



Australian Capital Territory

# **Discrimination Act 1991**

**A1991-81**

**Republication No 39**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Discrimination Act 1991* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 11 September 2012. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 11 September 2012.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



Australian Capital Territory

# Discrimination Act 1991

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Australian Capital Territory

## Discrimination Act 1991

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An Act to make certain kinds of discrimination unlawful and to provide for related matters

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Discrimination Act 1991*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*discriminate*—see section 8.' means that the word 'discriminate' is defined in section 8.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

### 4 Objects

The objects of this Act are—

- (a) to eliminate, so far as possible, discrimination to which this Act applies in the areas of work, education, access to premises, the provision of goods, services, facilities and accommodation and the activities of clubs; and
- (b) to eliminate, so far as possible, sexual harassment in those areas; and
- (c) to promote recognition and acceptance within the community of the equality of men and women; and

- (d) to promote recognition and acceptance within the community of the principle of equality of opportunity for all people.

#### **4A Meaning of *doing* an act**

- (1) In this Act:

*doing* an act includes failing to do the act.

*Note* The Legislation Act, dict, pt 1 defines *fail* to include refuse.

- (2) In this Act, a reference to doing an act because of a particular matter includes a reference to doing an act because of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for doing the act.

#### **5AA Meaning of *disability***

- (1) In this Act:

*disability* means—

- (a) total or partial loss of a bodily function; or
- (b) total or partial loss of a part of the body; or
- (c) malfunction of a part of the body; or
- (d) malformation or disfigurement of a part of the body; or
- (e) the presence in the body of organisms that cause or are capable of causing disease; or
- (f) an illness or condition which impairs a person's thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour; or
- (g) an intellectual disability or developmental delay.

- (2) Except in section 49 (Work related discrimination) and section 50 (Discrimination by qualifying bodies etc), **disability** includes a disability—
- (a) that the person has, or is thought to have (whether or not the person in fact has the disability); or
  - (b) that the person had in the past, or is thought to have had in the past (whether or not the person in fact had the disability); or
  - (c) that the person will have in the future, or is thought will have in the future (whether or not the person in fact will have the disability).

#### **5A Meaning of *potential pregnancy***

In this Act:

***potential pregnancy***, of a woman, includes—

- (a) the fact that the woman is or may be capable of bearing children; and
- (b) the fact that the woman has expressed a desire to become pregnant; and
- (c) the fact that the woman is likely, or is perceived as being likely, to become pregnant.

#### **6 MLAs as employers**

- (1) For this Act, a member of the Legislative Assembly (in his or her capacity as an office-holder or otherwise) is taken to be an employer in relation to a person who is, or who is seeking to be, employed under the *Legislative Assembly (Members' Staff) Act 1989*, section 5 or 10 as a member of the staff of the member.

- (2) In this section:

***office-holder***—see the *Legislative Assembly (Members' Staff) Act 1989*, dictionary.

**6A Offences against Act—application of Criminal Code etc**

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Discrimination to which Act applies

### 7 Grounds

- (1) This Act applies to discrimination on the ground of any of the following attributes:
  - (a) sex;
  - (b) sexuality;
  - (c) gender identity;
  - (d) relationship status;
  - (e) status as a parent or carer;
  - (f) pregnancy;
  - (g) breastfeeding;
  - (h) race;
  - (i) religious or political conviction;
  - (j) disability;
  - (k) industrial activity;
  - (l) age;
  - (m) profession, trade, occupation or calling;
  - (n) association (whether as a relative or otherwise) with a person identified by reference to an attribute referred to in another paragraph of this subsection;
  - (o) spent conviction within the meaning of the *Spent Convictions Act 2000*.

- (2) In this Act, a reference to an attribute mentioned in subsection (1) includes—
- (a) a characteristic that people with that attribute generally have; and
  - (b) a characteristic that people with that attribute are generally presumed to have; and
  - (c) such an attribute that a person is presumed to have; and
  - (d) such an attribute that the person had in the past but no longer has.

## **8 What constitutes discrimination**

- (1) For this Act, a person *discriminates* against another person if—
- (a) the person treats or proposes to treat the other person unfavourably because the other person has an attribute referred to in section 7; or
  - (b) the person imposes or proposes to impose a condition or requirement that has, or is likely to have, the effect of disadvantaging people because they have an attribute referred to in section 7.
- (2) Subsection (1) (b) does not apply to a condition or requirement that is reasonable in the circumstances.
- (3) In deciding whether a condition or requirement is reasonable in the circumstances, the matters to be taken into account include—
- (a) the nature and extent of the resultant disadvantage; and
  - (b) the feasibility of overcoming or mitigating the disadvantage; and
  - (c) whether the disadvantage is disproportionate to the result sought by the person who imposes or proposes to impose the condition or requirement.

**9 Disability—guide-dogs etc**

- (1) For this Act, a person discriminates against another person on the ground of disability if the discriminator treats the other person unfavourably because that person possesses or is accompanied by a guide-dog, a hearing dog, assistance animal or some other aid associated with the disability, whether or not it is the discriminator's practice to treat unfavourably people who possess or are accompanied by dogs, assistance animals or other things.
- (2) This section does not limit the operation of section 8 in relation to discrimination on the ground of disability.
- (3) This Act does not affect the liability of a person who is blind or deaf or has any other disability for any injury, loss or damage caused by a guide-dog, hearing dog, assistance animal or other aid.
- (4) In this section:

*assistance animal* means an animal trained to assist a person to alleviate the effect of the person's disability.

*blind* includes partially blind.

*deaf* includes partially deaf.

*guide-dog* means a dog that has been trained in the guidance of the blind and is, or is to be, used for the guidance of a blind person.

*hearing dog* means a dog that has been trained in the assistance of the deaf and is, or is to be, used for the assistance of a deaf person.



## **Part 3                      Unlawful discrimination**

### **Division 3.1                Discrimination in work**

#### **10                      Applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person—
  - (a) in the arrangements made for the purpose of deciding who should be offered employment; or
  - (b) in deciding who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee—
  - (a) in the terms or conditions of employment that the employer affords the employee; or
  - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training or to any other benefit associated with employment; or
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.
- (3) To remove any doubt, an employer discriminates against an employee if the employer denies the employee access to a benefit associated with employment because the employee is in a same-sex relationship.

#### **Example of discrimination**

denying an employee who is in a same-sex relationship access to parental leave that is available to other parents

*Note*        An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) Subsection (3) is in addition to, and does not limit, any other provision of this Act that provides what is, or is not, discrimination under this Act.

## **11 Employees—religious practice**

It is unlawful for an employer to discriminate against an employee on the ground of religious conviction by refusing the employee permission to carry out a religious practice during working hours, being a practice—

- (a) of a kind recognised as necessary or desirable by people of the same religious conviction as that of the employee; and
- (b) the performance of which during working hours is reasonable having regard to the circumstances of the employment; and
- (c) that does not subject the employer to unreasonable detriment.

## **12 Commission agents**

- (1) It is unlawful for a principal to discriminate against a person—
- (a) in the arrangements made for the purpose of deciding who should be engaged as a commission agent; or
  - (b) in deciding who should be engaged as a commission agent; or
  - (c) in the terms or conditions on which engagement as a commission agent is offered.
- (2) It is unlawful for a principal to discriminate against a commission agent—
- (a) in the terms or conditions that the principal affords the agent; or
  - (b) by denying the agent access, or limiting the agent's access, to opportunities for promotion, transfer or training or to any other benefit associated with the position as an agent; or

- (c) by terminating the engagement; or
- (d) by subjecting the agent to any other detriment.

### **13 Contract workers**

It is unlawful for a principal to discriminate against a contract worker—

- (a) in the terms or conditions on which the principal allows the contract worker to work; or
- (b) by not allowing the contract worker to work or continue to work; or
- (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the relevant work; or
- (d) by subjecting the contract worker to any other detriment.

### **14 Partnerships**

- (1) It is unlawful for any people who are proposing to form themselves into a partnership to discriminate against a person—
  - (a) in deciding who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (2) It is unlawful for a partner in a partnership to discriminate against a person—
  - (a) in deciding who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.

- (3) It is unlawful for a partner in a partnership to discriminate against another partner in the partnership—
- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership; or
  - (b) by expelling the partner from the partnership; or
  - (c) by subjecting the partner to any other detriment.

## 15 Professional or trade organisations

- (1) In this section:

**organisation** means an association or organisation of employers or employees.

- (2) It is unlawful for an organisation, the committee of management of an organisation or a member of the committee of management of an organisation to discriminate against a person who is not a member of the organisation—
- (a) by failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.

*Note* The Legislation Act, dict, pt 1 defines *fail* to include refuse.

- (3) It is unlawful for an organisation, the committee of management of an organisation or a member of the committee of management of an organisation to discriminate against a member of the organisation—
- (a) by denying the member access, or limiting the member's access, to any benefit provided by the organisation; or
  - (b) by depriving the member of membership or varying the terms of membership; or
  - (c) by subjecting the member to any other detriment.

## **16 Qualifying bodies**

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person—

- (a) by failing to confer, renew or extend the authorisation or qualification; or
- (b) in the terms or conditions on which it is prepared to confer, renew or extend the authorisation or qualification; or
- (c) by revoking or withdrawing the authorisation or qualification or varying the terms or conditions on which it is held; or
- (d) by subjecting the person to any other detriment.

*Note* The Legislation Act, dict, pt 1 defines *fail* to include refuse.

## **17 Employment agencies**

It is unlawful for an employment agency to discriminate against a person—

- (a) by refusing to provide the person with any of its services; or
- (b) in the terms or conditions on which it offers to provide the person with any of its services; or
- (c) in the way in which it provides the person with any of its services; or
- (d) by subjecting the person to any other detriment.

## Division 3.2 Discrimination in other areas

### 18 Education

- (1) It is unlawful for an educational authority to discriminate against a person—
- (a) by failing to accept the person's application for admission as a student; or
  - (b) in the terms or conditions on which it is prepared to admit the person as a student.

*Note* The Legislation Act, dict, pt 1 defines *fail* to include refuse.

- (2) It is unlawful for an educational authority to discriminate against a student—
- (a) by denying the student access, or limiting the student's access, to any benefit provided by the authority; or
  - (b) by expelling the student; or
  - (c) by subjecting the student to any other detriment.

### 19 Access to premises

It is unlawful for a person to discriminate against another person—

- (a) by refusing to allow the other person access to, or the use of, any premises (*public premises*) that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or
- (b) in the terms or conditions on which the discriminator is prepared to allow the other person access to, or the use of, public premises; or
- (c) in relation to the provision of means of access to public premises; or

- (d) by refusing to allow the other person the use of any facilities (*public facilities*) in public premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or
- (e) in the terms or conditions on which the discriminator is prepared to allow the other person the use of public facilities; or
- (f) by requiring the other person to leave public premises or cease to use such facilities.

## **20 Goods, services and facilities**

It is unlawful for a person (the *provider*) who (whether for payment or not) provides goods or services, or makes facilities available, to discriminate against another person—

- (a) by refusing to provide those goods or services or make those facilities available to the other person; or
- (b) in the terms or conditions on which the provider provides those goods or services or makes those facilities available to the other person; or
- (c) in the way in which the provider provides those goods or services or makes those facilities available to the other person.

## **21 Accommodation**

- (1) It is unlawful for a person (whether as principal or agent) to discriminate against another person—
  - (a) by refusing the other person's application for accommodation; or
  - (b) in the terms or conditions on which accommodation is offered to the other person; or

- (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person (whether as principal or agent) to discriminate against another person—
  - (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person; or
  - (b) by evicting the other person from accommodation occupied by the other person; or
  - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.

## 22 Clubs

- (1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club—
  - (a) by failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the club is prepared to admit the person to membership.

*Note* The Legislation Act, dict, pt 1 defines *fail* to include refuse.
- (2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a member of the club—
  - (a) in the terms or conditions of membership that are afforded to the member; or
  - (b) by failing to accept the member's application for a particular class or type of membership; or



- (c) by denying the member access, or limiting the member's access, to any benefit provided by the club; or
- (d) by depriving the member of membership or varying the terms of membership; or
- (e) by subjecting the member to any other detriment.

### **23 Requests etc for information**

It is unlawful for a person to discriminate against another person by requesting or requiring information (whether by way of completing a form or otherwise) in connection with, or for the purpose of performing, an act that is or would be unlawful under any other provision of this part or under part 5, 6 or 7.

## Part 4 Exceptions to unlawful discrimination

### Division 4.1 General exceptions

#### 24 Domestic duties

Section 10 (1) (a) or (b) or section 13 (b) does not make it unlawful for a person (the *first person*) to discriminate against someone else in relation to a position as an employee or contract worker if the duties of the position involve doing domestic duties on the premises where the first person lives.

#### 25 Residential care of children

Section 10 (1) (a) or (b) or section 13 (b) does not make it unlawful for a person to discriminate against someone else in relation to a position as an employee or contract worker if the duties of the position involve the care of a child where the child lives.

#### 25A Adoption

This Act does not prevent the director-general responsible for administering the *Adoption Act 1993* from discriminating against a person in making a decision—

- (a) under the *Adoption Act 1993*, section 18 in relation to the approval of a person to be registered as suitable for the placement of a child or young person for adoption; or
- (b) under the *Adoption Act 1993*, section 19 in relation to the removal of a person's name from the register of suitable people; or
- (c) under the *Adoption Act 1993*, section 35A in relation to the placement of a child or young person before adoption in the care of a person who is on the register of suitable people.

