

2002-2003

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN HUMAN RIGHTS COMMISSION LEGISLATION BILL 2003

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Daryl Williams AM QC MP)

AUSTRALIAN HUMAN RIGHTS COMMISSION LEGISLATION BILL 2003

OUTLINE

This Bill provides for the restructure of the Human Rights and Equal Opportunity Commission (the old Commission) and its renaming as the Australian Human Rights Commission (the new Commission). The new Commission will continue to have responsibility for protecting and promoting the human rights of all Australians, as well as for promoting an understanding and acceptance of the responsibility of Australians to respect each others human rights. This will be emphasised by the adoption of a new by-line accompanying the Commission's new name. The new by-line is '*human rights – everyone's responsibility*'.

The executive structure of the new Commission will consist of a President and three Human Rights Commissioners. The President and Commissioners will, as a group, have expertise covering the variety of matters likely to come before the Commission. This new collegiate structure will provide the Commission with greater flexibility to deal with current human rights issues which cut across the boundaries of the existing specialisations (for example, women with disabilities). Emerging human rights areas, such as age discrimination, will also be able to be dealt with without the need to appoint new specialist commissioners as each new area develops.

The Bill makes education, dissemination of information on human rights and assistance to business and the general community — for example, through the development of guidelines which will assist people to comply with their obligations under federal anti-discrimination legislation — central functions of the new Commission. The intention is that the new Commission's highest priorities will be those that relate to educating Australians about human rights and discrimination, and helping them understand their responsibilities, as members of the Australian community, to respect other people's human rights.

In addition to those outlined above, the Bill makes the following changes:

- Before exercising its power to seek leave to intervene in court proceedings the Commission will be required to either obtain the approval of the Attorney-General for the exercise of this power (if the President of the new Commission is not, and was not immediately before appointment as President a federal Judge) or notify the Attorney-General of the proposed intervention (if the President of the new Commission is, or was immediately before appointment as President, a federal Judge).
- The new Commission will not have a power to recommend the payment of damages or compensation following inquiries into certain types of complaints under the retitled *Australian Human Rights Commission Act 1986*.

- The Attorney-General will be able to appoint part-time Complaints Commissioners to whom the President will be able to delegate complaint-handling functions.
- The provisions for establishing a Community Relations Council and advisory committees are removed.
- The new Commission will not have powers of delegation under the *Disability Discrimination Act 1992*, the *Racial Discrimination Act 1975* and the *Sex Discrimination Act 1984*. Instead, the Bill provides for their repeal in those Acts and consolidation into one delegation provision in the renamed *Australian Human Rights Commission Act 1986*.

The Bill also makes other minor amendments and consequential amendments to other legislation, for example the *Crimes (Torture) Act 1988*, the *Defence Act 1903*, the *Workplace Relations Act 1996* and the *Federal Court of Australia Act 1976*.

FINANCIAL IMPACT STATEMENT

The measures proposed by this Bill are budget neutral.

NOTES ON CLAUSES

Abbreviations

1. The following abbreviations are used throughout these notes:

DDA	<i>Disability Discrimination Act 1992</i>
HREOCA	<i>Human Rights and Equal Opportunity Commission Act 1986</i>
HRLAA (No 1)	<i>Human Rights Legislation Amendment Act (No. 1) 1999</i>
New Commission	Australian Human Rights Commission (after the amendments made by this Bill)
Old Commission	Human Rights and Equal Opportunity Commission (before the amendments made by this Bill)
RDA	<i>Racial Discrimination Act 1975</i>
SDA	<i>Sex Discrimination Act 1984</i>
Retitled Act	The Act after the amendments made by this Bill retitled the <i>Human Rights and Equal Opportunity Commission Act 1986</i> to become the <i>Australian Human Rights Commission Act 1986</i> .

