Discrimination Tribunal; or

(v) a person acting under the direction or authority of the commissioner or a member of the former Anti-Discrimination Tribunal; or

(vi) a person acting under a delegation under section 244; and

(b) who, in that capacity, acquired information about a person's affairs or has access to, or custody of, a document about a person's affairs;

may not be required—

(c) to give to a court the information; or

(d) to produce in a court the document.

(2) Subsection (1) does not apply if giving the information or producing the document—

(a) is required for the performance of a function in connection with this Act; or

(b) is required or permitted by another Act (whether of the Commonwealth or a State).

(3) In this section—

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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.

265 Protection from civil actions—exercise of functions etc.

(1) A person who is or has been—

(a) the commissioner; or

(b) a member of the former Anti-Discrimination Tribunal; or

(c) the registrar of the former Anti-Discrimination Tribunal; or

(d) a member of the staff of the commission or the former Anti-Discrimination Tribunal; or

(e) a person acting under the direction or authority of the commissioner or a member of the former Anti-Discrimination Tribunal; or

(f) a person acting under a delegation under section 244;

incurs no civil liability for an honest act or omission in—

(g) the performance or purported performance of functions under this Act or the *Human Rights Act 2019*; or

(h) the exercise or purported exercise of powers under this Act or the *Human Rights Act 2019*.

(2) A liability that would, but for this section, attach to a person mentioned in subsection (1) attaches instead to the State.

266 Protection from civil actions—complaint etc.

If—

(a) a complaint has been made to the commissioner; or

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(b) a submission has been made or a document, information or evidence given to the commissioner or the former Anti-Discrimination Tribunal;

a person incurs no civil liability in respect of loss, damage or injury of any kind suffered by another person merely because the complaint or submission was made or the document, information or evidence given.

267 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may make provision about—

(a) the exercise of the commissioner's powers; and

(b) the fees to be paid for making a complaint to the commission under chapter 7.

(3) A regulation may provide that contravention of a regulation is an offence and prescribe a maximum penalty for the offence of not more than 20 penalty units.

Chapter 11 Transitional provisions

Part 1 Transitional provision for Act No. 29 of 1994

268 Transitional provisions about compulsory age retirement

(1) Subject to section 106A (Compulsory retirement age under legislation etc.), a provision of—

(a) a previous industrial order; or

(b) a previous industrial agreement; or

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(c) a previous public sector policy;

is of no effect so far as it requires, or requires or authorises the compelling of, a worker to retire on or after reaching a particular age.

(2) If a compulsory retirement age is—

(a) set for a person on or before 30 June 1994 under section 32(1) (Compulsory retirement age) as in force on that day; or

(b) specified for a person under a previous agreement;

then, by force of this subsection, the person is required, and is taken always to have been required, to retire in accordance with the compulsory retirement age set or specified unless the compulsory retirement age is subsequently waived by the relevant parties.

(3) Subject to section 106A, a previous provision of an Act is of no effect so far as it has the effect, apart from this subsection, of disqualifying, or requiring or authorising the disqualification of, a person from applying for or being appointed to an office or position or other work because the person has reached a particular age.

(4) Subject to section 106A, a previous provision of an Act is of no effect so far as it requires, or requires or authorises the compelling of, a person to end work on or after reaching a particular age.

(5) Subsections (1), (3) and (4) have effect despite section 106 (Acts done in compliance with legislation etc.).

(6) In this section—

previous agreement means any agreement in existence on 30 June 1994 other than a previous industrial agreement.

previous industrial agreement means a certified agreement, enterprise flexibility agreement or industrial agreement within the meaning of the *Industrial Relations Act 1990* in force on 30 June 1994.

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previous industrial order means an order or award of a court or tribunal having power to fix minimum wages and other terms of employment in force on 30 June 1994.

previous provision of an Act means a provision of an Act in force on 30 June 1994.

previous public sector policy means a policy, standard or other instrument of a previous public sector unit that applied on 30 June 1994 to an employee of the unit.

previous public sector unit means an entity that was a unit of the public sector on 30 June 1994 under the repealed *Public Sector Management Commission Act 1990*.

Part 2 Transitional provisions for Discrimination Law Amendment Act 2002

269 Application of amendments made by Discrimination Law Amendment Act 2002

(1) The following provisions of this Act, as inserted, or to the extent amended, by the *Discrimination Law Amendment Act 2002*, do not apply for the purposes of a complaint received by the commissioner before the commencement of this section—

(a) section 136;

(b) section 143(2) to (5);

(c) section 153;

(d) section 154A;

(e) section 155;

(f) section 164A.