## **26 Domestic accommodation etc**

- (1) Section 21 does not make unlawful discrimination in relation to—
- (a) the provision of accommodation if—
    - (i) the person who provides or proposes to provide the accommodation, or a near relative or carer of the person, lives and intends to continue to live on the premises; and
    - (ii) the accommodation provided in the premises is for not more than 6 people, not including the person mentioned in subparagraph (i) and any near relative or carer of the person; or
  - (b) the provision of accommodation by a religious body for members of a relevant class of people; or
  - (c) the provision of accommodation by a charitable or voluntary body for members of a relevant class of people.
- (2) In this section:

*near relative*, of a person, means—

- (a) a parent, child, grandparent, grandchild, brother or sister of the person; or
- (b) a domestic partner of the person or of a person mentioned in paragraph (a).

*Note* For the meaning of *domestic partner*, see Legislation Act, s 169.

## **26A Preselection by employment agencies**

Part 3 or part 4 does not make unlawful discrimination by an employment agency in the selection of people as suitable for a job vacancy if, had the proposed employer discriminated against the person in the same way, the discrimination would not have been unlawful.

## 27 Measures intended to achieve equality

- (1) Part 3 does not make it unlawful to do an act if a purpose of the act is—
- (a) to ensure that members of a relevant class of people have equal opportunities with other people; or
  - (b) to give members of a relevant class of people access to facilities, services or opportunities to meet the special needs they have as members of the relevant class.
- (2) However, subsection (1) does not make it lawful to do an act for a purpose mentioned in that subsection if the act discriminates against a member of the relevant class in a way that is not reasonable for the achievement of that purpose.

### Example for s (1) (a)

An employer runs a management skills development course for female employees only. Part 3 does not make this unlawful if a purpose is to ensure that women have equal opportunities (in this case, for career development) with men. Women are ‘members of a relevant class of people’ (*relevant class of people* is defined in the dict) because they are a class of people whose members are identified by reference to an attribute mentioned in s 7, in this case, sex in s 7 (1) (a).

### Example for s (1) (b)

A health clinic provides speech therapy for autistic children only. Part 3 does not make this unlawful if a purpose is to give autistic children access to a service that meets their special needs as autistic children. Autistic children are ‘members of a relevant class of people’ because they are a class of people whose members are identified by reference to 2 attributes mentioned in s 7, in this case, disability in s 7 (1) (j) and age in s 7 (1) (l) (the Legislation Act, s 145 (b) provides that words in the singular include the plural ie ‘attribute’ in the def of *relevant class of people* can mean ‘attributes’).

**28 Insurance**

Part 3 does not make it unlawful for a person (the *first person*) to discriminate against someone else (the *second person*) in relation to the terms on which an annuity or policy of insurance is offered to, or may be obtained by, the second person, if the discrimination is reasonable in the circumstances, having regard to any actuarial or statistical data on which it is reasonable for the first person to rely.

**29 Superannuation**

- (1) Part 3 does not make it unlawful for a person to discriminate against another person in the terms or conditions relating to a superannuation or provident fund or scheme.
- (2) For discrimination on the ground of age, subsection (1) applies only if—
  - (a) the discrimination is due to the application of a standard in force under the *Superannuation Industry (Supervision) Act 1993* (Cwlth); or
  - (b) the discrimination is for the purpose of—
    - (i) complying with; or
    - (ii) avoiding a penalty under; or
    - (iii) obtaining a benefit under;any other Act of the Commonwealth; or
  - (c) the discrimination is—
    - (i) based on actuarial or statistical data on which it is reasonable to rely; and
    - (ii) reasonable having regard to the data and any other relevant factors; or

- (d) if there are no actuarial or statistical data on which it is reasonable to rely—the discrimination is—
    - (i) based on other data on which it is reasonable to rely; and
    - (ii) reasonable having regard to that data and any other relevant factors; or
  - (e) if there are no data at all on which it is reasonable to rely—the discrimination is reasonable having regard to any other relevant factors.
- (3) Subsection (2) applies in relation to a new superannuation fund condition irrespective of—
- (a) whether the fund was in existence immediately before 4 March 1994; and
  - (b) when the person to whom the discrimination relates became a member of the fund.
- (4) Subsection (2) does not apply in relation to an existing superannuation fund condition if the person to whom the discrimination relates became a member of the fund before, or not later than 12 months after, 4 March 1994.
- (5) In this section:
- existing superannuation fund condition*** means a superannuation fund condition in existence immediately before 4 March 1994.
- new superannuation fund condition*** means—
- (a) a superannuation fund condition that came into existence on or after 4 March 1994; or
  - (b) an alteration made on or after 4 March 1994 to an existing superannuation fund condition.

**30 Acts done under statutory authority etc**

- (1) This Act does not make unlawful anything done necessarily for the purpose of complying with a requirement of—
  - (a) a Territory law; or
  - (b) a determination or direction made under a Territory law; or
  - (c) an order of a court; or
  - (d) an order of the ACAT.
- (2) The Minister may declare that subsection (1) (a) and (b) expire on a day stated in the declaration.
- (3) The declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (4) Subsection (1) (a) and (b) and this subsection expire on the day stated in the declaration.

**31 Voluntary bodies**

Part 3 does not make it unlawful for a voluntary body to discriminate against a person in relation to—

- (a) the admission of people as members of the body; or
- (b) the provision of benefits, facilities or services to people, whether the people are members of the body or otherwise.

**32 Religious bodies**

Part 3 does not apply in relation to—

- (a) the ordination or appointment of priests, ministers of religion or members of any 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 exercise functions for the purposes of, or in connection with, any religious observance or practice; or
- (d) any other act or practice of a body established for religious purposes, if the act or practice conforms to the doctrines, tenets or beliefs of that religion and is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

### **33 Educational institutions conducted for religious purposes**

- (1) Section 10 or 13 does not make it unlawful for a person (the *first person*) to discriminate against someone else in relation to—
  - (a) employment as a member of the staff of an educational institution; or
  - (b) a position as a contract worker that involves doing work in an educational institution;

if the institution is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, and the first person so discriminates in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed.

- (2) Section 18 does not make it unlawful for a person (the *first person*) to discriminate against someone else in relation to the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first person so discriminates in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed.



## **Division 4.2**                      **Exceptions about sex, relationship status, pregnancy or breastfeeding**

### **34**                      **Genuine occupational qualifications—sex**

- (1) Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful for a person to discriminate against someone else (the *relevant person*) on the ground of sex in relation to a position as an employee, commission agent, contract worker or partner if it is a genuine occupational qualification for the position that the position be filled by a person of the opposite sex to the relevant person.
- (2) Without limiting subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular sex (the *relevant sex*) if—
  - (a) the duties of the position can be performed only by a person having particular physical attributes (other than attributes of strength or stamina) that are not possessed by people not of the relevant sex; or
  - (b) the duties of the position involve performing in a dramatic performance or other entertainment in a role that, for reasons of authenticity, aesthetics or tradition is required to be performed by a person of the relevant sex; or
  - (c) the duties of the position involve participating as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of the relevant sex is required for reasons of authenticity; or
  - (d) the duties of the position need to be performed by a person of the relevant sex to preserve decency or privacy because they involve the fitting of clothing for people of that sex; or
  - (e) the duties of the position include the conduct of searches of the clothing or bodies of people of the relevant sex; or

- (f) the occupant of the position is required to enter a lavatory ordinarily used by people of the relevant sex while the lavatory is in use by people of that sex; or
- (g) the occupant of the position is required to live on premises provided by the employer or principal and—
  - (i) the premises are not equipped with separate sleeping accommodation or sanitary facilities for people of each sex; and
  - (ii) the premises are already occupied by a person of the relevant sex and are not occupied by any person not of the relevant sex; and
  - (iii) it is not reasonable to expect the employer or principal to provide separate sleeping accommodation or sanitary facilities for people of each sex; or
- (h) the occupant of the position is required to enter areas ordinarily used only by people of the relevant sex while those people are in a state of undress; or
- (i) the duties of the position involve providing people of the relevant sex with services for the purpose of promoting their welfare if those services can most effectively be provided by a person of that sex; or
- (j) the position is declared under the regulations to be a position in relation to which it is a genuine occupational qualification to be a person of a particular sex.

### **35 Employment of couple**

Part 3 does not make unlawful discrimination against a person on the grounds of relationship status in relation to a job that is 1 of 2 jobs to be held by a couple in a domestic partnership.

*Note* For the meaning of *domestic partnership*, see Legislation Act, s 169.

**36 Educational institutions for members of one sex**

Section 18 does not make unlawful discrimination on the ground of sex in relation to a failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students of the opposite sex to that of the applicant.

*Note* The Legislation Act, dict, pt 1 defines *fail* to include refuse.

**37 Pregnancy, childbirth or breastfeeding**

Part 3 does not make it unlawful for a person to discriminate against a man on the ground of sex only because the person gives a woman rights or privileges in relation to pregnancy, childbirth or breastfeeding.

**38 Services for members of one sex**

Part 3 does not make unlawful discrimination on the ground of sex in relation to the provision of services the nature of which is such that they can only be provided to members of one sex.

**39 Accommodation provided for employees, contract workers or students**

- (1) Part 3, in its application in relation to discrimination on the ground of sex, relationship status, pregnancy or breastfeeding, does not make it unlawful for an employer or principal who provides accommodation to employees or contract workers to provide accommodation of different standards to different employees or contract workers if—
  - (a) the standard of the accommodation provided is decided having regard to the number of people in the household of the employee or contract worker; and
  - (b) it is not reasonable to expect the employer or principal to provide accommodation of the same standard for all employees or contract workers.

- (2) Part 3 does not make unlawful discrimination on the ground of sex in relation to the provision of accommodation if the accommodation is provided solely for people of one sex who are students at an educational institution.

#### **40 Clubs for members of one sex etc**

- (1) Section 22 does not make it unlawful to discriminate against a person on the ground of that person's sex if membership of the relevant club is available only to people of the opposite sex.
- (2) Section 22 (1) (b) or (2) does not make it unlawful to discriminate against a person on the ground of sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the relevant club if—
- (a) it is not practicable for the benefit to be used or enjoyed, either simultaneously or to the same extent, by both men and women; and
  - (b) either—
    - (i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other; or
    - (ii) men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.
- (3) In deciding any matter relating to the application of subsection (2), the following must be taken into account:
- (a) the purposes for which the club is established;
  - (b) the membership of the club, including any class or type of membership;
  - (c) the nature of the benefits provided by the club;
  - (d) the opportunities for the use and enjoyment of those benefits by men and women;

- (e) any other relevant circumstances.

#### **41 Sport**

- (1) Part 3 does not make unlawful discrimination on the ground of sex in relation to the exclusion of people of one sex from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.
- (2) Subsection (1) does not apply in relation to the exclusion of people from participation in—
  - (a) the coaching of people engaged in any sporting activity; or
  - (b) the umpiring or refereeing of any sporting activity; or
  - (c) the administration of any sporting activity; or
  - (d) any prescribed sporting activity.

### **Division 4.3 Exceptions relating to race**

#### **42 Genuine occupational qualifications—race**

- (1) Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful for a person to discriminate against someone else (the *relevant person*) on the ground of race in relation to a position as an employee, commission agent, contract worker or partner if it is a genuine occupational qualification for the position that the position be filled by a person of a different race to the relevant person.
- (2) Without limiting subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular race if—
  - (a) the duties of the position involve participating in a dramatic performance or other entertainment in a role that, for reasons of authenticity, aesthetics or tradition is required to be performed by a person of that race; or

- (b) the duties of the position involve participating as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of that race is required for reasons of authenticity; or
- (c) the duties of the position involve working in a place where food or drink is (whether for payment or not) provided to and consumed by people in circumstances in which a person of that race is required for reasons of authenticity; or
- (d) the duties of the position involve providing people of that race with services for the purpose of promoting their welfare, if those services can most effectively be provided by a person of that race; or
- (e) the position is declared under the regulations to be a position in relation to which it is a genuine occupational qualification to be a person of a particular race.

### **43 Clubs for members of one race etc**

- (1) Section 22 does not make unlawful discrimination on the ground of race in relation to a club that has as its principal object providing benefits for people of a stated race if those people are described other than—
  - (a) by reference to colour; or
  - (b) in a way that has the effect of excluding some members of that race on the basis of colour.
- (2) In deciding what the principal object of the club is for subsection (1), the following must be taken into account:
  - (a) the essential character of the club;
  - (b) if the people mainly enjoying the benefits of membership are of the race stated in the principal object;
  - (c) any other relevant circumstance.

## **Division 4.4                      Exceptions relating to religious or political convictions**

### **44                      Religious workers**

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make unlawful—

- (a) discrimination on the ground of religious conviction by an educational authority in relation to employment or work in an educational institution conducted by the authority; or
- (b) discrimination on the ground of religious conviction by a religious body in relation to employment or work in a hospital or other place conducted by the body in which health services are provided;

if the duties of the employment or work involve, or would involve, the participation by the employee or worker in the teaching, observance or practice of the relevant religion.

### **45                      Political workers etc**

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make unlawful discrimination on the ground of political conviction in relation to employment or work—

- (a) as an adviser to, or a member of the staff of, a Minister, the Speaker of the Legislative Assembly or a member of the Legislative Assembly; or
- (b) as an officer or employee of, or a worker for, a political party; or
- (c) as a member of the electoral staff of a person; or
- (d) in any other similar employment or work.

