



Australian Capital Territory

Discrimination Act 1991

A1991-81

Republication No 47

Effective: 21 June 2019 – 9 April 2020

Republication date: 21 June 2019

Last amendment made by [A2019-17](#)

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 21 June 2019. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 21 June 2019.

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

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- 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). 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 \$160 for an individual and \$810 for a corporation (see *Legislation Act 2001*, s 133).



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R47
21/06/19

Discrimination Act 1991
Effective: 21/06/19-09/04/20

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Australian Capital Territory

Discrimination Act 1991

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

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 of Act

The objects of this Act are—

- (a) to eliminate discrimination to the greatest extent possible; and
- (b) to promote and protect the right to equality before the law under the [Human Rights Act 2004](#), including—
 - (i) the right to enjoy a person's human rights without distinction or discrimination of any kind; and

- (ii) the right to the equal protection of the law without discrimination; and
 - (iii) the right to equal and effective protection against discrimination on any ground; and
- (c) to encourage the identification and elimination of systemic causes of discrimination; and
- (d) to promote and facilitate the progressive realisation of equality, as far as reasonably practicable, by recognising that—
 - (i) discrimination can cause social and economic disadvantage and that access opportunities are not equitably distributed throughout society; and
 - (ii) equal application of a rule to different groups can have unequal results or outcomes; and
 - (iii) the achievement of substantive equality may require the making of reasonable adjustments, reasonable accommodation and the taking of special measures.

4AA Interpretation beneficial to people with protected attributes

This Act must be interpreted in a way that is beneficial to a person who has a protected attribute, to the extent it is possible to do so consistently with—

- (a) the objects of this Act; and
- (b) human rights under the *Human Rights Act 2004*.

Note The [Legislation Act](#), s 139 (1) (which is about interpreting legislation to be consistent with its purpose) and the *Human Rights Act 2004*, s 30 (which is about interpreting legislation to be consistent with human rights) are also relevant to interpreting territory laws.

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 or mental function; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms that cause disease or illness; or
- (d) the presence in the body of organisms that are capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the body; or
- (f) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or
- (h) any other condition prescribed by regulation.

- (2) For this Act, **disability** includes—
- (a) behaviour that is a symptom or manifestation of the disability;
and
 - (b) a disability that a person may have in the future, including because of a genetic disposition to the disability; and
 - (c) a disability that it is thought a person may have in the future, whether or not—
 - (i) the person has a genetic disposition to the disability; or
 - (ii) there is anything else to indicate the person may have the disability in the future; and
- Note* **Disability** also includes a disability that the person has or is thought to have, and a disability that the person has had in the past, or is thought to have had in the past (see s 7 (2)).
- (d) reliance on—
 - (i) a support person; or
 - (ii) a disability aid; or
 - (iii) an assistance animal.

- (3) In this section:

assistance animal means an assistance animal trained to assist a person with disability to alleviate the effect of the disability, that satisfies any requirements prescribed by regulation.

disability aid—

- (a) means equipment (including a palliative or therapeutic device) that is generally recognised to alleviate an effect of a disability;
and

(b) includes anything prescribed by regulation.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision in relation to different matters or different classes of matters, and to make an instrument that applies differently by reference to stated exceptions or factors (see [Legislation Act](#), s 48).

support person means a person who provides assistance or services to another person because of a disability the other person has.

Examples

carer, assistant, interpreter, reader

5AB Liability of person relying on assistance animal etc

- (1) This section applies to a person with disability who relies on an assistance animal or disability aid.
- (2) Nothing in this Act affects the liability of the person for any injury, loss or damage caused by the person's assistance animal or disability aid.
- (3) In this section:

assistance animal—see section 5AA (3).

disability aid—see section 5AA (3).

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 Protected attributes

(1) This Act applies to discrimination on the ground of any of the following attributes (a *protected attribute*):

- (a) accommodation status;
- (b) age;

Examples—par (b)

because the person is a child or young person or an older person

- (c) association (whether as a relative or otherwise) with a person who is identified by reference to another protected attribute;
- (d) breastfeeding;
- (e) disability;
- (f) employment status;
- (g) gender identity;
- (h) genetic information;
- (i) immigration status;
- (j) industrial activity;
- (k) intersex status;
- (l) irrelevant criminal record;
- (m) parent, family, carer or kinship responsibilities;
- (n) physical features;
- (o) political conviction;
- (p) pregnancy;

- (q) profession, trade, occupation or calling;
 - (r) race;
 - (s) record of a person's sex having been altered under the *Births, Deaths and Marriages Registration Act 1997* or a law of another jurisdiction that corresponds, or substantially, corresponds, to [the Act](#), section 26 (Alteration of register);
 - (t) relationship status;
 - (u) religious conviction;
 - (v) sex;
 - (w) sexuality;
 - (x) subjection to domestic or family violence.
- (2) For this Act, ***protected attribute*** includes—
- (a) a characteristic that people with the attribute generally have; and
 - (b) a characteristic that people with the attribute are generally presumed to have; and
 - (c) the attribute that a person has; and
 - (d) the attribute that a person has had in the past, whether or not the person still has the attribute; and
 - (e) the attribute that a person is thought to have, whether or not the person has the attribute; and
 - (f) the attribute that a person is thought to have had in the past, whether or not the person has had the attribute in the past.