(2) The following provisions of this Act, as inserted, or to the extent amended, by the *Discrimination Law Amendment Act 2002*, apply for the purposes of a complaint, whether the

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complaint was received by the commissioner before or after the commencement of this section—

(a) section 188;

(b) section 201;

(c) section 208;

(d) section 209;

(e) section 213;

(f) chapter 7, part 2, division 3A;

(g) section 215A;

(h) section 216;

(i) section 236;

(j) chapter 10, part 1.

270 Operation of service provisions for complaints received before commencement

(1) This section provides for the application of chapter 10, part 1 to a complaint received by the commissioner before the commencement of this section.

(2) Despite section 269(2), nothing in chapter 10, part 1 requires a relevant party for the complaint to advise the commissioner, the tribunal or another relevant party for the complaint of the relevant party's address for service.

(3) However—

(a) a relevant party for the complaint may at any time advise an address for service in the same way a relevant party for a complaint may advise a change of the relevant party's address for service under section 263E; and

(b) if a relevant party for the complaint has not advised an address for service, the relevant party's address for service is taken to be the address mentioned for the party in section 263H(2).

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(4) In this section—

relevant party, for a complaint, means the complainant or respondent in relation to the complaint.

Part 3 Transitional provision for Youth Justice (Boot Camp Orders) and Other Legislation Amendment Act 2012

271 Application of ch 2, pt 5

(1) Chapter 2, part 5 as in force immediately before the introduction day continues to apply in relation to a pre-introduction complaint.

(2) Chapter 2, part 5 as amended by the amendment Act applies in relation to a complaint made under section 136 on or after the introduction day.

(3) To remove any doubt, it is declared that subsection (2) applies for the purposes of—

(a) the hearing of the complaint by the tribunal; and

(b) any appeal against a decision or order made by the tribunal in relation to the complaint.

(4) In this section—

amendment Act means the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Act 2012*.

introduction day means the day on which the Bill for the amendment Act was introduced in the Legislative Assembly.

pre-introduction complaint means a complaint made under section 136 before the introduction day, whether or not the complaint is accepted by the commissioner before the introduction day.

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Part 4 Transitional provisions for Justice and Other Legislation Amendment Act 2013

272 Definitions for pt 4

In this part—

amended, for a provision, means the provision as amended by the *Justice and Other Legislation Amendment Act 2013*.

commencement means commencement of this section.

273 Application of amended ss 140 and 154A to a complaint made before commencement

(1) This section applies to a complaint made to the commissioner that had not, before the commencement, been accepted, rejected or stayed.

(2) The Commissioner may deal with the complaint as if the complaint had been made after the commencement, including by—

(a) rejecting or staying the complaint under amended section 140; or

(b) investigating the complaint under amended section 154A.

274 Complainant can not make further complaint if complaint lapsed under former s 168 or 170

(1) This section applies to a complaint that, before the commencement, had lapsed under section 168(3) or 170(2).

(2) The complainant can not make a further complaint in relation to the act or omission the subject of the complaint.

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275 Application of s 168A to complaint accepted before commencement

(1) This section applies to a complaint that, immediately before the commencement, had been accepted but not finally dealt with or referred to the tribunal.

(2) Section 168A applies to the complaint as if it had been made after commencement.

Part 5 Transitional provision for Industrial Relations Act 2016

276 Application of amendments relating to functions of industrial relations commission

(1) This Act as in force before the commencement of the IR Act continues to apply in relation to any of the following made under this Act before the commencement—

(a) a complaint;

(b) an application for an exemption under section 113;

(c) a request for an opinion under chapter 8.

(2) However, the amended Act applies if, before the commencement—

(a) for a complaint—the complaint was not accepted by the commissioner under section 141; or

(b) for an application under section 113 or a request for an opinion under chapter 8—the tribunal had not taken any steps in dealing with the application or request.

(3) The amended Act applies in relation to a complaint, application or other proceeding made or started under this Act on or after the commencement.

(4) Without limiting subsection (2) or (3), if QCAT considers a complaint or application mentioned in the subsection is or includes a work-related matter, QCAT may transfer the

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complaint or application to the industrial relations commission under the QCAT Act, section 52.

(5) In this section—

amended Act means this Act as amended by the *Industrial Relations Act 2016*.

Part 6 Transitional provisions for Human Rights Act 2019

277 Commissioner

(1) Subject to this Act, the current commissioner continues in office as the Human Rights Commissioner until the end of the term stated in the person's instrument of appointment.