## 46 Religious educational institutions

Section 18 does not make unlawful discrimination on the ground of religious conviction in relation to a failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students having a religious conviction other than that of the applicant.

*Note* The Legislation Act, dict, pt 1 defines *fail* to include refuse.

## Division 4.5 Exceptions relating to disability

### 47 Unjustifiable hardship

In deciding what is unjustifiable hardship for this division, all the relevant circumstances of the particular case must be taken into account, including the following:

- (a) the nature of the benefit or detriment likely to accrue or be suffered by all people concerned;
- (b) the nature of the disability of the person concerned;
- (c) the financial circumstances of, and the estimated amount of expenditure by, the person claiming unjustifiable hardship.

### 48 Genuine occupational qualifications—disability

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful to discriminate against a person on the ground of disability in relation to employment or work that involves any of the following activities:

- (a) participation in a dramatic performance or other entertainment in a role in which a person with a particular disability is required for reasons of authenticity;



- (b) participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person with a particular disability is required for reasons of authenticity;
- (c) providing people who have a particular disability with services for the purpose of promoting their welfare, if the services can most effectively be provided by a person with a similar disability;
- (d) a prescribed activity.

#### **49 Work related discrimination**

- (1) Section 10 (1) (b) or (2) (c), section 12 (1) (b) or (2) (c), section 13 (b) or section 14 (1) (a), (2) (a) or (3) (b) do not make unlawful discrimination by a person (the *first person*) against someone else (the *second person*) on the ground of disability if the first person believes on reasonable grounds that, because of a disability—
  - (a) the second person is, or would be, unable to carry out work that is essential to the position concerned; or
  - (b) the second person requires, or would require, to carry out the work, services or facilities that would not be required by a person who does not have the disability and providing the services or facilities would impose unjustifiable hardship on the first person.
- (2) Section 10 (1) (c) or (2) (a) or (b), section 12 (1) (c) or (2) (a) or (b), section 13 (a) or (c) or section 14 (1) (b), (2) (b) or (3) (a) does not make it unlawful for a person (the *first person*) to discriminate against someone else on the ground of disability in relation to any setting by the first person of terms or conditions for the performance of work that is essential to the position concerned, if the terms or conditions are reasonable having regard to either or both of the following:

- (a) any limitation or restriction that the disability would or does impose on the other person's ability to carry out that work;
  - (b) any services or facilities that would be or are required by the other person to carry out that work and that would not be or are not required by people who do not have such a disability.
- (3) In this section:

*disability*, of a person, includes a disability that the person has.

*Note* *Disability* is defined for the Act in s 5AA.

## 50 Discrimination by qualifying bodies etc

- (1) Section 16 does not make unlawful discrimination by an authority or body against a person on the ground of disability if the authority or body believes on reasonable grounds that, because of a disability, the person is, or would be, unable to carry out work that is essential to the position concerned.
- (2) In this section:

*disability*, of a person, includes a disability that the person has.

*Note* *Disability* is defined for the Act in s 5AA.

## 51 Discrimination by educational institutions

- (1) Section 18 does not make unlawful discrimination on the ground of disability in relation to a failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students with a disability that the applicant does not have.

*Note* The Legislation Act, dict, pt 1 defines *fail* to include refuse.

- (2) Section 18 does not make unlawful discrimination on the ground of disability in relation to a failure to accept an application by a person with a disability for admission as a student at an educational institution if the person, if so admitted, would require services or facilities that are not required by students who do not have a

disability, the provision of which would impose unjustifiable hardship on the relevant educational authority.

## **52 Discrimination relating to access to premises**

- (1) Section 19 does not make unlawful discrimination on the ground of disability in relation to the provision of access to premises if—
  - (a) the premises are so designed or constructed as to be inaccessible to a person with a disability; and
  - (b) any alteration of the premises to provide such access would impose unjustifiable hardship on the person who would have to provide that access.
- (2) The Minister may declare that subsection (1) does not apply to a building the construction of which begins on or after a day stated in the declaration.
- (3) The declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (4) Subsection (1) does not apply to a building the construction of which begins on or after a day stated in the declaration.
- (5) For this section, the construction of a building begins on the day when a building approval for the erection of the building is granted under the *Building Act 2004*.

## **53 Discrimination in the provision of goods and services**

- (1) Section 20 does not make unlawful discrimination on the ground of disability in relation to the provision of goods, services or facilities if—
  - (a) because of a person's disability, the goods, services or facilities would have to be provided in a special way; and

(b) their provision in that way would impose unjustifiable hardship on the person providing, or proposing to provide, the goods, services or facilities.

(2) In this section:

*services* includes services provided by an employment agency.

#### **54 Discrimination relating to accommodation**

Section 21 does not make unlawful discrimination on the ground of disability in relation to the provision of accommodation to a person with a disability if special services or facilities are, or would be, required by the person and their provision would impose unjustifiable hardship on the person providing or proposing to provide the accommodation.

#### **55 Discrimination by clubs**

(1) Section 22 does not make unlawful discrimination on the ground of disability in relation to a club that has as its principal object the provision of benefits to people who have a particular disability.

(2) In deciding what the principal object of a club is for subsection (1), the following must be taken into account:

- (a) the essential character of the club;
- (b) if the people mainly enjoying the benefits of membership have the particular disability;
- (c) any other relevant circumstance.

(3) Section 22 does not make it unlawful to discriminate against a person on the ground of disability if the discrimination is in relation to the enjoyment of any benefit provided by a club if—

- (a) because of the person's disability, the benefit would have to be provided to the person in a special way; and

- (b) the provision of the benefit in that way would impose unjustifiable hardship on the club.

**56 Public health**

Part 3 does not make unlawful discrimination against a person on the ground of disability if the discrimination is necessary and reasonable to protect public health.

**57 Sport**

- (1) Part 3 does not make unlawful discrimination on the ground of disability in relation to the exclusion of a person from participation in any competitive sporting activity if—
  - (a) the person has a disability and the activity requires physical or intellectual attributes that the person does not possess; or
  - (b) if the activity is conducted for, or mainly for, people who have a particular kind of disability—the person does not have a disability of that kind.
- (2) Subsection (1) does not apply in relation to the exclusion of people from participation in—
  - (a) the coaching of people engaged in any sporting activity; or
  - (b) the umpiring or refereeing of any sporting activity; or
  - (c) the administration of any sporting activity; or
  - (d) any prescribed sporting activity.

**Division 4.6 Exceptions relating to age**

**57A Genuine occupational qualifications—age**

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful to discriminate against a person on the ground of age in relation to employment or work that involves any of the following activities:

- (a) participation in a dramatic performance or other entertainment in a role in which a person belonging to a particular age group is required for reasons of authenticity;
- (b) participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person belonging to a particular age group is required for reasons of authenticity;
- (c) providing people belonging to a particular age group with services for the purpose of promoting their welfare, if the services can most effectively be provided by a person belonging to a particular age group.

#### **57B Youth wages**

- (1) This section applies if an award provides for the payment of reduced wages to employees under 21 years old.
- (2) If this section applies, section 10 (1) or (2) (a) or (b) does not make it unlawful for an employer to discriminate against a person on the ground of age—
  - (a) if the person is 21 years old or older—in relation to the offer of employment to a person under 21 years old; or
  - (b) if the person is under 21 years old—in relation to the payment of reduced wages to the person in accordance with the award.
- (3) In this section:  
*award* means a modern award made under the *Fair Work Act 2009* (Cwlth).
- (4) For the definition of *award*, a reference to a modern award made under the *Fair Work Act 2009* (Cwlth) includes a reference to an award-based transitional instrument within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth), schedule 3, part 2.

- (5) Subsection (4) and this subsection expire 1 year after the day this subsection commences.

**57C Employment and work—health and safety**

- (1) Section 10 (1) (c) or (2) (a) or (b), section 12 (1) (c) or (2) (a) or (b), section 13 (a) or (c) or section 14 (1) (b), (2) (b) or (3) (a) does not make it unlawful to discriminate against a person on the ground of age in relation to employment or work, or qualifications for employment or work, if the discrimination is practised to comply with reasonable health and safety requirements relevant to the employment or work.
- (2) In deciding what health and safety requirements are reasonable for subsection (1), all the relevant circumstances of the particular case must be taken into account, including the effects of the discrimination on the person discriminated against.

**57E Education—minimum-age admissions**

- (1) Section 18 does not make it unlawful to discriminate against a person on the ground of age in relation to the admission of the person to an educational institution if the level of education or training sought is provided only for students older than a particular age.
- (2) Section 18 does not make it unlawful to fail to accept an application for admission as a student at an educational institution under a mature age admission scheme, if the application is made by a person whose age is below the minimum age fixed under that scheme for admission.

*Note* The Legislation Act, dict, pt 1 defines *fail* to include refuse.

**57G Legal incapacity**

Part 3 does not make it unlawful to discriminate against a person on the ground of age in relation to a transaction if the person is subject to a legal incapacity because of his or her age and the incapacity is relevant to the transaction.

**57H Benefits and concessions**

Division 3.2 does not make it unlawful to discriminate against a person in relation to the provision of genuine benefits, including concessions, to someone else because of his or her age.

**57J Goods, services and facilities—health and safety**

- (1) Section 19 or section 20 does not make it unlawful to discriminate against a person on the ground of age in relation to the provision of goods, services or facilities if that discrimination is practised to comply with reasonable health and safety requirements relevant to such provision.
- (2) In deciding what health and safety requirements are reasonable for subsection (1), all the relevant circumstances of the particular case must be taken into account, including the effects of the discrimination on the person discriminated against.

**57K Recreational tours and accommodation**

Section 20 or section 21 does not make it unlawful to discriminate against a person on the ground of age in relation to the provision of a recreational tour or recreational accommodation.

**57L Clubs**

- (1) Section 20 or section 22 does not make it unlawful for a club to discriminate against a person on the ground of age if the club's principal object is providing benefits for people belonging to a particular age group.



- (2) In deciding what the principal object of a club is for subsection (1), the following must be taken into account:
- (a) the essential character of the club;
  - (b) if the people mainly enjoying the benefits of membership belong to the particular age group stated in the club's objects;
  - (c) any other relevant circumstances.

**57M Sport**

- (1) Part 3 does not make it unlawful to discriminate against a person on the ground of age by his or her exclusion from participation in any competitive sport if competition is only allowed between people belonging to a particular age group.
- (2) This section does not apply in relation to the exclusion of people from participation in—
- (a) coaching people doing any sporting activity; or
  - (b) umpiring or refereeing any sporting activity; or
  - (c) administering any sporting activity; or
  - (d) any sporting activity prescribed under the regulations.

**Division 4.7 Exceptions relating to profession, trade, occupation or calling**

**57N Discrimination in profession, trade, occupation or calling**

Part 3 does not make it unlawful to discriminate against a person on the ground of the profession, trade, occupation or calling of the person in relation to any transaction if profession, trade, occupation or calling is relevant to that transaction and the discrimination is reasonable in those circumstances.

## Part 5                      Sexual harassment

### 58                      Meaning of *sexual harassment* for pt 5

- (1) In this part:

*sexual harassment*—a person subjects someone else to *sexual harassment* if the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person or engages in other unwelcome conduct of a sexual nature in circumstances in which the other person reasonably feels offended, humiliated or intimidated.

- (2) In this section:

*conduct*, of a sexual nature, includes the making of a statement of a sexual nature to, or in the presence of, a person, whether the statement is made orally or in writing.

### 59                      Employment etc

- (1) It is unlawful for an employer to subject an employee, or a person seeking employment, to sexual harassment.
- (2) It is unlawful for an employee to subject a fellow employee, or a person seeking employment with the same employer, to sexual harassment.
- (3) It is unlawful for a principal to subject a commission agent or contract worker, or a person seeking to become his or her commission agent or contract worker, to sexual harassment.
- (4) It is unlawful for a commission agent or contract worker to subject a fellow commission agent or contract worker to sexual harassment.
- (5) It is unlawful for a partner in a partnership to subject another partner in the partnership, or a person seeking to become a partner in the partnership, to sexual harassment.

(6) It is unlawful for a workplace participant to subject another workplace participant, or a person seeking to become a workplace participant at that workplace, to sexual harassment at a place that is a workplace, or potential workplace, as the case requires, of both of those people.

(7) In this section:

*place* includes a ship, aircraft or vehicle.

*workplace* means a place at which a workplace participant works or otherwise carries out functions in connection with being a workplace participant.

*workplace participant* means any of the following:

- (a) an employer or employee;
- (b) a commission agent or contract worker;
- (c) a partner in a partnership.

## **60 Educational institutions**

(1) It is unlawful for a member of the staff of an educational institution to subject a student at that institution, or a person seeking admission to the institution as a student, to sexual harassment.

(2) It is unlawful for a student at an educational institution to subject—

- (a) another student at the institution; or
- (b) a member of the staff of the institution;

to sexual harassment.

**61 Access to premises**

It is unlawful for a person to subject another person to sexual harassment in the course of providing, or offering to provide, the other person with access to any premises to which the public or a section of the public are entitled to have access, whether for payment or not.

**62 Provision of goods, services and facilities**

It is unlawful for a person to subject another person to sexual harassment in the course of providing, or offering to provide, goods, services or facilities to the other person.