8 Meaning of *discrimination*

- (1) For this Act, *discrimination* occurs when a person discriminates either directly or indirectly, or both, against someone else.
- (2) For this section, a person *directly* discriminates against someone else if the person treats, or proposes to treat, another person unfavourably because the other person has 1 or more protected attributes.
- (3) For this section, a person *indirectly* discriminates against someone else if the person imposes, or proposes to impose, a condition or requirement that has, or is likely to have, the effect of disadvantaging the other person because the other person has 1 or more protected attributes.
- (4) However, a condition or requirement does not give rise to indirect discrimination if it is reasonable in the circumstances.
- (5) 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 any disadvantage that results from imposing the condition or requirement; 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.

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

- (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) Also, section 21 does not make it unlawful for a person to discriminate on the ground of accommodation status in relation to the provision of accommodation if the discrimination is reasonable, having regard to any relevant factors.

Example—relevant factors

effect of the discrimination on the person discriminated against

- (3) 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 a protected attribute, 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

- (1) 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 (other than a defined act) 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.
- (2) In this section:
- defined act**, by a religious body, means an act or practice in relation to—
- (a) the employment or contracting of a person by the body to work in an educational institution; or
 - (b) the admission, treatment or continued enrolment of a person as a student at an educational institution.

33A Discrimination relating to accommodation, goods or services etc

Part 3 does not make it unlawful to discriminate against a person in relation to accommodation, providing goods or services or making facilities available only because a person charges for the accommodation, goods, services or facilities.

- (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

- (1) 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.

- (2) Section 10 or section 13 does not make unlawful discrimination on the ground of religious conviction in relation to staff matters at an educational institution if—
- (a) the institution is conducted in accordance with the doctrines, tenets, beliefs or teaching of a particular religion or creed; and
 - (b) the discrimination is intended to enable, or better enable, the institution to be conducted in accordance with those doctrines, tenets, beliefs or teachings.

- (3) Subsection (1) does not apply unless—
- (a) the educational institution has published its policy in relation to student matters; and
 - (b) the policy is readily accessible by prospective and current students at the institution.
- (4) Subsection (2) does not apply unless—
- (a) the educational institution has published its policy in relation to staff matters; and
 - (b) the policy is readily accessible by prospective and current employees and contractors of the institution.
- (5) In this section:
- staff matters*, in relation to an educational institution, means—
- (a) the employment of a member of staff of the institution; or
 - (b) the engagement of a contractor to do work in the institution.
- student matters*, in relation to an educational institution, means the admission of a student at the institution.

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* does not include anything mentioned in—
- (a) section 5AA (2) (b) or (c) (Meaning of *disability* etc); or
 - (b) section 7 (2) (Protected attributes), other than a disability that the person has.

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* does not include anything mentioned in—
- (a) section 5AA (2) (b) or (c) (Meaning of *disability* etc); or
 - (b) section 7 (2) (Protected attributes), other than a disability that the person has.

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).

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.

Division 4.8 **Exceptions relating to employment status**

57O **Discrimination relating to employment status**

Part 3 does not make it unlawful to discriminate against a person on the ground of employment status in relation to something mentioned in section 10 (1) (Applicants and employees) if the discrimination is reasonable, having regard to any relevant factors.

Example—relevant factors

effect of the discrimination on the person discriminated against

Division 4.9 **Exceptions relating to immigration status**

57P **Discrimination relating to immigration status**

Part 3 does not make it unlawful to discriminate against a person on the ground of immigration status if the discrimination is reasonable, having regard to any relevant factors.

Example—relevant factors

effect of the discrimination on the person discriminated against

Division 4.10 Exceptions relating to physical features

57Q Genuine occupational requirements—physical features

Part 3 does not make it unlawful to discriminate against a person on the ground of physical features in relation to employment or work if the employment relates to a dramatic or artistic performance, photographic or modelling work or similar employment or work.

57R Health and safety—physical features

Part 3 does not make it unlawful to discriminate against a person on the ground of physical features if the discrimination is reasonably necessary to—

- (a) protect the health or safety of the person, anyone else or the public generally; or
- (b) protect the property of the person, anyone else or the public generally.

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 7 Other unlawful acts

67A Unlawful vilification

- (1) It is unlawful for a person to incite hatred toward, revulsion of, serious contempt for, or severe ridicule of a person or group of people on the ground of any of the following, other than in private:
- (a) disability;
 - (b) gender identity;
 - (c) HIV/AIDS status;
 - (d) intersex status;
 - (e) race;
 - (f) religious conviction;
 - (g) sexuality.

Examples—other than in private

- 1 screening recorded material at an event that is open to the public, even if privately organised
- 2 writing a publicly viewable post on social media
- 3 speaking in an interview intended to be broadcast or published
- 4 actions or gestures observable by the public
- 5 wearing or displaying clothes, signs or flags observable by the public

Note Serious vilification is an offence under the [Criminal Code](#), s 750.

- (2) However, it is not unlawful to—
- (a) make a fair report about an act mentioned in subsection (1); or
 - (b) communicate, distribute or disseminate any matter consisting of a publication that is subject to a defence of absolute privilege in a proceeding for defamation; or

(c) do an act mentioned in subsection (1) 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.