Clause 1 - Short title

2. This clause provides that the Act may be cited as the *Australian Human Rights Commission Legislation Bill 2003*.

Clause 2 - Commencement

3. This clause provides for the commencement of the Act. It provides that the *Australian Human Rights Commission Legislation Act* will commence on the day on which the Act receives Royal Assent, and the amendments it makes to other acts, including the HREOCA, (these amendments are outlined in Schedules 1 and 2 of the Bill), commence on a day to be fixed by proclamation. If Schedules 1 and 2 do not commence within 6 months beginning on the day on which the *Australian Human Rights Commission Legislation Act 2003* receives the Royal Assent, they commence the day after the end of that period.

Clause 3 – Schedule(s)

4. This is the operative clause which gives effect to the amendments set out in the Schedules to the Act.

SCHEDULE 1 – AMENDMENT OF THE HUMAN RIGHTS AND PRIVACY LEGISLATION

Part 1 - Human Rights and Equal Opportunity Commission Act 1986

5. This part of Schedule 1 contains amendments to the HREOCA.

Item 1 –Title

6. This item amends the long title of the HREOCA by omitting the words ‘Human Rights and Equal Opportunity’ and substituting ‘Australian Human Rights’. After this amendment, the HREOCA will be known as the *Australian Human Rights Commission Act 1986*.

Item 2 - Section 1

7. This item amends the short title of the Retitled Act, consequential on the amendment to the long title of the Act.

Item 3 - Subsection 3(1) (definition of *appointed member*)

8. In the existing HREOCA, the term ‘appointed member’ is defined as ‘the President or the Human Rights Commissioner’ and is used in the provisions in Division 5 relating to terms and conditions of appointment.

9. The existing position of Human Rights Commissioner will be removed and three Human Rights Commissioner positions, with responsibility with the President for all functions of the new Commission, created. The President and the three Human Rights Commissioners will have common provisions relating to terms and conditions of appointment in the retitled Act. The definition of ‘appointed member’ is no longer required to distinguish the President and Human Rights Commissioner from other Commission members whose terms and provisions were found in other Acts, ie the Sex Discrimination Commissioner, the Race Discrimination Commissioner and the Disability Discrimination Commissioner.

Item 4 - Subsection 3(1) (definition of *Commission*)

10. This item amends the definition of ‘Commission’, consequential on the amendment made by a later item which renames the Commission.

Item 5 - Subsection 3(1)

11. This item inserts in subsection 3(1) of the retitled HREOCA a definition of ‘Complaints Commissioner’. This amendment is consequential on the amendment made by a later item which creates the position of Complaints Commissioner.

Item 6 -Subsection 3(1) (definition of *Disability Discrimination Commissioner*)

12. This item repeals the definition of ‘Disability Discrimination Commissioner’, consequential on the amendment made by a later item which repeals Part 6 of the DDA (relating to the position of the Disability Discrimination Commissioner). The specific position of Disability Discrimination Commissioner is no longer required because of the new structure created by later items which change the composition of the new Commission’s executive.

Item 7 - Subsection 3(1)

13. This item inserts in subsection 3(1) of the retitled HREOCA a definition of ‘Human Rights Commissioner’, consequential on the amendment made by a later item which changes the composition of the new Commission’s executive.

Item 8 - Subsection 3(1) (definition of *member*)

14. This item amends the definition of ‘member’ by deleting the words ‘and includes the President’. The reference to the President will be unnecessary as a later item amends section 8 to specifically identify the members of the new Commission.

Item 9 - Subsection 3(1) (definition of *Race Discrimination Commissioner*)

15. This item repeals the definition of ‘Race Discrimination Commissioner’, consequential on the amendment made by a later item which repeals Parts V and VI of the RDA. The specific position of Race Discrimination Commissioner is no longer required because of the new structure created by later items which change the composition of the new Commission’s executive.

Item 10 - Subsection 3(1) (definition of *Sex Discrimination Commissioner*)

16. This item repeals the definition of ‘Sex Discrimination Commissioner’, consequential on the amendment made by a later item which repeals Part V of the SDA. The specific position of Sex Discrimination Commissioner is no longer required because of the new structure created by later items which change the composition of the new Commission’s executive.