**63 Accommodation**

It is unlawful for a person to subject another person to sexual harassment in the course of providing, or offering to provide, accommodation to the other person.

**64 Clubs**

It is unlawful for a member of the committee of management of a club to subject a member of the club, or a person seeking to become a member of the club, to sexual harassment.

## Part 6                      Racial, sexuality and HIV/AIDS vilification

### 65                      Definitions for pt 6

In this part:

*HIV/AIDS status* means status as a person who has the Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome.

*public act* includes—

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material; and
- (b) any conduct (other than a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia; and
- (c) the distribution or dissemination of any matter to the public.

### 66                      Unlawful vilification—race, sexuality etc

- (1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of people on the ground of any of the following characteristics of the person or members of the group:
  - (a) race;
  - (b) sexuality;
  - (c) gender identity;
  - (d) HIV/AIDS status.

- (2) This section does not make unlawful—
- (a) a fair report of an act mentioned in subsection (1); or
  - (b) a communication or the distribution or dissemination of any matter consisting of a publication that is subject to a defence of absolute privilege in a proceeding for defamation; or
  - (c) a public act, done reasonably and honestly, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and presentations of any matter.

**67 Serious vilification offence—race, sexuality etc**

- (1) A person commits an offence if—
- (a) the person intentionally carries out an act; and
  - (b) the person is reckless about whether the act is a public act; and
  - (c) the act is a threatening act; and
  - (d) the person is reckless about whether the act incites hatred towards, serious contempt for, or severe ridicule of, a person or group of people on the ground of any of the following characteristics of the person or members of the group:
    - (i) race;
    - (ii) sexuality;
    - (iii) gender identity;
    - (iv) HIV/AIDS status.

Maximum penalty: 50 penalty units.

- (2) For subsection (1) (c), an act is a *threatening act* only if the person carrying it out—
- (a) by the act, intentionally threatens physical harm towards, or towards any property of, the person, or members of the group, mentioned in subsection (1) (d); or
  - (b) is reckless about whether the act incites others to threaten such physical harm.

## Part 7 Other unlawful acts

### 68 Victimisation

- (1) It is unlawful for a person (the *first person*) to subject someone else (the *other person*) to any detriment because—
- (a) the other person has—
    - (i) begun a proceeding in the ACAT in relation to this Act; or
    - (ii) made a discrimination complaint; or
    - (iii) given information or produced a document or other thing to a person exercising a discrimination function; or
    - (iv) given information, produced a document or thing or answered a question when required to do so under the HRC Act in relation to a discrimination complaint; or
    - (v) given evidence, or produced a document or thing, to the ACAT in relation to this Act; or
    - (vi) reasonably asserted any rights that a person (including the other person) has under this Act; or
    - (vii) claimed that a person has committed an act that is unlawful under this Act; or
  - (b) the first person believes that the other person proposes to do something mentioned in paragraph (a).
- (2) Subsection (1) (a) (vii) does not apply in relation to a claim that is false and is not made honestly.



(3) In this section:

***discrimination complaint*** means a complaint under the HRC Act about an unlawful act under this Act, part 3 (Unlawful discrimination), part 5 (Sexual harassment), section 66 (Unlawful vilification—race, sexuality etc) or this part.

***discrimination function*** means a function under the HRC Act in relation to a discrimination complaint.

***HRC Act*** means the *Human Rights Commission Act 2005*.

## 69 Unlawful advertising

It is unlawful for a person to advertise any matter—

- (a) that indicates an intention to do an act that is unlawful under part 3, part 5 or this part; or
- (b) that could reasonably be understood as indicating such an intention.

## **Part 8**                      **General principles about unlawful acts**

### **70**                      **Onus of establishing exception etc**

If, apart from an exception, exemption, excuse, qualification or justification under this Act, conduct would be unlawful under part 3, part 5, section 66 or part 7, the onus of establishing the exception, exemption, excuse, qualification or justification lies on the person seeking to rely on it.

### **71**                      **Unlawful act not an offence**

The doing of an act is not an offence only because it is unlawful under part 3, part 5, section 66 or part 7.

### **72**                      **Unlawful act no basis for civil action**

This Act does not give a person any right of action in relation to the doing of an act that is unlawful under part 3, part 5, section 66 or part 7.

### **73**                      **Aiding etc unlawful acts**

A person who aids, abets, counsels or procures someone else to do an act that is unlawful under part 3, part 5, section 66 or part 7 is taken, for this Act, also to have done the act.

## Part 10 Exemptions

### 109 Grant of exemptions

- (1) The HRC may, on written application, exempt the applicant from the operation of a specified provision of part 3, part 5 or part 7.
- (2) The HRC may, on a written application made—
  - (a) by a person to whom an exemption has been granted; and
  - (b) before expiry of that exemption;further exempt the applicant from the operation of the provision concerned.
- (3) In the exercise of a power under subsection (1) or subsection (2), the matters to which the HRC must have regard include the following matters:
  - (a) the need to promote an acceptance of, and compliance with, this Act;
  - (b) the desirability, if relevant, of certain discriminatory actions being permitted for the purpose of redressing the effects of past discrimination.
- (4) An exemption or further exemption—
  - (a) is a notifiable instrument; and
  - (b) is subject to the conditions (if any) specified in the notice; and
  - (c) has effect according to its terms for the period not longer than 3 years specified in the notice.

*Note* A notifiable instrument must be notified under the Legislation Act.
- (5) If the HRC refuses to grant an exemption or a further exemption, the HRC must give the applicant or each applicant written notice of the refusal.

- (6) A notice mentioned in subsection (4) or (5) is a reviewable decision notice.

**110 Review by ACAT**

An application may be made to the ACAT for review of a decision of the HRC under section 109.

## Part 12                      Miscellaneous

### 121            Secrecy

(1) In this section:

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

*divulge* includes communicate.

*person to whom this section applies* means a person who exercises, or has exercised, a function under this Act.

*produce* includes allow access to.

*protected information* means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

(2) A person to whom this section applies commits an offence if—

(a) the person—

(i) makes a record of protected information about someone else; and

(ii) is reckless about whether the information is protected information about someone else; or

(b) the person—

(i) does something that divulges protected information about someone else; and

(ii) is reckless about whether—

(A) the information is protected information about someone else; and

- (B) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the record is made, or the information is divulged—
- (a) under this or any other Act; or
  - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.
- (4) Subsection (2) does not apply to the divulging of protected information about someone with the person's consent.
- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

## 121A Acts and omissions of representatives

- (1) This section applies to doing an act (*conduct*) that is unlawful under 1 or more of the following provisions:
- (a) part 3 (Unlawful discrimination);
  - (b) part 5 (Sexual harassment);
  - (c) section 66 (Unlawful vilification—race, sexuality etc);
  - (d) part 7 (Other unlawful acts).

*Note 1* Complaints about these matters may be made under the HRC Act (see HRC Act, s 42 (1) (c)).

*Note 2* **Doing** an act—see s 4A.

- (2) Conduct engaged in on behalf of a person by a representative of the person is taken to have been engaged in by the person if the conduct was within the scope of the representative's actual or apparent authority.
- (3) However, subsection (2) does not apply if the person establishes that the person took all reasonable steps to prevent the representative from engaging in the conduct.
- (4) In this section:

*representative*, of a person, means an employee or agent of the person.

## **122 Relationship to other laws**

This Act is additional to any other territory law that provides for the protection of a person from conduct that is or would be unlawful under this Act.

## **123 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may except people, activities or other things from the operation of particular provisions of part 3, part 5 or part 7.

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- body
- civil partner
- civil partnership
- civil union
- civil union partner
- corporation
- director-general (see s 163)
- domestic partner (see s 169)
- domestic partnership (see s 169)
- fail
- for
- in relation to
- reviewable decision notice
- State
- Territory authority
- the Territory
- under.

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

***carer***—a person is a ***carer*** of someone else (the ***dependant***) if—

- (a) the dependant is dependent on the person for ongoing care and assistance; and
- (b) the person cares for the dependant otherwise than because of—
  - (i) a commercial arrangement; or



(ii) an arrangement that is substantially commercial.

**Example of a carer**

Ms W suffers from multiple sclerosis and requires constant care. Her spouse and 3 children aged 21, 16 and 11 share her care and would each be a ‘carer’.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**club** means a club that holds a club licence.

**club licence**—see the *Liquor Act 2010*, section 20.

**commission agent** means a person who does work for another person as the agent of that other person and who is remunerated (whether wholly or partially) by commission.

**committee of management**, in relation to a club or organisation, means the group or body of people (however described) that manages the affairs of the club or organisation.

**contract worker** means a person (the **worker**) who does work for someone else (the **third person**) under a contract between the worker’s employer and the third person.

**disability**—see section 5AA.

**discriminate**—see section 8.

**doing** an act—see section 4A.

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

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

**employer**, in relation to an unpaid worker, means the person for whom the unpaid worker performs work.

**employment** includes—

(a) work under a contract for services; and

- (b) work as a Territory employee; and
- (c) work as an unpaid worker.

**employment agency** means any person who or body that (whether for payment or not) assists people to find employment or other work or assists employers to find employees or workers.

**gender identity** means—

- (a) the identification on a genuine basis by a person of one sex as a member of the other sex (whether or not the person is recognised as such)—
  - (i) by assuming characteristics of the other sex, whether by way of medical intervention, style of dressing or otherwise; or
  - (ii) by living, or seeking to live, as a member of the other sex; or
- (b) the identification on a genuine basis by a person of indeterminate sex as a member of a particular sex (whether or not the person is recognised as such)—
  - (i) by assuming characteristics of that sex, whether by way of medical intervention, style of dressing or otherwise; or
  - (ii) by living, or seeking to live, as a member of that sex.

**HIV/AIDS status**, for part 6 (Racial, sexuality and HIV/AIDS vilification)—see section 65.

**HRC** means the human rights commission.

**industrial activity** means any of the following:

- (a) being or not being a member of, or joining, not joining or refusing to join, an industrial organisation or industrial association;

- 
- (b) establishing or being involved in establishing an industrial organisation or forming or being involved in forming an industrial association;
  - (c) organising or promoting or proposing to organise or promote a lawful activity on behalf of an industrial organisation or industrial association;
  - (d) encouraging, assisting, participating in or proposing to encourage, assist or participate in a lawful activity organised or promoted by an industrial organisation or industrial association;
  - (e) not participating in or refusing to participate in a lawful activity organised or promoted by an industrial organisation or industrial association;
  - (f) representing or advancing the views, claims or interests of members of an industrial organisation or industrial association.

***industrial association***—

- (a) means a group of employees or employers formed formally or informally to represent or advance the views, claims or interests of the employees or employers in a particular industry, trade, profession, business or employment; but
- (b) does not include an industrial organisation.

***industrial organisation*** means any of the following that is registered or recognised under the law of the Commonwealth, a State or another Territory:

- (a) an organisation of employees;
- (b) an organisation of employers;
- (c) any other organisation established for the purposes of people who carry on a particular industry, trade, profession, business or employment.

***man*** means a member of the male sex irrespective of age.

**potential pregnancy**—see section 5A.

**pregnancy** includes potential pregnancy.

**premises** includes—

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

**principal** means—

- (a) for a commission agent—a person for whom the commission agent does work as a commission agent; or
- (b) for a contract worker—a person for whom the contract worker does work under a contract between the contract worker's employer and the person.

**public act**, for part 6 (Racial, sexuality and HIV/AIDS vilification)—see section 65.

**race** includes—

- (a) colour, descent, ethnic and national origin and nationality; and
- (b) any 2 or more distinct races that are collectively referred to or known as a race.

**relationship status** means the status or condition of being—

- (a) single; or
- (b) married; or
- (c) married but living separately and apart from one's spouse; or
- (d) in a civil union; or
- (e) in a civil union but living separately and apart from one's civil union partner; or
- (f) in a civil partnership; or

- (g) in a civil partnership but living separately and apart from one's civil partner; or
- (h) divorced; or
- (i) widowed; or
- (j) the domestic partner (other than the spouse, civil union partner or civil partner) of someone else.

*Note* For the meaning of **domestic partner**, see Legislation Act, s 169.

**relative**, of a person, means—

- (a) a person who is related to the person by blood, marriage, civil union, civil partnership or any other domestic partnership or adoption; or
- (b) a domestic partner of the person or of a person mentioned in paragraph (a).

**relevant class of people** means a class of people whose members are identified by reference to an attribute mentioned in section 7.

**services** includes—

- (a) services relating to banking, insurance or the provision of grants, loans, credit or finance; and
- (b) services relating to entertainment, recreation or refreshment; and
- (c) services relating to transport or travel; and
- (d) services of any profession, trade or business; and
- (e) services provided by a government, government authority, local government body or corporation in which a government has a controlling interest; and
- (f) the provision of scholarships, prizes or awards.

**sexual harassment**, for part 5 (Sexual harassment)—see section 58.

**sexuality** means heterosexuality, homosexuality (including lesbianism) or bisexuality.

**Territory employee** means a person who is—

- (a) a public servant; or
- (b) employed by a Territory authority;

**unpaid worker** means a person who performs work for an employer for no remuneration.

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

- (a) a club; or
- (b) a body established by a law of the Territory, the Commonwealth, a State or another Territory; or
- (c) an association that provides grants, loans, credit or finance to its members.