(3) In this section:

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

68 Victimization

(1) It is unlawful for a person (the ***first person***) to subject, or threaten to subject, another person (the ***other person***) to any detriment because—

(a) the other person, or someone associated with the other person—

(i) has taken discrimination action; or

(ii) proposes to take discrimination action; or

(b) the first person believes the other person, or someone associated with the other person—

(i) has taken discrimination action; or

(ii) proposes to take discrimination action.

(2) In this section:

discrimination action means any of the following:

(a) begin a proceeding in the ACAT or a court in relation to this Act;

(b) make a discrimination complaint;

(c) participate in or assist with, a criminal investigation in relation to an offence under the [Criminal Code](#), section 750 (Serious vilification);

- (d) give information or produce a document or other thing to a person exercising a function under the [HRC Act](#) in relation to a discrimination complaint;
- (e) give information, produce a document or other thing or answer a question when required under the [HRC Act](#) in relation to a discrimination complaint;
- (f) give evidence or produce a document or thing to the ACAT or a court in relation to this Act;
- (g) reasonably assert any rights that the other person, or someone else, has under this Act;
- (h) claim that a person has committed an act that is unlawful under this Act, or is an offence against the [Criminal Code](#), section 750, other than a claim that is false and not made honestly;
- (i) do anything else in accordance with this Act.

discrimination complaint means a complaint under the [HRC Act](#) about an unlawful act.

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 an unlawful act, 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 an unlawful act.

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 an unlawful act.

73 Aiding etc unlawful acts

A person who aids, abets, counsels or procures someone else to do an act that is an unlawful act 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 the doing of an unlawful act (*conduct*).

Note 1 A complaint may be made about an unlawful act (see [Human Rights Commission Act 2005](#), 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
- intersex person (see s 169B)
- reviewable decision notice
- State
- Territory authority
- the Territory
- under.

accommodation includes residential and business accommodation.

accommodation status includes being—

- (a) a tenant; and
- (b) an occupant within the meaning of the [Residential Tenancies Act 1997](#); and

- (c) in receipt of, or waiting to receive, housing assistance within the meaning of the *Housing Assistance Act 2007*; and
- (d) homeless.

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’.

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.

discrimination—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.

employment status includes—

- (a) being unemployed; and
- (b) receiving a pension or another social security benefit; and
- (c) receiving compensation; and
- (d) being employed on a part-time, casual or temporary basis; and
- (e) undertaking shift or contract work.

gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person, with or without regard to the person's designated sex at birth.

Note ***Gender identity*** includes the gender identity that the person has or has had in the past, or is thought to have or have had in the past (see s 7 (2)).

HRC means the human rights commission.

immigration status includes being an immigrant, a refugee or an asylum seeker, or holding any kind of visa under the *Migration Act 1958* (Cwlth).

Note ***Immigration status*** includes the immigration status that the person has or has had in the past, or is thought to have or have had in the past (see s 7 (2)).

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.

intersex status means status as an intersex person.

irrelevant criminal record, in relation to a person, means a record relating to an offence, or an alleged offence, if—

- (a) the person has been charged with the offence but—
 - (i) a proceeding for the alleged offence is not finalised; or
 - (ii) the charge has lapsed, been withdrawn or discharged, or struck out; or
- (b) the person has been acquitted of the alleged offence; or
- (c) the person has had a conviction for the alleged offence quashed or set aside; or
- (d) the person has been served with an infringement notice for the alleged offence; or
- (e) the person has a conviction for the offence, but the circumstances of the offence are not directly relevant to the situation in which discrimination arises; or
- (f) the person has a spent conviction or an extinguished conviction, within the meaning of the *Spent Convictions Act 2000*, for the offence.

Note The *Spent Convictions Act 2000* sets out which convictions can be spent (see [that Act](#), s 11) and when a conviction is spent (see that Act, s 12).

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

physical features means a person's height, weight, size or other bodily features.

political conviction includes—

- (a) having a political conviction, belief, opinion or affiliation; and
- (b) engaging in political activity; and
- (c) not having a political conviction, belief, opinion or affiliation; and
- (d) not engaging in political activity.

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.

protected attribute—see section 7.

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) the surviving spouse; 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 a protected attribute.

religious conviction includes—

- (a) having a religious conviction, belief, opinion or affiliation; and
- (b) engaging in religious activity; and

- (c) the cultural heritage and distinctive spiritual practices, observances, beliefs and teachings of Aboriginal and Torres Strait Islander people; and
- (d) engaging in the cultural heritage and distinctive spiritual practices, observances, beliefs and teachings of Aboriginal and Torres Strait Islander peoples; and
- (e) not having a religious conviction, belief, opinion or affiliation; and
- (f) not engaging in religious activity.

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;

unlawful act means an act that is unlawful under—

- (a) part 3 (Unlawful discrimination); or
- (b) part 5 (Sexual harassment); or
- (c) part 7 (Other unlawful acts).