Item 11 - Part II (heading)

17. This item replaces the heading to Part II of the Retitled Act, consequential on the amendment made by the item below which renames the old Commission.

Item 12 - Subsection 7(1)

18. This item amends subsection 7(1) of the Retitled Act (which establishes the Commission) to rename the Commission the Australian Human Rights Commission. The heading to section 7 of the Retitled Act is also altered accordingly.

Item 13 - Subsection 8(1)

19. This item amends subsection 8(1) of the Retitled Act to prescribe the composition of the new Commission. The new Commission will comprise:

- a President;
- three Human Rights Commissioners.

20. The item makes clear that the President and Human Rights Commissioners are members of the Commission. The Human Rights Commissioners will not have specific functions allocated to them but will be charged with holding responsibility, as a group, for all functions of the new Commission. This new streamlined and collegiate structure will provide the Commission with greater flexibility to protect human rights for all Australians by promoting awareness of discrimination intersections (for example, women with disabilities) and allowing emerging areas (such as age discrimination) to be addressed without the need to appoint new specialist commissioners.

Item 14 - Subsection 8(6)

21. This item amends subsection 8(6) of the Retitled Act to take into account the renumbering of section 31 which results from the insertion of a new subsection (2) into that section.

Item 15 - Subsection 8(6)

22. This item also amends subsection 8(6) of the Retitled Act to take into account the renumbering of section 31 which results from the insertion of a new subsection (2) into that section.

Item 16 - Subsection 8(7)

23. This item amends subsection 8(7) of the Retitled Act, consequential on the amendment made by an earlier item which changes the composition of the new Commission's executive. This item ensures that the performance of the functions or the exercise of the power of the new Commission is not affected by reason only of a vacancy in one of the executive positions.

Item 17 - Subsection 8B(1)

24. This item amends subsection 8B(1) of the Retitled Act to provide for the appointment by the Governor-General of Human Rights Commissioners as full-time members of the new Commission.

Item 18 - Subsection 8B(2)

25. This item amends subsection 8B(2) of the Retitled Act, consequential on the amendment made by an earlier item which provides for the appointment of three Human Rights Commissioners.

26. This item also makes a minor technical drafting amendment to update the subsection to refer to the ‘Minister’ rather than the ‘Governor-General’ being satisfied that a person has appropriate qualifications, knowledge or experience. This amendment is being made in accordance with Parliamentary Counsel *Drafting Direction 2000, No. 3 Exercise of powers of the Governor-General* ‘so as to make clear who is to form the opinion, or do the thing, that is a formal pre-condition for the exercise of a power by the Governor-General’.

Item 19 - At the end of subsection 8B(2)

27. This item provides that before the Governor-General makes an appointment under subsection 8B(1), the Minister must be satisfied that the President, the other Human Rights Commissioners and the person, as a group, have expertise in the variety of matters likely to come before the Commission. This requirement is in addition to the knowledge, qualifications or experience requirement of subsection 8B(2). Although there will be no specific functions or subject areas legislatively allocated to individual Human Rights Commissioners, the Commissioners as a whole will be charged with holding responsibility for all functions of the Commission and therefore must, among them, have the expertise to undertake the variety of matters likely to come before the Commission.

Item 20 – Before paragraph 11(1)(a)

28. This item amends subsection 11(1) of the Retitled Act to make education and dissemination of information on human rights the central focus of the new Commission’s functions, primarily by re-ordering and enhancing the existing functions set out in subsection 11(1).

29. This item inserts new paragraphs (aaa), (aab), (aac) and (aad) into subsection 11(1) of the retitled HREOCA. Paragraphs 11(1)(aaa), (aac) and (aad) broadly reflect existing paragraphs 11(1)(g), (h) and (n), with the addition of references to the responsibility of persons and organisations to respect human rights, while paragraph 11(1)(aab) confers on the new Commission a function which was not conferred on the old Commission.