**woman** means a member of the female sex irrespective of age.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Discrimination Act 1991 No 81**

notified 13 December 1991 (Gaz 1991 No S143)  
s 1, s 2 commenced 13 December 1991 (s 2 (1))  
remainder commenced 20 January 1992 (Gaz 1992 No 6)

as amended by

#### **Discrimination (Amendment) Act 1993 No 25**

notified 21 May 1993 (Gaz 1993 S83)  
commenced 21 May 1993 (s 2)

#### **Acts Revision (Position of Crown) Act 1993 No 44 sch 2**

notified 27 August 1993 (Gaz 1994 S165)  
commenced 27 August 1993 (s 2)

#### **Discrimination (Amendment) Act 1994 No 1**

notified 4 March 1994 (Gaz 1994 S35)  
commenced 4 March 1994 (s 2)

#### **Discrimination (Amendment) Act (No 2) 1994 No 11**

notified 14 March 1994 (Gaz 1994 S44)  
s 1, s 2 commenced 14 March 1994 (s 2 (1))  
remainder commenced 14 May 1994 (s 2 (2))

#### **Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 28**

notified 30 June 1994 (Gaz 1994 S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 28 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

#### **Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1**

notified 11 October 1994 (Gaz 1994 S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and Gaz 1994 No S250)

#### **Discrimination (Amendment) Act (No 3) 1994 No 103**

notified 22 December 1994 (Gaz 1994 S289)  
commenced 22 December 1994 (s 2)



**Discrimination (Amendment) Act 1995 No 9**

notified 30 June 1995 (Gaz 1995 S135)  
commenced 30 June 1995 (s 2)

**Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 No 25 sch**

notified 5 September 1995 (Gaz 1995 S212)  
sch commenced 5 September 1995 (s 2)

**Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 S306)  
sch commenced 18 December 1995 (s 2)

**Discrimination (Amendment) Act 1996 No 67**

notified 20 December 1996 (Gaz 1996 S328)  
ss 1-3 commenced 20 December 1996 (s 2 (1))  
ss 4-24 commenced 31 December 1996 (s 2 (2) and Gaz 1996 No S350)  
remainder commenced 8 January 1997 (s 2 (2) and Gaz 1997 No S3)

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41 sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 S264)  
commenced 24 September 1997 (s 2 as am by Act 2002 No 49 amdt 3.222)

**Building (Amendment) Act (No 2) 1998 No 52 sch**

notified 16 November 1998 (Gaz 1998 S205)  
ss 1-3 commenced 16 November 1998 (s 2 (1))  
sch commenced 4 January 1999 (s 2 (2) and Gaz 1999 No S1)

**Statute Law Revision (Penalties) Act 1998 No 54 sch**

notified 27 November 1998 (Gaz 1998 S207)  
s 1, s 2 commenced 27 November 1998 (s 2 (1))  
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Courts and Tribunals (Audio Visual and Audio Linking) Act 1999 No 22 s 12**

notified 14 April 1999 (Gaz 1999 S16)  
s 1, s 2 commenced 14 April 1999 (s 2 (1))  
s 12 commenced 1 September 1999 (s 2 (2) and Gaz 1999 No 35)

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**Discrimination Amendment Act 1999 No 60**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2 (1))

**Children and Young People (Consequential Amendments) Act 1999  
No 64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)  
s 1, s 2 commenced 10 November 1999 (IA s 10B)  
sch 2 commenced 10 May 2000 (s 2 (2))

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
sch 3 commenced 10 November 1999 (s 2)

**Discrimination Amendment Act (No 2) 1999 No 83**

notified 23 December 1999 (Gaz 1999 S65)  
commenced 23 December 1999 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000  
(No 2) No 2 sch**

notified 9 March 2000 (Gaz 2000 No 10)  
commenced 9 March 2000 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000  
(No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)  
commenced 1 June 2000 (s 2)

**Spent Convictions Act 2000 No 48 pt 5**

notified 28 September 2000 (Gaz 2000 No 39)  
s 1, s 2 commenced 28 September 2000 (IA s 10B)  
pt 5 (s 24) commenced 28 March 2001 (IA s 10E)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 105**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 105 commenced 12 September 2001 (s 2 and see Gaz 2001  
No S65)

**Legislation Amendment Act 2002 No 11 pt 2.16**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.16 commenced 28 May 2002 (s 2 (1))

**Discrimination Amendment Act 2002 No 19**

notified LR 13 June 2002  
s 1, s 2 commenced 13 June 2002 (LA s 75)  
remainder commenced 14 June 2002 (s 2)

**Criminal Code 2002 No 51 pt 1.7**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75)  
pt 1.7 commenced 1 January 2003 (s 2 (1))

**Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
amdt 3.222 commenced 24 September 1997 (s 2 (3))

*Note* This Act only amends the Remuneration Tribunal (Consequential Amendments) Act 1997 No 41.

**Discrimination Amendment Act 2003 A2003-15**

notified LR 27 March 2003  
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))  
remainder commenced 28 March 2003 (s 2)

**Statute Law Amendment Act 2003 A2003-41 sch 3 pt 3.7**

notified LR 19 August 2003  
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))  
sch 3 pt 3.7 commenced 9 October 2003 (s 2 (1))

**Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 sch 2 pt 2.5**

notified LR 31 October 2003  
s 1, s 2 commenced 31 October 2003 (LA s 75 (1))  
sch 2 pt 2.5 commenced 30 April 2004 (s 2 and LA s 79)

## Endnotes

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### **Sexuality Discrimination Legislation Amendment Act 2004 A2004-2 sch 2 pt 2.3**

notified LR 18 February 2004  
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))  
sch 2 pt 2.3 commenced 22 March 2004 (s 2 and CN2004-4)

### **Human Rights Act 2004 A2004-5 sch 2 pt 2.2**

notified LR 10 March 2004  
s 1, s 2 commenced 10 March 2004 (LA s 75 (1))  
sch 2 pt 2.2 commenced 1 July 2004 (s 2)

### **Construction Occupations Legislation Amendment Act 2004 A2004-13 sch 2 pt 2.7**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.7 commenced 1 September 2004 (s 2 and see Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

### **Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 1 pt 1.8, sch 2 pt 2.26**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 1 pt 1.8, sch 2 pt 2.26 commenced 9 April 2004 (s 2 (1))

### **Discrimination Amendment Act 2004 A2004-51**

notified LR 11 August 2004  
s 1, s 2 commenced 11 August 2004 (LA s 75 (1))  
remainder commenced 12 August 2004 (s 2)

### **Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.22**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.22 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

### **Human Rights Commission Legislation Amendment Act 2005 A2005-41 sch 1 pt 1.2 (as am by A2006-3 amdt 1.3)**

notified LR 1 September 2005  
s 1, s 2 commenced 1 September 2005 (LA s 75 (1))  
sch 1 pt 1.2 commenced 1 November 2006 (s 2 (3) (as am by A2006-3 amdt 1.3) and see Human Rights Commission Act 2005 A2005-40, s 2 (as am by A2006-3 s 4) and CN2006-21)

**Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.8 (as am by A2005-60 pt 1.13)**

notified LR 26 October 2005

s 1, s 2 commenced 26 October 2005 (LA s 75 (1))

sch 1 pt 1.8 commenced 1 November 2006 (s 2 (2) (as am by A2005-60 amdt 1.54) and see Human Rights Commission Act 2005 A2005-40, s 2 (as am by A2006-3 s 4) and CN2006-21)

**Justice and Community Safety Legislation Amendment Act 2005 (No 4) A2005-60 sch 1 pt 1.13**

notified LR 1 December 2005

s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))

sch 1 pt 1.13 commenced 22 December 2005 (s 2 (4))

*Note* This Act only amends the Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53

**Human Rights Commission Legislation Amendment Act 2006 A2006-3 amdt 1.3**

notified LR 22 February 2006

s 1, s 2 commenced 22 February 2006 (LA s 75 (1))

amdt 1.3 commenced 23 February 2006 (s 2)

*Note* This Act only amends the Human Rights Commission Legislation Amendment Act 2005 A2005-41

**Civil Unions Act 2006 A2006-22 sch 1 pt 1.9**

notified LR 19 May 2006

s 1, s 2 commenced 19 May 2006 (LA s 75 (1))

sch 1 pt 1.9 never commenced

*Note* Act repealed by disallowance 14 June 2006 (see Cwlth Gaz 2006 No S93)

**Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 2 pt 2.14**

notified LR 28 September 2006

s 1, s 2 commenced 28 September 2006 (LA s 75 (1))

sch 2 pt 2.14 commenced 29 September 2006 (s 2 (1))

**Carers Recognition Legislation Amendment Act 2006 A2006-47 pt 2**

notified LR 28 November 2006

s 1, s 2 commenced 28 November 2006 (LA s 75 (1))

pt 2 commenced 28 May 2007 (s 2 and LA s 79)

## Endnotes

3 Legislation history

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**Statute Law Amendment Act 2007 (No 2) A2007-16 sch 3 pt 3.11**

notified LR 20 June 2007  
s 1, s 2 taken to have commenced 12 April 2007 (LA s 75 (2))  
sch 3 pt 3.11 commenced 11 July 2007 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2007  
A2007-22 sch 1 pt 1.8**

notified LR 5 September 2007  
s 1, s 2 commenced 5 September 2007 (LA s 75 (1))  
sch 1 pt 1.8 commenced 6 September 2007 (s 2)

**Statute Law Amendment Act 2007 (No 3) A2007-39 sch 3 pt 3.9**

notified LR 6 December 2007  
s 1, s 2 commenced 6 December 2007 (LA s 75 (1))  
sch 3 pt 3.9 commenced 27 December 2007 (s 2)

**Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.8**

notified LR 15 May 2008  
s 1, s 2 commenced 15 May 2008 (LA s 75 (1))  
sch 1 pt 1.8 commenced 19 May 2008 (s 2 and CN2008-8)

**Parental Leave Legislation Amendment Act 2008 A2008-27**

notified LR 12 August 2008  
s 1, s 2 commenced 12 August 2008 (LA s 75 (1))  
remainder commenced 13 August 2008 (s 2)

**Justice and Community Safety Legislation Amendment  
Act 2008 (No 3) A2008-29 sch 1 pt 1.7**

notified LR 13 August 2008  
s 1, s 2 commenced 13 August 2008 (LA s 75 (1))  
sch 1 pt 1.7 commenced 27 August 2008 (s 2)

**ACT Civil and Administrative Tribunal Legislation Amendment  
Act 2008 A2008-36 sch 1 pt 1.20**

notified LR 4 September 2008  
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))  
sch 1 pt 1.20 commenced 2 February 2009 (s 2 (1) and see ACT Civil  
and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

**Adoption Amendment Act 2009 (No 2) A2009-36 sch 1 pt 1.3**

notified LR 22 October 2009

s 1, s 2 commenced 22 October 2009 (LA s 75 (1))

sch 1 pt 1.3 commenced 22 April 2010 (s 2 and LA s 79)

**Human Rights Commission Legislation Amendment Act 2010  
A2010-5 pt 2**

notified LR 2 March 2010

s 1, s 2 commenced 2 March 2010 (LA s 75 (1))

pt 2 commenced 9 March 2010 (s 2)

**Liquor (Consequential Amendments) Act 2010 A2010-43 sch 1 pt 1.8**

notified LR 8 November 2010

s 1, s 2 commenced 8 November 2010 (LA s 75 (1))

sch 1 pt 1.8 commenced 1 December 2010 (s 2 (4) and see Liquor Act 2010 A2010-35, s 2 (3) (as am by A2010-43 amdt 1.19) and CN2010-14)

**Administrative (One ACT Public Service Miscellaneous Amendments)  
Act 2011 A2011-22 sch 1 pt 1.54**

notified LR 30 June 2011

s 1, s 2 commenced 30 June 2011 (LA s 75 (1))

sch 1 pt 1.54 commenced 1 July 2011 (s 2 (1))

**Statute Law Amendment Act 2011 (No 2) A2011-28 sch 3 pt 3.8**

notified LR 31 August 2011

s 1, s 2 commenced 31 August 2011 (LA s 75 (1))

sch 3 pt 3.8 commenced 21 September 2011 (s 2 (1))

**Statute Law Amendment Act 2011 (No 3) A2011-52 sch 3 pt 3.19**

notified LR 28 November 2011

s 1, s 2 commenced 28 November 2011 (LA s 75 (1))

sch 3 pt 3.19 commenced 12 December 2011 (s 2)

**Civil Unions Act 2012 A2012-40 sch 3 pt 3.9**

notified LR 4 September 2012

s 1, s 2 commenced 4 September 2012 (LA s 75 (1))

sch 3 pt 3.9 commenced 11 September 2012 (s 2)

## Endnotes

4 Amendment history

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### 4 Amendment history

#### Long title

long title am A2003-41 amdt 3.22

#### Name of Act

s 1 sub A2003-41 amdt 3.23

#### Dictionary

s 2 om 2001 No 44 amdt 1.1123  
ins A2003-41 amdt 3.33

#### Notes

s 3 orig s 3 am A2003-41 amdt 3.206  
renum as s 4  
ins A2003-41 amdt 3.33

#### Objects

s 4 orig s 4 defs reloc to dict A2003-41 amdt 3.32  
om A2003-41 amdt 3.33  
def **de facto spouse** om A2003-15 s 4  
def **impairment** sub A2003-15 s 5  
om A2003-41 amdt 3.28  
def **marital status** om A2003-15 s 6  
def **near relative** om A2003-15 s 6  
(prev s 3) renum A2003-41 amdt 3.24