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

Endnotes

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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

3 Legislation history

Discrimination Act 1991 A1991-81

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 A1993-25

notified 21 May 1993 (Gaz 1993 No S83)
commenced 21 May 1993 (s 2)

Acts Revision (Position of Crown) Act 1993 A1993-44 sch 2

notified 27 August 1993 (Gaz 1994 No S165)
commenced 27 August 1993 (s 2)

Discrimination (Amendment) Act 1994 A1994-1

notified 4 March 1994 (Gaz 1994 No S35)
commenced 4 March 1994 (s 2)

Discrimination (Amendment) Act (No 2) 1994 A1994-11

notified 14 March 1994 (Gaz 1994 No 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 A1994-38 sch 1 pt 28

notified 30 June 1994 (Gaz 1994 No 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 A1994-60 sch 1

notified 11 October 1994 (Gaz 1994 No 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 A1994-103

notified 22 December 1994 (Gaz 1994 No S289)
commenced 22 December 1994 (s 2)

Endnotes

3 Legislation history

Discrimination (Amendment) Act 1995 A1995-9

notified 30 June 1995 (Gaz 1995 No S135)
commenced 30 June 1995 (s 2)

Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 A1995-25 sch

notified 5 September 1995 (Gaz 1995 No S212)
sch commenced 5 September 1995 (s 2)

Statute Law Revision Act 1995 A1995-46 sch

notified 18 December 1995 (Gaz 1995 No S306)
sch commenced 18 December 1995 (s 2)

Discrimination (Amendment) Act 1996 A1996-67

notified 20 December 1996 (Gaz 1996 No 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 A1997-41 sch 1 (as am by A2002-49 amdt 3.222)

notified 19 September 1997 (Gaz 1997 No S264)
commenced 24 September 1997 (s 2 as am by A2002-49 amdt 3.222)

Building (Amendment) Act (No 2) 1998 A1998-52 sch

notified 16 November 1998 (Gaz 1998 No 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 A1998-54 sch

notified 27 November 1998 (Gaz 1998 No 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 A1999-22 s 12

notified 14 April 1999 (Gaz 1999 No 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)

Discrimination Amendment Act 1999 A1999-60

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

**Children and Young People (Consequential Amendments) Act 1999
A1999-64 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 A1999-66 sch 3

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

Discrimination Amendment Act (No 2) 1999 A1999-83

notified 23 December 1999 (Gaz 1999 No S65)
commenced 23 December 1999 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000
(No 2) A2000-2 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) A2000-17 sch 1**

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

Spent Convictions Act 2000 A2000-48 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 A2001-44 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)

Endnotes

3 Legislation history

Legislation Amendment Act 2002 A2002-11 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 A2002-19

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) A2002-49 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 A1997-41](#) .

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)

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](#))

Endnotes

3 Legislation history

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)

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](#))

Endnotes

3 Legislation history

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)

Marriage Equality (Same Sex) Act 2013 A2013-39 sch 2 pt 2.9

notified LR 4 November 2013

s 1, s 2 commenced 4 November 2013 (LA s 75 (1))

sch 2 pt 2.9 commenced 7 November 2013 (s 2 and [CN2013-11](#))

Note The High Court held this Act to be of no effect (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)

Spent Convictions (Historical Homosexual Convictions Extinguishment) Amendment Act 2015 A2015-45 sch 1 pt 1.3

notified LR 6 November 2015

s 1, s 2 commenced 6 November 2015 (LA s 75 (1))

sch 1 pt 1.3 commenced 7 November 2015 (s 2)

Discrimination Amendment Act 2016 A2016-49 pt 2, pt 3

notified LR 23 August 2016

s 1, s 2 commenced 23 August 2016 (LA s 75 (1))

pt 2 commenced 24 August 2016 (s 2 (1))

pt 3 commenced 3 April 2017 (s 2 (2))

Discrimination Amendment Act 2018 A2018-48

notified LR 6 December 2018

s 1, s 2 commenced 6 December 2018 (LA s 75 (1))

remainder commenced 29 April 2019 (s 2 and [CN2019-7](#))

Justice and Community Safety Legislation Amendment Act 2019 A2019-17 sch 1 pt 1.2

notified LR 14 June 2019

s 1, s 2 commenced 14 June 2019 (LA s 75 (1))

sch 1 pt 1.2 commenced 21 June 2019 (s 2)

Endnotes

4 Amendment history

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 [A2001-44](#) 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 of Act

s 4 orig s 4 defs reloc to dict [A2003-41](#) amdt 3.32
om [A2003-41](#) amdt 3.33
(prev s 3) renum [A2003-41](#) amdt 3.24
sub [A2016-49](#) s 4
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

Interpretation beneficial to people with protected attributes

s 4AA ins [A2016-49](#) s 4
am [A2016-49](#) s 19

Meaning of *doing an act*

s 4A ins [A2003-41](#) 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
sub [A2016-49](#) s 5

Liability of person relying on assistance animal etc

s 5AB ins [A2016-49](#) s 5

Meaning of *potential pregnancy*

s 5A ins [A2002-19](#) s 5
am [A2003-41](#) amdt 3.40

MLAs as employers

s 6 om [A1993-44](#) sch 2
ins [A1995-9](#) 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

Protected attributes

s 7 am [A1993-25](#) s 4; [A1994-1](#) s 4; [A1994-11](#) s 4; [A1996-67](#) s 5;
[A1999-60](#) s 4; [A2000-48](#) 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; [A2015-45](#) amdt 1.3
sub [A2016-49](#) s 20