(2) A reference in a document to the Anti-Discrimination Commissioner is, unless the context otherwise permits, taken to be a reference to the Human Rights Commissioner.

(3) In this section—

current commissioner means the person who, immediately before the commencement, was the Anti-Discrimination Commissioner.

278 Commission

(1) The current commission continues as the Queensland Human Rights Commission.

(2) A reference in a document to the Anti-Discrimination Commission is, unless the context otherwise permits, taken to be a reference to the Queensland Human Rights Commission.

(3) In this section—

current commission means the body that, immediately before the commencement, was the Anti-Discrimination Commission.

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Part 7 Transitional provision for Industrial Relations and Other Legislation Amendment Act 2022

279 Application of s 190 to existing complaints

Section 190 applies for a complaint mentioned in that section, regardless of whether the complaint was made, or referred to the tribunal, before or after the commencement.

Part 8 Transitional provision for Public Sector Act 2022

280 First strategic review of commission after commencement

Despite section 247(2), the first strategic review of the commission under chapter 9, part 2 is to be conducted within 4 years after the commencement.

Part 9 Transitional provision for Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023

281 Continued application of former s 131A

(1) Former section 131A continues to apply to a person charged with an offence under that section as if the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* had not commenced.

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(2) Subsections (3) and (4) apply if—

(a) immediately before the commencement, a proceeding could have been started for an offence against former section 131A; and

(b) on the commencement, the proceeding has not been started.

(3) The proceeding may be started and continued under former section 131A, as if the *Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Act 2023* had not commenced.

(4) However, despite former section 131A(2), the proceeding may be heard and decided without a Crown Law Officer's written consent.

(5) In this section—

former section 131A means section 131A as in force before the commencement.

Part 10 Transitional provisions for Respect at Work and Other Matters Amendment Act 2024

282 Definitions for part

In this part—

amendment Act means the *Respect at Work and Other Matters Amendment Act 2024*.

former, for a provision of this Act, means the provision as in force from time to time before the commencement of the provision in which the term is used.

new, for a provision of this Act, means the provision as in force from the commencement of the provision in which the term is used.

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285 Existing representative complaints

(1) This section applies in relation to a complaint accepted by the commissioner before the commencement that, immediately before the commencement—

(a) was a representative complaint; and

(b) either—

(i) was still being dealt with by the commissioner; or

(ii) had been referred to the tribunal and was still being dealt with by the tribunal.

(2) Former chapter 7, parts 1 and 2 continue to apply in relation to the complaint, and the complaint must continue to be dealt with under former chapter 7, parts 1 and 2, as if the amendment Act had not been enacted.

(3) Subsection (2) does not prevent the commissioner giving directions under former section 150, or the tribunal giving directions under section former 198, that allows for the complaint to be dealt with in a way that is consistent with this Act as in force from the commencement.

285AA Delayed application of new burden of proof for complaints

(1) This section applies in relation to—

(a) a complaint made before the relevant commencement that, immediately before the relevant commencement, had not been finally dealt with; or

(b) a complaint made after the relevant commencement in relation to an alleged contravention of the Act that happened before the relevant commencement.

(2) New sections 204 and 205 do not apply in relation to the complaint.

(3) Former sections 204 to 206 continue to apply in relation to the complaint, as if section 47A of the amendment Act had not commenced.

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(4) This section is taken to have applied from 1 December 2024.

(5) In this section—

former sections 204 to 206 means sections 204 to 206 of this Act as in force before 1 December 2024.

new sections 204 and 205 means sections 204 and 205 of this Act as in force from 1 December 2024.

relevant commencement means the commencement of section 7B of the amendment Act.

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Schedule 1 Dictionary

section 4

accommodation includes—

(a) business premises; and

(b) a house or flat; and

(c) a hotel or motel; and

(d) a boarding house or hostel; and

(e) a caravan or caravan site; and

(f) a manufactured home, or a site, under the *Manufactured Homes (Residential Parks) Act 2003*; and

(g) a camping site; and

(h) a building or construction site.

advertisement includes every form of advertisement or notice, however displayed, and whether or not displayed to the public, and includes, for example, an advertisement—

(a) in a newspaper or other publication; or

(b) by television or radio; or

(c) by display of notices, signs, labels or goods; or

(d) by distribution of samples, circulars, catalogues, price lists or other material; or

(e) by exhibition of pictures, models or films.

affairs, in relation to a club, has the meaning given by the Corporations Act, section 53.

agent means a person who has actual, implied or ostensible authority to act on behalf of another.

assistance dog has the meaning given by the *Guide, Hearing and Assistance Dogs Act 2009*, schedule 4.

attribute means an attribute set out in section 7.