#### Meaning of *doing an act*

s 4A ins A2002-41 amdt 3.34

#### Meaning of *complainant and respondent*

s 5 sub A2003-41 amdt 3.35  
om A2005-41 amdt 1.3

#### Meaning of *disability*

s 5AA hdg am A2003-41 amdt 3.36  
s 5AA ins A2003-15 s 9  
am A2003-41 amdts 3.37-3.39

#### Meaning of *potential pregnancy*

s 5A ins 2002 No 19 s 5  
am A2003-41 amdt 3.40

#### MLAs as employers

s 6 om 1993 No 44 sch 2  
ins 1995 No 9 s 4  
sub A2003-41 amdt 3.41  
am A2007-16 amdt 3.45

#### Offences against Act—application of Criminal Code etc

s 6A ins A2004-2 amdt 2.4  
am A2005-41 amdt 1.4



**Grounds**

s 7 am 1993 No 25 s 4; 1994 No 1 s 4; 1994 No 11 s 4; 1996 No 67 s 5; 1999 No 60 s 4; 2000 No 48 s 24; A2003-15 s 10; pars renum R11 LA (see A2003-15 s 11); A2003-41 amdt 3.42, amdt 3.43, amdt 3.206; A2010-5 s 4, s 5

**What constitutes discrimination**

s 8 am A2003-41 amdt 3.44, amdt 3.206

**Disability—guide-dogs etc**

s 9 hdg am A2003-41 amdt 3.207  
s 9 am 1996 No 67 s 5; A2003-41 amdts 3.45-3.47, amdt 3.206, amdt 3.207

**Applicants and employees**

s 10 am A2003-41 amdt 3.48; A2008-27 s 4

**Employees—religious practice**

s 11 am A2003-41 amdt 3.206

**Commission agents**

s 12 am A2003-41 amdt 3.49

**Partnerships**

s 14 am A2003-41 amdt 3.50, amdt 3.206

**Professional or trade organisations**

s 15 am 1993 No 25 s 5; A2003-41 amdt 3.51, amdt 3.52

**Qualifying bodies**

s 16 am A2003-41 amdt 3.53, amdt 3.54

**Education**

s 18 am A2003-41 amdt 3.55, amdt 3.56

**Access to premises**

s 19 am A2003-41 amdts 3.57-3.62

**Goods, services and facilities**

s 20 am A2003-41 amdt 3.63, amdt 3.64

**Clubs**

s 22 am A2003-41 amdts 3.65-3.67

**Domestic duties**

s 24 sub A2003-41 amdt 3.68

**Residential care of children**

s 25 sub A2003-41 amdt 3.68

**Adoption**

s 25A ins 1994 No 1 s 5  
am 1999 No 64 sch 2; A2003-41 amdt 3.69, amdt 3.206;  
A2009-36 amdt 1.5; A2011-22 amdt 1.168

## Endnotes

4 Amendment history

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### **Domestic accommodation etc**

s 26 am A2003-15 s 12, s 13; A2003-41 amdt 3.206; A2006-47 s 4

### **Preselection by employment agencies**

s 26A ins 1996 No 67 s 6  
sub A2003-41 amdt 3.70

### **Measures intended to achieve equality**

s 27 am 1999 No 83 s 4; A2003-41 amdt 3.71, amdt 3.206  
sub A2004-51 s 4

### **Insurance**

s 28 sub A2003-41 amdt 3.72

### **Superannuation**

s 29 am 1994 No 1 s 6; A2003-41 amdts 3.73-3.77, amdt 3.209

### **Acts done under statutory authority etc**

s 30 am 1996 No 67 s 7; 2001 No 44 amdt 1.1124; A2003-41  
amdt 3.78; A2008-36 amdt 1.249; A2011-28 amdt 3.52  
(1) (a), (b), (4) exp on day stated in declaration (s 30 (2), (4))

### **Voluntary bodies**

s 31 am 1996 No 67 s 8  
sub A2003-41 amdt 3.79

### **Religious bodies**

s 32 am 2000 No 2 sch; A2003-41 amdt 3.80, amdt 3.206

### **Educational institutions conducted for religious purposes**

s 33 am A2003-41 amdts 3.81-3.85

### **Exceptions about sex, relationship status, pregnancy or breastfeeding**

div 4.2 hdg (prev pt 4 div 2 hdg) am 1999 No 60 s 5  
renum R6 LA  
sub A2003-15 s 14

### **Genuine occupational qualifications—sex**

s 34 hdg sub A2003-41 amdt 3.86  
s 34 am A2003-41 amdt 3.87, amdt 3.88, amdt 3.206, amdt 3.209

### **Employment of couple**

s 35 sub A2003-15 s 15

### **Educational institutions for members of one sex**

s 36 am A2003-41 amdts 3.89-3.91

### **Pregnancy, childbirth or breastfeeding**

s 37 am 1999 No 60 s 6  
sub A2003-41 amdt 3.92

### **Services for members of one sex**

s 38 am A2003-41 amdt 3.93

- Accommodation provided for employees, contract workers or students**  
s 39 am 1999 No 60 s 7; A2003-15 s 16; A2003-41 amdt 3.94, amdt 3.95, amdt 3.206
- Clubs for members of one sex etc**  
s 40 am A2003-41 amdts 3.96-3.100, amdt 3.206, amdt 3.209
- Sport**  
s 41 am A2003-41 amdt 3.101, amdt 3.206
- Genuine occupational qualifications—race**  
s 42 hdg sub A2003-41 amdt 3.102  
s 42 am A2003-41 amdt 3.103, amdt 3.104, amdt 3.206, amdt 3.209
- Clubs for members of one race etc**  
s 43 am A2003-41 amdt 3.105
- Religious workers**  
s 44 am A2003-41 amdt 3.106
- Political workers etc**  
s 45 am A2003-41 amdt 3.107
- Religious educational institutions**  
s 46 am A2003-41 amdts 3.108-3.110
- Exceptions relating to disability**  
div 4.5 hdg am A2003-41 amdt 3.207
- Unjustifiable hardship**  
s 47 sub A2003-41 amdt 3.111
- Genuine occupational qualifications—disability**  
s 48 hdg sub A2003-41 amdt 3.112  
s 48 am A2003-41 amdt 3.112, amdt 3.113, amdt 3.207
- Work related discrimination**  
s 49 am A2003-15 s 17, s 18; A2003-41 amdt 3.114, amdt 3.115, amdt 3.206, amdt 3.207
- Discrimination by qualifying bodies etc**  
s 50 am A2003-15 s 19, s 20; A2003-41 amdt 3.116, amdt 3.207
- Discrimination by educational institutions**  
s 51 am A2003-41 amdts 3.117-3.121, amdt 3.207, amdt 3.209; A2011-52 amdt 3.67, amdt 3.68
- Discrimination relating to access to premises**  
s 52 am 1998 No 52 sch; 2001 No 44 amdt 1.1125; A2003-41 amdt 3.122, amdt 3.207; A2004-13 amdt 2.20; A2011-28 amdt 3.52; A2011-52 amdt 3.68

## Endnotes

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### **Discrimination in the provision of goods and services**

s 53 am 1996 No 67 s 9  
sub A2003-41 amdt 3.123

### **Discrimination relating to accommodation**

s 54 am A2003-41 amdt 3.124, amdt 3.207; A2011-52 amdt 3.69

### **Discrimination by clubs**

s 55 am A2003-41 amdts 3.125-3.127, amdt 3.206, amdt 3.207

### **Public health**

s 56 am A2003-41 amdt 3.128, amdt 3.207

### **Sport**

s 57 am A2003-41 amdt 3.128, amdt 3.129, amdt 3.206,  
amdt 3.207

### **Exceptions relating to age**

div 4.6 hdg (prev pt 4 div 6 hdg) ins 1994 No 1 s 7  
renum R6 LA

### **Genuine occupational qualifications—age**

s 57A hdg sub A2003-41 amdt 3.130  
s 57A ins 1994 No 1 s 7  
am A2003-41 amdt 3.130, amdt 3.131

### **Youth wages**

s 57B ins 1994 No 1 s 7  
am A2003-41 amdt 3.132; A2011-28 amdt 3.53, amdt 3.54  
(4), (5) exp 21 September 2012 (s 57B (5))

### **Employment and work—health and safety**

s 57C ins 1994 No 1 s 7  
sub A2003-41 amdt 3.133

### **Compulsory retirement—2-year exemption**

s 57D ins 1994 No 1 s 7  
(1) exp 4 March 1996 (s 57D (2))  
om R4 LRA

### **Education—minimum-age admissions**

s 57E ins 1994 No 1 s 7  
am A2003-41 amdts 3.134-3.136, amdt 3.209

### **Education—senior secondary colleges (until 1 January 1996)**

s 57F ins 1994 No 1 s 7  
(1) exp 1 January 1996 (s 57F (2))  
om R4 LRA

### **Legal capacity**

s 57G ins 1994 No 1 s 7  
sub A2003-41 amdt 3.137

**Benefits and concessions**

s 57H ins 1994 No 1 s 7  
sub A2003-41 amdt 3.138

**Goods, services and facilities—health and safety**

s 57J ins 1994 No 1 s 7  
am A2003-41 amdt 3.139, amdt 3.140, amdt 3.209

**Recreational tours and accommodation**

s 57K ins 1994 No 1 s 7  
am A2003-41 amdt 3.141

**Clubs**

s 57L ins 1994 No 1 s 7  
sub A2003-41 amdt 3.142

**Sport**

s 57M ins 1994 No 1 s 7  
sub A2003-41 amdt 3.143

**Exceptions relating to profession, trade, occupation or calling**

div 4.7 hdg (prev pt 4 div 6 hdg) ins 1994 No 11 s 5  
renum R6 LA

**Discrimination in profession, trade, occupation or calling**

s 57N ins 1994 No 11 s 5  
am A2003-41 amdt 3.144, amdt 3.209

**Meaning of *sexual harassment* for pt 5**

s 58 sub A2003-41 amdt 3.145

**Employment etc**

s 59 am 1995 No 9 s 5; A2003-41 amdt 3.206

**Racial, sexuality and HIV/AIDS vilification**

pt 6 hdg sub A2004-2 amdt 2.5

**Definitions for pt 6**

s 65 hdg sub A2003-41 amdt 3.146; A2004-2 amdt 2.5  
s 65 am A2003-41 amdt 3.147  
def **HIV/AIDS status** ins A2004-2 amdt 2.6

**Unlawful vilification—race, sexuality etc**

s 66 am A2003-41 amdt 3.148, amdt 3.206  
sub A2004-2 amdt 2.7  
am A2010-5 s 6

**Serious vilification offence—race, sexuality etc**

s 67 am 1998 No 54 sch  
sub A2004-2 amdt 2.7  
am A2010-5 s 7

## Endnotes

### 4 Amendment history

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#### **Victimisation**

s 68 am 2000 No 2 sch; A2003-41 amdts 3.149-3.151  
sub A2005-41 amdt 1.5  
am A2008-36 amdt 1.250; A2010-5 s 8, s 9; pars renum  
R33 LA

#### **General principles about unlawful acts**

pt 8 hdg sub 1996 No 67 s 10; A2005-41 amdt 1.6

#### **Preliminary**

div 8.1 hdg om A2005-41 amdt 1.6

#### **Onus of establishing exception etc**

s 70 hdg sub A2003-41 amdt 3.152  
s 70 sub 1996 No 67 s 10; A2005-41 amdt 1.6

#### **Unlawful act not an offence**

s 71 am 1994 No 60 sch 1  
sub 1996 No 67 s 10  
am A2003-41 amdt 3.153  
sub A2005-41 amdt 1.6

#### **Making, investigation, conciliation and referral of complaints**

div 8.2 hdg om A2005-41 amdt 1.6

#### **Unlawful act no basis for civil action**

s 72 sub 1996 No 67 s 10  
am 2001 No 44 amdt 1.1126, amdt 1.1127; A2003-41  
amdt 3.154, amdt 3.206  
sub A2005-41 amdt 1.6

#### **Aiding etc unlawful acts**

s 73 sub 1996 No 67 s 10  
am A2003-41 amdt 3.155  
sub A2005-41 amdt 1.6

#### **Hearings before discrimination tribunal**

div 8.3 hdg om A2005-41 amdt 1.6

#### **Granting of relief by discrimination tribunal**

div 8.4 hdg om A2005-41 amdt 1.6

#### **Enforcement of orders and decisions of discrimination tribunal**

div 8.5 hdg om A2005-41 amdt 1.6

#### **Other powers of commissioner and tribunal**

div 8.6 hdg om A2005-41 amdt 1.6

#### **Miscellaneous**

div 8.7 hdg om A2005-41 amdt 1.6

**Hearing of complaints**

pt 9 hdg orig pt 9 hdg renum as pt 10 hdg  
ins A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Preliminary**

div 9.1 hdg ins A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Meaning of *party* for pt 9**

s 74 sub 1996 No 67 s 10; A2003-41 amdt 3.156; A2005-41  
amdt 1.6  
om A2008-36 amdt 1.251