Meaning of *discrimination*

s 8 am [A2003-41](#) amdt 3.44, amdt 3.206
sub [A2016-49](#) s 6
am [A2016-49](#) s 21

Disability—guide-dogs etc

s 9 hdg am [A2003-41](#) amdt 3.207
s 9 am [A1996-67](#) s 5; [A2003-41](#) amdts 3.45-3.47, amdt 3.206,
amdt 3.207
om [A2016-49](#) s 7

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 [A1993-25](#) 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

Endnotes

4 Amendment history

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 [A1994-1](#) s 5
am [A1999-64](#) sch 2; [A2003-41](#) amdt 3.69, amdt 3.206;
[A2009-36](#) amdt 1.5; [A2011-22](#) amdt 1.168

Domestic accommodation etc

s 26 am [A2003-15](#) s 12, s 13; [A2003-41](#) amdt 3.206; [A2006-47](#) s 4;
[A2016-49](#) s 22; ss renum R45 LA

Preselection by employment agencies

s 26A ins [A1996-67](#) s 6
sub [A2003-41](#) amdt 3.70

Measures intended to achieve equality

s 27 am [A1999-83](#) s 4; [A2003-41](#) amdt 3.71, amdt 3.206
sub [A2004-51](#) s 4
am [A2016-49](#) s 23

Insurance

s 28 sub [A2003-41](#) amdt 3.72

Superannuation

s 29 am [A1994-1](#) s 6; [A2003-41](#) amdts 3.73-3.77, amdt 3.209

Acts done under statutory authority etc

s 30 am [A1996-67](#) s 7; [A2001-44](#) 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 [A1996-67](#) s 8
sub [A2003-41](#) amdt 3.79

Religious bodies

s 32 am [A2000-2](#) sch; [A2003-41](#) amdt 3.80, amdt 3.206; [A2018-48](#)
s 4, s 5

Educational institutions conducted for religious purposes

s 33 am [A2003-41](#) amdts 3.81-3.85
om [A2018-48](#) s 6

Discrimination relating to accommodation, goods or services etc

s 33A ins [A2016-49](#) s 24

Exceptions about sex, relationship status, pregnancy or breastfeeding

div 4.2 hdg (prev pt 4 div 2 hdg) am [A1999-60](#) 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 [A1999-60](#) 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 [A1999-60](#) 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; [A2018-48](#) s 7

Endnotes

4 Amendment history

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; [A2016-49](#) s 25

Discrimination by qualifying bodies etc

s 50 am [A2003-15](#) s 19, s 20; [A2003-41](#) amdt 3.116, amdt 3.207; [A2016-49](#) s 26

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 [A1998-52](#) sch; [A2001-44](#) 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

Discrimination in the provision of goods and services

s 53 am [A1996-67](#) 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 [A1994-1](#) s 7
renum R6 LA

Genuine occupational qualifications—age

s 57A hdg sub [A2003-41](#) amdt 3.130

s 57A ins [A1994-1](#) s 7

am [A2003-41](#) amdt 3.130, amdt 3.131

Youth wages

s 57B ins [A1994-1](#) 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 [A1994-1](#) s 7
 sub [A2003-41](#) amdt 3.133

Compulsory retirement—2-year exemption

s 57D ins [A1994-1](#) s 7
 (1) exp 4 March 1996 (s 57D (2))
 om R4 LRA

Education—minimum-age admissions

s 57E ins [A1994-1](#) s 7
 am [A2003-41](#) amdts 3.134-3.136, amdt 3.209

Education—senior secondary colleges (until 1 January 1996)

s 57F ins [A1994-1](#) s 7
 (1) exp 1 January 1996 (s 57F (2))
 om R4 LRA

Legal capacity

s 57G ins [A1994-1](#) s 7
 sub [A2003-41](#) amdt 3.137

Benefits and concessions

s 57H ins [A1994-1](#) s 7
 sub [A2003-41](#) amdt 3.138

Goods, services and facilities—health and safety

s 57J ins [A1994-1](#) s 7
 am [A2003-41](#) amdt 3.139, amdt 3.140, amdt 3.209

Recreational tours and accommodation

s 57K ins [A1994-1](#) s 7
 am [A2003-41](#) amdt 3.141

Clubs

s 57L ins [A1994-1](#) s 7
 sub [A2003-41](#) amdt 3.142

Sport

s 57M ins [A1994-1](#) 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 [A1994-11](#) s 5
 renum R6 LA

Endnotes

4 Amendment history

Discrimination in profession, trade, occupation or calling

s 57N ins [A1994-11](#) s 5
am [A2003-41](#) amdt 3.144, amdt 3.209

Exceptions relating to employment status

div 4.8 hdg ins [A2016-49](#) s 27

Discrimination relating to employment status

s 57O ins [A2016-49](#) s 27

Exceptions relating to immigration status

div 4.9 hdg ins [A2016-49](#) s 27

Discrimination relating to immigration status

s 57P ins [A2016-49](#) s 27

Exceptions relating to physical features

div 4.10 hdg ins [A2016-49](#) s 27

Genuine occupational requirements—physical features

s 57Q ins [A2016-49](#) s 27

Health and safety—physical features

s 57R ins [A2016-49](#) s 27

Meaning of *sexual harassment* for pt 5

s 58 sub [A2003-41](#) amdt 3.145

Employment etc

s 59 am [A1995-9](#) s 5; [A2003-41](#) amdt 3.206

Racial, sexuality and HIV/AIDS vilification

pt 6 hdg sub [A2004-2](#) amdt 2.5
om [A2016-49](#) s 8

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
om [A2016-49](#) s 8
def ***HIV/AIDS status*** ins [A2004-2](#) amdt 2.6
om [A2016-49](#) s 8
def ***public act*** om [A2016-49](#) s 8