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class member, for a representative complaint, means each person named or otherwise identified in the complaint as a person on whose behalf the complaint is made, other than a person who has opted out of the complaint under section 148 or 195.

club means an association that—

(a) is established for social, literary, cultural, political, sporting, athletic, recreational, community service or any other similar lawful purposes; and

(b) carries out its purposes for the purpose of making a profit.

commission means the Queensland Human Rights Commission established under section 234(1).

commissioner means the Human Rights Commissioner.

committee of management, in relation to a club or unincorporated association, means the group or body of people, by whatever name called, that manages the affairs of the club or association.

complainant means—

(a) in relation to a representative complaint—

(i) the person who made the complaint; or

(ii) if the complainant has been substituted under section 152 or 201—the substituted complainant; or

(b) in relation to a complaint by a relevant entity under section 134—the relevant entity; or

(c) otherwise—the person who is the subject of the alleged contravention of the Act.

contravention, in relation to the Act, means—

(a) unlawful discrimination; or

(b) sexual harassment; or

(c) conduct prohibited by chapter 4 or 5.

direct discrimination has the meaning given by section 10.

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discriminate means discriminate whether by direct discrimination or indirect discrimination.

discrimination on the basis of an attribute has the meaning given by section 8.

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

educational institution means a school, college, university or other institution providing any form of training or instruction, and includes a place at which training or instruction is provided by an employer.

EIS, for chapter 5B, see section 131B.

exclude, in relation to a student, means expel.

family responsibilities, of a person, means the person's responsibilities to care for or support—

(a) a dependant child of the person; or

(b) any other member of the person's immediate family who is in need of care or support.

fly-in fly-out worker, for a large resource project, for chapter 5B, see section 131B.

forced retirement includes engaging in conduct with a view to causing a person to retire from particular work because of the person's age.

former Anti-Discrimination Tribunal see section 220(4).

gender identity, of a person—

(a) is the person's internal and individual experience of gender, whether or not it corresponds with the sex assigned to the person at birth; and

(b) without limiting paragraph (a), includes—

(i) the person's personal sense of the body; and

(ii) if freely chosen—modification of the person's bodily appearance or functions by medical, surgical or other means; and

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(iii) other expressions of the person's gender, including name, dress, speech and behaviour.

guide dog has the meaning given by the *Guide, Hearing and Assistance Dogs Act 2009*, schedule 4.

hearing dog has the meaning given by the *Guide, Hearing and Assistance Dogs Act 2009*, schedule 4.

human rights has the meaning given by section 3(1) of the *Australian Human Rights Commission Act 1986* (Cwlth).

immediate family, of a person, means—

(a) the person's spouse or former spouse; or

(b) a child of the person or the person's spouse or former spouse, including an exnuptial child, stepchild, adopted child, or past or present foster child of the person or the person's spouse or former spouse; or

(c) a parent, grandparent, grandchild or sibling of the person or the person's spouse or former spouse.

impairment, in relation to a person, means—

(a) the total or partial loss of the person's bodily functions, including the loss of a part of the person's body; or

(b) the malfunction, malformation or disfigurement of a part of the person's body; or

(c) a condition or malfunction that results in the person learning more slowly than a person without the condition or malfunction; or

(d) a condition, illness or disease that impairs a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or

(e) the presence in the body of organisms capable of causing illness or disease; or

(f) reliance on a guide, hearing or assistance dog, wheelchair or other remedial device;

whether or not arising from an illness, disease or injury or from a condition subsisting at birth, and includes an impairment that—

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(g) presently exists; or

(h) previously existed but no longer exists.

indirect discrimination has the meaning given by section 11.

industrial relief means relief under the *Industrial Relations Act 2016*, chapter 8, part 2.

insurance includes—

(a) an annuity; and

(b) life assurance; and

(c) accident insurance; and

(d) illness insurance.

IR Act means the *Industrial Relations Act 2016*.

large resource project, for chapter 5B, see section 131B.