**Reliance on exceptions and exemptions**

s 75 sub 1996 No 67 s 10  
am A2003-41 amdt 3.157, amdt 3.208  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Complaints about unlawful discrimination**

s 76 sub 1996 No 67 s 10  
am A2003-41 amdt 3.208, amdt 3.209  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Hearings by tribunal**

div 9.2 hdg ins A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Hearings by tribunal**

s 77 sub 1996 No 67 s 10; A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Power to strike out complaints**

s 77A ins A2007-22 amdt 1.26  
om A2008-36 amdt 1.251

**Late application in exceptional circumstances**

s 78 sub 1996 No 67 s 10  
am A2003-41 amdt 3.206  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Application to strike out complaint**

s 79 hdg am A2003-41 amdt 3.158  
s 79 sub 1996 No 67 s 10  
am A2003-41 amdt 3.159  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

## Endnotes

### 4 Amendment history

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#### **Tribunal procedure**

div 9.3 hdg ins A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

#### **Tribunal to decide own procedures**

s 80 am 1994 No 103 s 4  
sub 1996 No 67 s 10  
am A2003-41 amdt 3.160, amdt 3.208, amdt 3.209  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

#### **Hearings may be closed**

s 81 sub 1996 No 67 s 10  
am A2003-41 amdt 3.161, amdt 3.162, amdt 3.208,  
amdt 3.209  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

#### **Sittings**

s 82 sub 1996 No 67 s 10  
am A2003-41 amdts 3.163-3.165, amdt 3.208  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

#### **Joining parties**

s 83 sub 1996 No 67 s 10  
am A2003-41 amdt 3.166, amdt 3.208, amdt 3.209  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

#### **Appearances**

s 84 sub 1996 No 67 s 10; A2003-41 amdt 3.167; A2005-41  
amdt 1.6  
om A2008-36 amdt 1.251

#### **Representation**

s 85 sub 1996 No 67 s 10; A2003-15 s 21; A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

#### **Witness subpoenas**

s 86 sub 1996 No 67 s 10  
am A2003-41 amdt 3.208, amdt 3.209  
sub A2005-41 amdt 1.6  
am A2005-53 amdt 1.42  
om A2008-36 amdt 1.251

#### **Expenses of witnesses etc**

s 87 sub 1996 No 67 s 10  
am A2003-41 amdt 3.208, amdt 3.209  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251



**Failure to attend or produce document**

s 88 am 1994 No 60 sch 1  
sub 1996 No 67 s 10  
am A2003-41 amdt 3.208, amdt 3.209  
sub A2005-41 amdt 1.6  
om A2005-53 amdt 1.43

**Appearance by audiovisual or audio links**

s 89 am 1994 No 60 sch 1  
sub 1996 No 67 s 10; A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Power to require witness to take oath etc**

s 90 am 1994 No 60 sch 1  
sub 1996 No 67 s 10  
am A2003-41 amdt 3.208  
sub A2005-41 amdt 1.6; A2005-53 amdt 1.44  
om A2008-36 amdt 1.251

**Refusing to take oath or make affirmation**

s 91 sub 1996 No 67 s 10  
am A2003-41 amdt 3.168, amdt 3.208  
sub A2005-41 amdt 1.6  
om A2005-53 amdt 1.44

**Requiring answer or document**

s 92 sub 1996 No 67 s 10  
am 2001 No 44 amdt 1.1128, amdt 1.1129; A2003-41  
amdt 3.169  
sub A2005-41 amdt 1.6  
om A2005-53 amdt 1.44

**Prohibiting or controlling publication**

s 93 am 1994 No 60 sch 1  
sub 1996 No 67 s 10  
am 2000 No 2 sch; A2003-41 amdt 3.170, amdt 3.208  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Privileges against selfincrimination and exposure to civil penalty**

s 94 sub 1996 No 67 s 10; A2005-41 amdt 1.6  
am A2005-53 amdt 1.45, amdt 1.46  
om A2008-36 amdt 1.251

## Endnotes

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### **Protection of members of tribunal etc**

s 95 om 1994 No 60 sch 1  
ins 1996 No 67 s 10  
am A2003-41 amdt 3.171  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

### **Contempt of tribunal**

s 96 am 1995 No 46 sch  
sub 1996 No 67 s 10  
am A2003-41 amdt 3.208  
sub A2005-41 amdt 1.6; A2005-53 amdt 1.47  
om A2008-36 amdt 1.251

### **Application of Criminal Code, ch 7**

s 96A ins 1999 No 22 s 12  
am 2000 No 17 sch 1; A2003-41 amdt 3.208, amdt 3.209;  
A2003-48 amdt 2.6  
om A2005-41 amdt 1.6  
ins A2005-53 amdt 1.47  
om A2008-36 amdt 1.251

### **Granting of relief by tribunal**

div 9.4 hdg ins A2005-41 amdt 1.6`  
om A2008-36 amdt 1.251

### **Interim orders—complaint before HRC**

s 97 sub 1996 No 67 s 10; A2005-41 amdt 1.6  
am A2007-16 amdt 3.46  
om A2008-36 amdt 1.251

### **Interim orders—complaint before tribunal**

s 98 sub 1996 No 67 s 10  
am 1998 No 54 sch  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

### **Decisions following hearing**

s 99 sub 1996 No 67 s 10  
am 2001 No 44 amdts 1.1130-1.1132; A2003-41 amdt 3.208,  
amdt 3.209  
sub A2005-41 amdt 1.6  
(9), (10) exp 1 December 2006 (s 99 (10))  
om A2008-36 amdt 1.251

### **Enforcement of orders and decisions of tribunal**

div 9.5 hdg ins A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Failure to comply with tribunal order**

s 100 sub 1996 No 67 s 10  
am 2001 No 44 amdts 1.1133-1.1135; A2003-41 amdt 3.208,  
amdt 3.209  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Enforcement of tribunal orders**

s 101 sub 1996 No 67 s 10  
am A2003-41 amdt 3.208, amdt 3.209  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251`

**Miscellaneous**

div 9.6 hdg ins A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Statement of reasons**

s 102 sub 1996 No 67 s 10  
am A2003-41 amdt 3.172, amdt 3.208, amdt 3.209  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Referral of questions of law to Supreme Court**

s 103 sub 1996 No 67 s 10  
am 1998 No 54 sch  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Appeals from tribunal decisions**

s 104 sub 1996 No 67 s 10  
(5), (6) exp 10 January 2006 (s 104 (6))  
sub A2005-41 amdt 1.6  
om A2008-36 amdt 1.251

**Effect of Division**

s 105 sub 1996 No 67 s 10  
am A2003-41 amdt 3.173  
om A2005-41 amdt 1.6

**Joining parties**

s 106 sub 1996 No 67 s 10  
am A2003-41 amdt 3.174, amdt 3.209  
om A2005-41 amdt 1.6

## Endnotes

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### Requiring answer or document

s 107 sub 1996 No 67 s 10  
am 1998 No 54 sch  
om A2005-41 amdt 1.6

### Prohibiting or controlling publication

s 108 sub 1996 No 67 s 10  
am 2001 No 44 amdts 1.1136-1.1138; A2003-41 amdt 3.175,  
amdt 3.208  
om A2005-41 amdt 1.6

### Review of directions by commissioner

s 108A ins 1996 No 67 s 10  
om A2005-41 amdt 1.6

### Prohibited publications

s 108B ins 1996 No 67 s 10  
am 1998 No 54 sch  
om A2005-41 amdt 1.6

### Obtaining information and documents

s 108C ins 1996 No 67 s 10  
am A2003-41 amdt 3.176, amdt 3.208, amdt 3.209  
om A2005-41 amdt 1.6

### Statement of reasons

s 108D ins 1996 No 67 s 10  
am A2003-41 amdt 3.208  
sub A2004-60 amdt 1.141  
om A2005-41 amdt 1.6

### Referral of questions of law to Supreme Court

s 108DA ins A2004-60 amdt 1.141  
om A2005-41 amdt 1.6

### Appeals from tribunal to Supreme Court

s 108DB ins A2004-60 amdt 1.141  
(5), (6) exp 10 January 2006 (s 108DB (6))  
sub A2006-40 amdt 2.104  
om A2005-41 amdt 1.6

### Selfincrimination etc

s 108E ins 1996 No 67 s 10  
am 2002 No 11 amdts 2.31-2.33; 2002 No 51 amdt 1.18;  
A2004-15 amdt 2.54  
om A2005-41 amdt 1.6

### Unlawful act not an offence

s 108F ins 1996 No 67 s 10  
om A2005-41 amdt 1.6

**Unlawful act no basis for civil action**

s 108G ins 1996 No 67 s 10  
am A2003-41 amdt 3.177  
om A2005-41 amdt 1.6

**Aiding etc unlawful acts**

s 108H ins 1996 No 67 s 10  
am A2003-41 amdt 3.178  
om A2005-41 amdt 1.6

**Acts and omissions of representatives**

s 108I ins 1996 No 67 s 10  
sub A2004-15 amdt 1.9  
om A2005-41 amdt 1.6

**Protection from civil proceedings**

s 108J ins 1996 No 67 s 10  
om A2005-41 amdt 1.6

**Expenses of witnesses etc**

s 108K ins 1996 No 67 s 10  
am A2003-41 amdt 3.179  
om A2005-41 amdt 1.6

**Failure to attend before commissioner or tribunal**

s 108L ins 1996 No 67 s 10  
am 1998 No 54 sch  
om A2005-41 amdt 1.6

**Failure to give information etc**

s 108M ins 1996 No 67 s 10  
am 1998 No 54 sch  
om A2005-41 amdt 1.6

**Disrupting proceedings before commissioner or tribunal**

s 108N hdg sub A2004-15 amdt 2.55  
s 108N ins 1996 No 67 s 10  
am 1998 No 54 sch  
am 2000 No 2 sch; A2004-15 amdt 2.56  
om A2005-41 amdt 1.6

**False information**

s 108O ins 1996 No 67 s 10  
am 1998 No 54 sch  
om A2004-15 amdt 2.57

**Discrimination tribunal**

pt 9A hdg renum as pt 11 hdg

**Establishment, functions and powers**

div 9A.1 hdg renum as div 11.1 hdg

## Endnotes

### 4 Amendment history

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#### **Tribunal members**

div 9A.2 hdg renum as div 11.2 hdg

#### **Registrar and deputy registrars**

div 9A.3 hdg renum as div 11.3 hdg

#### **Other provisions**

div 9A.4 hdg renum as div 11.4 hdg

#### **Exemptions**

pt 10 hdg orig pt 10 hdg om A2005-41 amdt 1.12  
(prev pt 9 hdg) renum A2005-41 amdt 1.8

#### **Grant of exemptions**

s 109 am 1994 No 60 sch 1; 2001 No 44 amdts 1.1139-1.1142;  
A2003-41 amdt 3.208, amdt 3.209; A2005-41 amdt 1.7;  
A2008-36 amdt 1.252; A2011-52 amdt 3.70, amdt 3.71

#### **Review by ACAT**

s 110 am A2005-41 amdt 1.7  
sub A2008-36 amdt 1.253

#### **Establishment**

s 110A renum as s 111

#### **Functions and powers**

s 110B ins 1996 No 67 s 11  
sub 2000 No 2 sch  
om A2003-41 amdt 3.181

#### **Membership of tribunal**

s 110C renum as s 112

#### **Eligibility for appointment**

s 110D renum as s 113

#### **Conditions of appointment generally**

s 110E renum as s 114

#### **Matters to be included in instrument of appointment etc**

s 110F renum as s 115

#### **Duration of appointment**

s 110G renum as s 116

#### **Registrar and deputy registrars**

s 110H renum as s 117

#### **Constitution of tribunal**

s 110I renum as s 118

#### **Role of president**

s 110J renum as s 119

**Approved forms—registrar**

s 110K renum as s 120

**Discrimination tribunal**

pt 11 hdg orig pt 11 hdg renum as pt 12 hdg  
(prev pt 9A hdg) ins 1996 No 67 s 11  
renum A2005-41 amdt 1.9  
om A2008-36 amdt 1.254

**Establishment, functions and powers**

div 11.1 hdg (prev pt 9A div 1 hdg and then div 9A.1 hdg) ins 2000 No 2  
sch  
renum R6 LA; A2005-41 amdt 1.10  
om A2008-36 amdt 1.254

**Establishment**

s 111 hdg orig s 111 hdg sub A2003-41 amdt 3.191  
s 111 orig s 111 am 2000 No 2 sch; A2003-41 amdt 3.192-3.194  
s 111 (a)-(h) renum as s 112  
prev s 111 ins A2003-41 amdt 3.191  
om A2005-41 amdt 1.12  
(prev s 110A) ins 1996 No 67 s 11  
am A2003-41 amdt 3.180  
renum A2005-41 amdt 1.11  
om A2008-36 amdt 1.254

**Tribunal members**

div 11.2 hdg (prev pt 9A div 2 hdg and then div 9A.2 hdg) ins 2000 No 2  
sch  
renum R6 LA; A2005-41 amdt 1.10  
om A2008-36 amdt 1.254

**Membership of tribunal**

s 112 hdg orig s 112 hdg sub A2003-41 amdt 3.191  
om A2005-41 amdt 1.12  
s 112 orig s 112 om A2003-41 amdt 3.195  
prev s 112 (prev s 111 (a)-(h)) renum A2003-41 amdt 3.191  
am A2003-41 amdt 3.192-3.194; A2004-5 amdt 2.5  
om A2005-41 amdt 1.12  
(prev s 110C) ins 1996 No 67 s 11  
sub 2000 No 2 sch  
am A2003-41 amdt 3.182  
renum A2005-41 amdt 1.11  
om A2008-36 amdt 1.254