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
om [A2016-49](#) s 8

Serious vilification offence—race, sexuality etc

s 67 am [A1998-54](#) sch
sub [A2004-2](#) amdt 2.7
am [A2010-5](#) s 7
om [A2016-49](#) s 8

Unlawful vilification

s 67A ins [A2016-49](#) s 9
am [A2016-49](#) s 28; pars renum R45 LA

Victimisation

s 68 am [A2000-2](#) 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
sub [A2016-49](#) s 10

General principles about unlawful acts

pt 8 hdg sub [A1996-67](#) 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 [A1996-67](#) s 10; [A2005-41](#) amdt 1.6
am [A2016-49](#) s 11

Unlawful act not an offence

s 71 am [A1994-60](#) sch 1
sub [A1996-67](#) s 10
am [A2003-41](#) amdt 3.153
sub [A2005-41](#) amdt 1.6
am [A2016-49](#) s 11

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 [A1996-67](#) s 10
am [A2001-44](#) amdt 1.1126, amdt 1.1127; [A2003-41](#)
amdt 3.154, amdt 3.206
sub [A2005-41](#) amdt 1.6
am [A2016-49](#) s 11

Aiding etc unlawful acts

s 73 sub [A1996-67](#) s 10
am [A2003-41](#) amdt 3.155
sub [A2005-41](#) amdt 1.6
am [A2016-49](#) s 11

Endnotes

4 Amendment history

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 [A1996-67](#) 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 [A1996-67](#) 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 [A1996-67](#) 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 [A1996-67](#) 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 [A1996-67](#) 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 [A1996-67](#) s 10
am [A2003-41](#) amdt 3.159
sub [A2005-41](#) amdt 1.6
om [A2008-36](#) amdt 1.251

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 [A1994-103](#) s 4
sub [A1996-67](#) 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 [A1996-67](#) 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 [A1996-67](#) 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 [A1996-67](#) 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 [A1996-67](#) s 10; [A2003-41](#) amdt 3.167; [A2005-41](#) amdt 1.6
om [A2008-36](#) amdt 1.251

Representation

s 85 sub [A1996-67](#) s 10; [A2003-15](#) s 21; [A2005-41](#) amdt 1.6
om [A2008-36](#) amdt 1.251

Endnotes

4 Amendment history

Witness subpoenas

s 86 sub [A1996-67](#) 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 [A1996-67](#) 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 [A1994-60](#) sch 1
sub [A1996-67](#) 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 [A1994-60](#) sch 1
sub [A1996-67](#) s 10; [A2005-41](#) amdt 1.6
om [A2008-36](#) amdt 1.251

Power to require witness to take oath etc

s 90 am [A1994-60](#) sch 1
sub [A1996-67](#) 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 [A1996-67](#) 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 [A1996-67](#) s 10
am [A2001-44](#) 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 [A1994-60](#) sch 1
sub [A1996-67](#) s 10
am [A2000-2](#) 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 [A1996-67](#) s 10; [A2005-41](#) amdt 1.6
am [A2005-53](#) amdt 1.45, amdt 1.46
om [A2008-36](#) amdt 1.251

Protection of members of tribunal etc

s 95 om [A1994-60](#) sch 1
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am [A2003-41](#) amdt 3.171
sub [A2005-41](#) amdt 1.6
om [A2008-36](#) amdt 1.251

Contempt of tribunal

s 96 am [A1995-46](#) sch
sub [A1996-67](#) 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 [A1999-22](#) s 12
am [A2000-17](#) sch 1; [A2003-41](#) amdt 3.208, amdt 3.209;
[A2003-48](#) amdt 2.6
om [A2005-41](#) amdt 1.6
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Granting of relief by tribunal

div 9.4 hdg ins [A2005-41](#) amdt 1.6`
om [A2008-36](#) amdt 1.251

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s 97 sub [A1996-67](#) s 10; [A2005-41](#) amdt 1.6
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s 99 sub [A1996-67](#) s 10
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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 [A1996-67](#) s 10
am [A2001-44](#) 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 [A1996-67](#) 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 [A1996-67](#) 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 [A1996-67](#) s 10
am [A1998-54](#) sch
sub [A2005-41](#) amdt 1.6
om [A2008-36](#) amdt 1.251

Appeals from tribunal decisions

s 104 sub [A1996-67](#) 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 [A1996-67](#) s 10
am [A2003-41](#) amdt 3.173
om [A2005-41](#) amdt 1.6