Magistrates Courts' district means the district appointed under the *Justices Act 1886* for the purposes of Magistrates Courts.

nearby regional community, for a large resource project, for chapter 5B, see section 131B.

order, of the tribunal, in relation to an agreement, the terms of which are recorded in a document filed under section 164 or 189, means—

(a) if the document is filed with the industrial relations commission—a decision of the commission under the IR Act; or

(b) if the document is filed with QCAT—a final decision of QCAT in a proceeding under the QCAT Act.

out-of-time contravention see section 141A(1)(a)(ii).

owner, of a large resource project, for chapter 5B, see section 131B.

parent includes—

(a) step-parent; and

(b) adoptive parent; and

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(c) foster parent; and

(d) guardian.

parental status means whether or not a person is a parent.

parliamentary committee means—

(a) if the Legislative Assembly resolves that a particular committee of the Assembly is to be the parliamentary committee under this Act—that committee; or

(b) if paragraph (a) does not apply and the standing rules and orders state that the portfolio area of a portfolio committee includes the commissioner—that committee; or

(c) otherwise—the portfolio committee whose portfolio area includes the department, or the part of a department, in which this Act is administered.

position includes a position as—

(a) a worker; or

(b) a partner.

principal contractor, for chapter 5B, see section 131B.

race includes—

(a) colour; and

(b) descent or ancestry; and

(c) ethnicity or ethnic origin; and

(d) nationality or national origin.

recruitment process, for a large resource project, for chapter 5B, see section 131B.

registered employee organisation means an organisation of employees that is registered under the *Industrial Relations Act 2016* or the *Fair Work (Registered Organisations) Act 2009* (Cwlth).

registrar, of the tribunal, means the principal registrar of the tribunal.

related body corporate, for chapter 5B, see section 131B.

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relation, in relation to a person, means relation to the person by blood, marriage, affinity or adoption, and includes a person who is wholly or mainly dependent on, or is a member of the household of, the first person.

relationship status means whether a person is—

(a) single; or

(b) married; or

(c) married to another person, but living separately and apart from the other person; or

(d) divorced; or

(e) widowed; or

(f) a de facto partner; or

(g) a civil partner.

relevant tribunal Act means—

(a) in relation to a work-related matter—the IR Act; or

(b) in relation to any other matter—the QCAT Act.

religious activity means engaging in, not engaging in or refusing to engage in a lawful religious activity.

religious belief means holding or not holding a religious belief.

resident, of a nearby regional community, for chapter 5B, see section 131B.

resource project, for chapter 5B, see section 131B.

respondent, in relation to a complaint, means a person alleged in the complaint to have contravened the Act.

services includes—

(a) access to and use of any place, vehicle or facilities that members of the public are permitted to use; and

(b) banking and the supply of loans, finance or credit guarantees; and

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(c) recreation, including entertainment, sports, tourism and the arts; and

(d) the supply of refreshments; and

(e) services connected with transport and travel; and

(f) services of any profession, trade or business; and

(g) services provided by a public or local government; and

(h) the provision of scholarships, prizes or awards;

but does not include—

(i) superannuation; or

(j) insurance.

sex characteristics, of a person, means the person's physical features and development related to the person's sex, and includes—

(a) genitalia, gonads and other sexual and reproductive parts of the person's anatomy; and

(b) the person's chromosomes, genes and hormones that are related to the person's sex; and

(c) the person's secondary physical features emerging as a result of puberty.

sexuality means heterosexuality, homosexuality or bisexuality.

sex work activity—

(a) means the provision by an adult person of the following services for payment or reward—

(i) services that involve the person participating in a sexual activity with another person;

(ii) services that involve the use or display of the person's body for the sexual arousal or gratification of another person; and

(b) includes being or having been a person who provides services mentioned in paragraph (a).

State includes Territory.

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superannuation fund means a superannuation or provident fund or scheme.

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

term includes condition.

tribunal means—

(a) in relation to a work-related matter—the industrial relations commission; or

(b) in relation to any other matter—QCAT.

work includes—

(a) work in a relationship of employment (including full-time, part-time, casual, permanent and temporary employment); and

(b) work under a contract for services; and

(c) work remunerated in whole or in part on a commission basis; and

(d) work under a statutory appointment; and

(e) work under a work experience arrangement within the meaning of the *Education (Work Experience) Act 1996*, section 4; and

(ea) work under a vocational placement; and

(f) work on a voluntary or unpaid basis; and

(g) work by a person with an impairment in a sheltered workshop, whether on a paid basis (including a token remuneration or allowance) or an unpaid basis; and

(h) work under a guidance program, an apprenticeship training program or other occupational training or retraining program.

worker, for a large resource project, for chapter 5B, see section 131B.

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work-related matter means a complaint or other matter relating to, or including, work or the work-related area.

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