## Endnotes

### 4 Amendment history

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#### **Eligibility for appointment**

s 113 orig s 113 om 1997 No 41 sch 1  
prev s 113 ins A2003-41 amdt 3.195  
om A2005-41 amdt 1.12  
(prev s 110D) ins 1996 No 67 s 11  
sub 2000 No 2 sch  
renum A2005-41 amdt 1.11  
om A2008-36 amdt 1.254

#### **Conditions of appointment generally**

s 114 hdg (prev s 110E hdg) sub A2003-41 amdt 3.183  
s 114 orig s 114 sub A2003-41 amdt 3.195  
om A2005-41 amdt 1.12  
(prev s 110E) ins 1996 No 67 s 11  
sub 2000 No 2 sch  
am A2003-41 amdt 3.184  
renum A2005-41 amdt 1.11  
om A2008-36 amdt 1.254

#### **Matters to be included in instrument of appointment etc**

s 115 orig s 115 sub A2003-41 amdt 3.196  
om A2005-41 amdt 1.12  
(prev s 110F) ins 1996 No 67 s 11  
sub 1999 No 66 sch 3  
sub 2000 No 2 sch  
am A2003-41 amdt 3.185, amdt 3.186  
renum A2005-41 amdt 1.11  
om A2008-36 amdt 1.254

#### **Duration of appointment**

s 116 orig s 116 sub A2003-41 amdt 3.196  
om A2005-41 amdt 1.12  
(prev s 110G) ins 2000 No 2 sch  
am A2003-41 amdt 3.187  
renum A2005-41 amdt 1.11  
am A2007-39 amdt 3.23  
om A2008-36 amdt 1.254

#### **Registrar and deputy registrars**

div 11.3 hdg (prev pt 9A div 3 hdg and then div 9A.3 hdg) ins 2000 No 2  
sch  
renum R6 LA; A2005-41 amdt 1.10  
om A2008-36 amdt 1.254



**Registrar and deputy registrars**

s 117 orig s 117 om A2003-41 amdt 3.196  
(prev s 110H) ins 2000 No 2 sch  
am A2003-41 amdt 3.188, amdt 3.189  
renum A2005-41 amdt 1.11  
om A2008-36 amdt 1.254

**Other provisions**

div 11.4 hdg (prev pt 9A div 4 hdg and then div 9A.4 hdg) ins 2000 No 2  
sch  
renum R6 LA; A2005-41 amdt 1.10  
om A2008-36 amdt 1.254

**Constitution of tribunal**

s 118 orig s 118 sub 1994 No 38 sch 1 pt 28  
am A2003-41 amdt 3.208  
om A2005-41 amdt 1.12  
(prev s 110I) ins 2000 No 2 sch  
renum A2005-41 amdt 1.11  
om A2008-36 amdt 1.254

**Role of president**

s 119 orig s 119 om 1995 No 25 sch  
prev s 119 ins 1996 No 67 s 12  
am 2000 No 2 s 3 sch  
om A2005-41 amdt 1.12  
(prev s 110J) ins 2000 No 2 sch  
renum A2005-41 amdt 1.11  
om A2008-36 amdt 1.254

**Approved forms—registrar**

s 120 orig s 120 am 1996 No 67 s 13  
sub A2003-41 amdt 3.197  
om A2005-41 amdt 1.12  
(prev s 110K) ins 2001 No 44 amdt 1.1143  
am A2003-41 amdt 3.190  
renum A2005-41 amdt 1.11  
om A2008-36 amdt 1.254

**Miscellaneous**

pt 12 hdg (prev pt 11 hdg) sub and renum A2005-41 amdt 1.13

**Secrecy**

s 121 sub 1996 No 67 s 14  
am 2000 No 2 s 3 sch; A2003-41 amdt 3.198, amdt 3.199  
sub A2005-41 amdt 1.13  
(6), (7) exp 1 December 2006 (s 121 (7))  
am A2008-36 amdt 1.255

## Endnotes

4 Amendment history

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### Acts and omissions of representatives

s 121A ins A2008-29 amdt 1.22

### Relationship to other laws

s 122 am 1996 No 67 s 15  
am 1998 No 54 s 3 sch  
am 2000 No 2 s 3 sch; A2003-41 amdt 3.200, amdt 3.201,  
amdt 3.209  
sub A2005-41 amdt 1.13

### Regulation-making power

s 123 om 1997 No 41 sch 1  
ins A2005-41 amdt 1.13

### Intergovernmental arrangements

s 124 am 2000 No 2 s 3 sch; 2001 No 44 amdt 1.1144; A2003-41  
amdt 3.202, amdt 3.208  
om A2005-41 amdt 1.13

### Exercise of functions under intergovernmental arrangement

s 125 hdg am 2000 No 2 s 3 sch  
s 125 am A2003-41 amdt 3.203  
om A2005-41 amdt 1.13

### Approved forms—commissioner

s 126A ins 2001 No 44 amdt 1.1145  
am A2003-41 amdt 3.204  
om A2005-41 amdt 1.13

### Regulation-making power

s 127 sub 2000 No 2 s 3 sch  
am 2001 No 44 amdt 1.1146, amdt 1.1147; A2003-41  
amdt 3.206  
om A2005-41 amdt 1.13

### Transitional provisions about tribunal members

s 128 ins 2000 No 2 sch  
exp 9 June 2000 (s 128 (3))

### Dictionary

dict ins A2003-41 amdt 3.205  
am A2006-22 amdt 1.30 (A2006-22 rep before commenced by  
disallowance (see Cwlth Gaz 2006 No S93)); A2008-14  
amdt 1.22; A2008-36 amdt 1.256; A2011-22 amdt 1.169,  
amdt 1.170; A2011-28 amdt 3.55; A2012-40 amdt 3.29  
def **accommodation** reloc from s 4 A2003-41 amdt 3.32  
def **affinity** ins A2006-22 amdt 1.31 (A2006-22 rep before  
commenced by disallowance (see Cwlth Gaz 2006 No S93))  
def **carer** reloc from s 4 A2003-41 amdt 3.32  
sub A2006-47 s 5

- def **club** reloc from s 4 A2003-41 amdt 3.32  
sub A2010-43 amdt 1.10
- def **club licence** ins A2010-43 amdt 1.10
- def **commission agent** reloc from s 4 A2003-41 amdt 3.32
- def **commissioner** sub A2003-41 amdt 3.25  
reloc from s 4 A2003-41 amdt 3.32  
om A2005-41 amdt 1.14
- def **committee of management** am A2003-41 amdt 3.206  
reloc from s 4 A2003-41 amdt 3.32
- def **Commonwealth commission** reloc from s 4 A2003-41  
amdt 3.32  
om A2005-41 amdt 1.14
- def **complainant** ins A2003-41 amdt 3.205  
sub A2005-41 amdt 1.15  
om A2008-36 amdt 1.257
- def **complaint** reloc from s 4 A2003-41 amdt 3.32  
sub A2005-41 amdt 1.16  
om A2008-36 amdt 1.257
- def **complaint about unlawful discrimination** ins A2005-41  
amdt 1.17  
om A2008-36 amdt 1.257
- def **compulsory conference** reloc from s 4 A2003-41  
amdt 3.32  
om A2007-22 amdt 1.27
- def **contract worker** sub A2003-41 amdt 3.26  
reloc from s 4 A2003-41 amdt 3.32
- def **deputy president** ins 2000 No 2 sch  
reloc from s 4 A2003-41 amdt 3.32  
om A2008-36 amdt 1.257
- def **disability** ins A2003-41 amdt 3.27  
reloc from s 4 A2003-41 amdt 3.32
- def **discriminate** reloc from s 4 A2003-41 amdt 3.32
- def **doing** ins A2003-41 amdt 3.205
- def **educational authority** reloc from s 4 A2003-41 amdt 3.32
- def **educational institution** reloc from s 4 A2003-41  
amdt 3.32
- def **employer** reloc from s 4 A2003-41 amdt 3.32
- def **employment** reloc from s 4 A2003-41 amdt 3.32
- def **employment agency** am A2003-41 amdt 3.206  
reloc from s 4 A2003-41 amdt 3.32
- def **gender identity** ins A2010-5 s 10
- def **HIV/AIDS status** ins A2004-2 amdt 2.8
- def **HRC** ins A2005-41 amdt 1.17
- def **HRC Act** ins A2005-41 amdt 1.17  
om A2008-36 amdt 1.257
- def **industrial activity** ins A2010-5 s 10
- def **industrial association** ins A2010-5 s 10

## Endnotes

### 4 Amendment history

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- def **industrial organisation** ins A2010-5 s 10
- def **investigation** reloc from s 4 A2003-41 amdt 3.32  
om A2005-41 amdt 1.18
- def **man** reloc from s 4 A2003-41 amdt 3.32
- def **member** ins 2000 No 2 sch  
reloc from s 4 A2003-41 amdt 3.32  
om A2008-36 amdt 1.257
- def **party** ins A2003-41 amdt 3.205  
sub A2005-41 amdt 1.19  
om A2008-36 amdt 1.257
- def **potential pregnancy** ins 2002 No 19 s 4  
reloc from s 4 A2003-41 amdt 3.32
- def **pregnancy** ins 2002 No 19 s 4  
reloc from s 4 A2003-41 amdt 3.32
- def **premises** reloc from s 4 A2003-41 amdt 3.32
- def **president** ins 2000 No 2 sch  
reloc from s 4 A2003-41 amdt 3.32  
om A2008-36 amdt 1.257
- def **principal** sub A2003-41 amdt 3.29  
reloc from s 4 A2003-41 amdt 3.32
- def **public act** ins A2003-41 amdt 3.205  
sub A2004-2 amdt 2.9
- def **race** reloc from s 4 A2003-41 amdt 3.32
- def **relationship status** ins A2003-15 s 7  
reloc from s 4 A2003-41 amdt 3.32  
am A2006-22 amdt 1.32, amdt 1.33 (A2006-22 rep before  
commenced by disallowance (see Cwlth Gaz 2006  
No S93)); A2008-14 amdt 1.23, amdt 1.24; pars renum  
R29 LA; A2012-40 amdt 3.30, amdt 3.31; pars renum  
R39 LA
- def **relative** sub A2003-15 s 8  
reloc from s 4 A2003-41 amdt 3.32  
am A2006-22 amdt 1.34 (A2006-22 rep before  
commenced by disallowance (see Cwlth Gaz 2006  
No S93)); A2012-40 amdt 3.32
- def **relevant class of persons** sub A2003-41 amdt 3.30  
reloc from s 4 A2003-41 amdt 3.32
- def **representative complaint** am 1996 No 67 s 4  
reloc from s 4 A2003-41 amdt 3.32  
om A2005-41 amdt 1.20
- def **respondent** ins A2003-41 amdt 3.205  
sub A2005-41 amdt 1.21  
om A2008-36 amdt 1.257
- def **services** am A2003-41 amdt 3.31  
reloc from s 4 A2003-41 amdt 3.32
- def **sexual harassment** ins A2003-41 amdt 3.205
- def **sexuality** reloc from s 4 A2003-41 amdt 3.32

- def **staff** reloc from s 4 A2003-41 amdt 3.32  
om A2005-41 amdt 1.22
- def **Territory employee** sub 1994 No 38 sch 1 pt 28  
reloc from s 4 A2003-41 amdt 3.32
- def **transsexual** reloc from s 4 A2003-41 amdt 3.32  
om A2010-5 s 11
- def **tribunal** ins 1996 No 67 s 4  
reloc from s 4 A2003-41 amdt 3.32  
sub A2005-41 amdt 1.23  
om A2008-36 amdt 1.257
- def **unpaid worker** reloc from s 4 A2003-41 amdt 3.32
- def **voluntary body** reloc from s 4 A2003-41 amdt 3.32
- def **woman** reloc from s 4 A2003-41 amdt 3.32

## Endnotes

### 5 Earlier republications

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#### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1994 No 11	31 May 1994
2	Act 1995 No 46	1 January 1996
3	Act 1996 No 67	31 January 1997
4	Act 1998 No 54	31 January 1999
5	Act 2000 No 17	15 June 2000
6	Act 2001 No 44	12 September 2001
7	Act 2002 No 11	31 May 2002
8	Act 2002 No 19	14 June 2002
9	Act 2002 No 19	11 July 2002
10	Act 2002 No 51	1 January 2003
10 (RI)	Act 2002 No 51 ‡	10 February 2003
11	A2003-15	28 March 2003
12	A2003-41	9 October 2003
13	<u>A2004-5</u>	22 March 2004
14	A2004-15	9 April 2004
15	A2004-15	30 April 2004
16	A2004-15	1 July 2004
17	A2004-51	12 August 2004
18*	A2004-51	1 September 2004
19	A2004-60	10 January 2005
20	A2005-60	11 January 2006
21	A2006-3	23 February 2006

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
22	A2006-40	29 September 2006
23	A2006-40	1 November 2006
24*	A2006-47	2 December 2006
25	A2006-47	28 May 2007
26	A2007-16	11 July 2007
27	A2007-22	6 September 2007
28	A2007-39	27 December 2007
29	A2008-14	19 May 2008
30	<u>A2008-29</u>	13 August 2008
31	A2008-29	27 August 2008
32*	A2008-36	2 February 2009
33	A2010-5	9 March 2010
34	A2010-5	22 April 2010
35	A2010-43	1 December 2010
36	A2011-22	1 July 2011
37*	A2011-28	21 September 2011
38	A2011-52	12 December 2011

‡ includes retrospective amendments by A2002-49

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