Joining parties

s 106 sub [A1996-67](#) s 10
 am [A2003-41](#) amdt 3.174, amdt 3.209
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Requiring answer or document

s 107 sub [A1996-67](#) s 10
 am [A1998-54](#) sch
 om [A2005-41](#) amdt 1.6

Prohibiting or controlling publication

s 108 sub [A1996-67](#) s 10
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 amdt 3.208
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 am [A1998-54](#) sch
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s 108C ins [A1996-67](#) s 10
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s 108D ins [A1996-67](#) s 10
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s 108DA ins [A2004-60](#) amdt 1.141
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s 108DB ins [A2004-60](#) amdt 1.141
 (5), (6) exp 10 January 2006 (s 108DB (6))
 sub [A2006-40](#) amdt 2.104
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Selfincrimination etc

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[A2004-15](#) amdt 2.54
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Unlawful act not an offence

s 108F ins [A1996-67](#) s 10
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Unlawful act no basis for civil action

s 108G ins [A1996-67](#) s 10
am [A2003-41](#) amdt 3.177
om [A2005-41](#) amdt 1.6

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s 108H ins [A1996-67](#) s 10
am [A2003-41](#) amdt 3.178
om [A2005-41](#) amdt 1.6

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s 108I ins [A1996-67](#) s 10
sub [A2004-15](#) amdt 1.9
om [A2005-41](#) amdt 1.6

Protection from civil proceedings

s 108J ins [A1996-67](#) s 10
om [A2005-41](#) amdt 1.6

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s 108K ins [A1996-67](#) s 10
am [A2003-41](#) amdt 3.179
om [A2005-41](#) amdt 1.6

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s 108L ins [A1996-67](#) s 10
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s 108M ins [A1996-67](#) s 10
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om [A2005-41](#) amdt 1.6

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s 108N hdg sub [A2004-15](#) amdt 2.55
s 108N ins [A1996-67](#) s 10
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am [A2000-2](#) sch; [A2004-15](#) amdt 2.56
om [A2005-41](#) amdt 1.6

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s 108O ins [A1996-67](#) s 10
am [A1998-54](#) sch
om [A2004-15](#) amdt 2.57

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[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

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s 110 am [A2005-41](#) amdt 1.7
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s 110A renum as s 111

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s 110B ins [A1996-67](#) s 11
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s 110C renum as s 112

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s 110E renum as s 114

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s 110G renum as s 116

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s 110K renum as s 120

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pt 11 hdg orig pt 11 hdg renum as pt 12 hdg
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om [A2008-36](#) amdt 1.254

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div 11.1 hdg (prev pt 9A div 1 hdg and then div 9A.1 hdg) ins [A2000-2](#) sch
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om [A2008-36](#) amdt 1.254

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s 111 hdg orig s 111 hdg sub [A2003-41](#) amdt 3.191
s 111 orig s 111 am [A2000-2](#) sch; [A2003-41](#) amdts 3.192-3.194
s 111 (a)-(h) renum as s 112
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renum R6 LA; [A2005-41](#) amdt 1.10
om [A2008-36](#) amdt 1.254

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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
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sub [A2000-2](#) sch
am [A2003-41](#) amdt 3.182
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om [A2008-36](#) amdt 1.254

Eligibility for appointment

s 113 orig s 113 om [A1997-41](#) sch 1
prev s 113 ins [A2003-41](#) amdt 3.195
om [A2005-41](#) amdt 1.12
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sub [A2000-2](#) sch
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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
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(prev s 110E) ins [A1996-67](#) s 11
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am [A2003-41](#) amdt 3.184
renum [A2005-41](#) amdt 1.11
om [A2008-36](#) amdt 1.254

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s 115 orig s 115 sub [A2003-41](#) amdt 3.196
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s 116 orig s 116 sub [A2003-41](#) amdt 3.196
om [A2005-41](#) amdt 1.12
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am [A2003-41](#) amdt 3.187
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div 11.3 hdg (prev pt 9A div 3 hdg and then div 9A.3 hdg) ins [A2000-2](#) sch
renum R6 LA; [A2005-41](#) amdt 1.10
om [A2008-36](#) amdt 1.254

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s 117 orig s 117 om [A2003-41](#) amdt 3.196
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Other provisions

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om [A2008-36](#) amdt 1.254

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s 118 orig s 118 sub [A1994-38](#) sch 1 pt 28
am [A2003-41](#) amdt 3.208
om [A2005-41](#) amdt 1.12
(prev s 110I) ins [A2000-2](#) sch
renum [A2005-41](#) amdt 1.11
om [A2008-36](#) amdt 1.254

Role of president

s 119 orig s 119 om [A1995-25](#) sch
prev s 119 ins [A1996-67](#) s 12
am [A2000-2](#) s 3 sch
om [A2005-41](#) amdt 1.12
(prev s 110J) ins [A2000-2](#) sch
renum [A2005-41](#) amdt 1.11
om [A2008-36](#) amdt 1.254

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s 120 orig s 120 am [A1996-67](#) s 13
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om [A2005-41](#) amdt 1.12
(prev s 110K) ins [A2001-44](#) amdt 1.1143
am [A2003-41](#) amdt 3.190
renum [A2005-41](#) amdt 1.11
om [A2008-36](#) amdt 1.254

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

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s 121 sub [A1996-67](#) s 14
am [A2000-2](#) 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

Acts and omissions of representatives

s 121A ins [A2008-29](#) amdt 1.22
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Relationship to other laws

s 122 am [A1996-67](#) s 15
am [A1998-54](#) s 3 sch
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Regulation-making power

s 123 om [A1997-41](#) sch 1
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s 124 am [A2000-2](#) s 3 sch; [A2001-44](#) amdt 1.1144; [A2003-41](#) amdt 3.202, amdt 3.208
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Exercise of functions under intergovernmental arrangement

s 125 hdg am [A2000-2](#) s 3 sch
s 125 am [A2003-41](#) amdt 3.203
om [A2005-41](#) amdt 1.13

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s 126A ins [A2001-44](#) amdt 1.1145
am [A2003-41](#) amdt 3.204
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Regulation-making power

s 127 sub [A2000-2](#) s 3 sch
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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, [A2013-39](#) amdt 2.17 ([A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)); [A2016-49](#) s 29
def **accommodation** reloc from s 4 [A2003-41](#) amdt 3.32
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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
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def **club** reloc from s 4 [A2003-41](#) amdt 3.32
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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
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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
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om [A2008-36](#) amdt 1.257
def **complaint** reloc from s 4 [A2003-41](#) amdt 3.32
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def **complaint about unlawful discrimination** ins [A2005-41](#) amdt 1.17
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def **compulsory conference** reloc from s 4 [A2003-41](#) amdt 3.32
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def **deputy president** ins [A2000-2](#) sch
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def **disability** ins [A2003-41](#) amdt 3.27
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- def **discriminate** reloc from s 4 [A2003-41](#) amdt 3.32
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- def **discrimination** ins [A2016-49](#) s 16
- 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](#)
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- 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
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- def **employment status** ins [A2016-49](#) s 30
- def **gender identity** ins [A2010-5](#) s 10
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- def **HIV/AIDS status** ins [A2004-2](#) amdt 2.8
om [A2016-49](#) s 17
- def **HRC** ins [A2005-41](#) amdt 1.17
- def **HRC Act** ins [A2005-41](#) amdt 1.17
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- def **immigration status** ins [A2016-49](#) s 32
- def **industrial activity** ins [A2010-5](#) s 10
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- def **industrial organisation** ins [A2010-5](#) s 10
- def **intersex status** ins [A2016-49](#) s 32
- def **investigation** reloc from s 4 [A2003-41](#) amdt 3.32
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- def **irrelevant criminal record** ins [A2016-49](#) s 32
- def **man** reloc from s 4 [A2003-41](#) amdt 3.32
- def **member** ins [A2000-2](#) sch
reloc from s 4 [A2003-41](#) amdt 3.32
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- def **party** ins [A2003-41](#) amdt 3.205
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- def **physical features** ins [A2016-49](#) s 32
- def **political conviction** ins [A2016-49](#) s 32
- def **potential pregnancy** ins [A2002-19](#) s 4
reloc from s 4 [A2003-41](#) amdt 3.32
- def **pregnancy** ins [A2002-19](#) 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 [A2000-2](#) sch
reloc from s 4 [A2003-41](#) amdt 3.32
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- def **principal** sub [A2003-41](#) amdt 3.29
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- def **protected attribute** ins [A2016-49](#) s 32
- def **public act** ins [A2003-41](#) amdt 3.205
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- def **race** reloc from s 4 [A2003-41](#) amdt 3.32
- def **relationship status** ins [A2003-15](#) s 7
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- def **relative** sub [A2003-15](#) s 8
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- def **relevant class of persons** sub [A2003-41](#) amdt 3.30
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- def **religious conviction** ins [A2016-49](#) s 34
- def **representative complaint** am [A1996-67](#) s 4
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- def **respondent** ins [A2003-41](#) amdt 3.205
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- def **services** am [A2003-41](#) amdt 3.31
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- 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 [A1994-38](#) sch 1 pt 28
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- def **transsexual** reloc from s 4 [A2003-41](#) amdt 3.32
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- def **tribunal** ins [A1996-67](#) s 4
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- def **unlawful act** ins [A2016-49](#) s 18
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- def **voluntary body** reloc from s 4 [A2003-41](#) amdt 3.32
- def **woman** reloc from s 4 [A2003-41](#) amdt 3.32

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	A1994-11	31 May 1994
2	A1995-46	1 January 1996
3	A1996-67	31 January 1997
4	A1998-54	31 January 1999
5	A2000-17	15 June 2000
6	A2001-44	12 September 2001
7	A2002-11	31 May 2002
8	A2002-19	14 June 2002
9	A2002-19	11 July 2002
10	A2002-51	1 January 2003
10 (RI)	A2002-51 ‡	10 February 2003
11	A2003-15	28 March 2003
12	A2003-41	9 October 2003
13	A2004-5	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

Endnotes

5 Earlier republications

Republication No	Amendments to	Republication date
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	A2008-29	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
39	A2012-40	11 September 2012
40	A2012-40	22 September 2012
41	A2013-39 (never effective)	7 November 2013
41 (RI)	A2013-39 (never effective)	7 November 2013
42	A2015-45	7 November 2015
43	A2016-49	24 August 2016
44	A2016-49	25 August 2016
45	A2016-49	3 April 2017
46	A2018-48	29 April 2019

‡ includes retrospective amendments by [A2002-49](#)

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