30. These amendments are intended to focus the new Commission’s attention on the following functions:

- promoting an understanding and acceptance, and the public discussion, of human rights in Australia, and of the responsibility of persons and organisations in Australia to respect those rights (new paragraph 11(1)(aaa));
- disseminating information on human rights, and on the responsibility of persons and organisations to respect those rights (new paragraph 11(1)(aab));
- undertaking research and educational programs, on behalf of the Commonwealth, for the purpose of promoting human rights, and coordinating any such programs undertaken by any other person or authority on behalf of the Commonwealth (new paragraph 11(1)(aac)); and
- preparing, and publishing in a manner the new Commission considers appropriate, guidelines for avoiding acts or practices of a kind in respect of which a function is conferred by paragraph 11(1)(f) of the Retitled Act (new paragraph 11(1)(aad)).

Paragraph 11(1)(f) confers a function of inquiring into acts or practices inconsistent with or contrary to any human right (as defined in subsection 3(1) of the Retitled Act), done by or on behalf of the Commonwealth or a Commonwealth authority, under an enactment or within a Territory.

Item 21 - Paragraph 11(1)(a)

31. Paragraph 11(1)(a) currently states that the functions of the Commission are those conferred on the Commission by the RDA, the SDA or ‘any other enactment’. This item is a minor technical amendment which inserts into paragraph 11(1)(a) of the Retitled Act a specific reference to the DDA. Functions under the DDA were already conferred on the Commission because the DDA constitutes ‘any other enactment’, however this item makes it explicit that the functions of the Commission include such functions as are conferred on the Commission by the DDA.

Item 22 - Paragraph 11(1)(d)

32. This item amends paragraph 11(1)(d) of the Retitled Act to take into account the renumbering of section 31 which results from the insertion of a new subsection (2) into that section.

Item 23 - Paragraphs 11(1)(g), (h) and (n)

33. This item repeals paragraphs 11(1)(g), (h) and (n) of the Retitled Act, consequential on the amendments made by an earlier item that re-order and enhance the existing functions of the Commission.

Item 24 - Paragraph 11(1)(o)

34. This item amends paragraph 11(1)(o) to be subject to new subsections 11(5) and (6) of the Retitled Act. These new subsections are created by a later item.

Item 25 - After subsection 11(1)

35. This item inserts two new subsections (1A) and (1B) into section 11, which emphasise the particular educative role of the new Commission. The Commission’s functions under paragraph 11(1)(aaa) and 11(1)(aab) are based upon the principle that for a person to be able to enjoy human rights, there is a corresponding responsibility for persons and organisations to respect those human rights. New subsection 11(1A) seeks to raise public awareness of this responsibility by instructing the Commission to find opportunities to use the expression *human rights – everyone’s responsibility*. New subsection 11(1B) provides examples of the use of the expression as a by-line in the Commission’s logo and on its stationery.

Item 26 – At the end of section 11

36. This item qualifies paragraph 11(1)(o) of the Retitled Act to make the exercise by the new Commission of its function of seeking leave to intervene in court proceedings which involve human rights issues conditional on:

- the Attorney-General first having given approval in accordance with new subsection 11(5) unless new subsection (6) applies; or
- if the President of the new Commission is, or was immediately before appointment as President, a federal Judge (subsection (6)) - to require the Commission to notify the Attorney-General of its intention to seek leave to intervene in court proceedings and its reasons for doing so. The notice must be given when there is still a reasonable period before the Commission seeks leave to intervene in the court proceedings.

37. As First Law Officer of the Commonwealth the Attorney-General has a general public interest role in litigation, including human rights litigation. When the new Commission is given leave to intervene in court proceedings, it will effectively become a party to those proceedings, advocating and/or defending a particular legal position, or a particular interpretation of any legislation in issue in the proceedings. Requiring the new Commission to seek the Attorney-General's approval for such an intervention before the new Commission exercises its function to seek leave to intervene will ensure that the intervention function is only exercised after the broader interests of the community have been taken into account.

38. In deciding whether to approve the exercise by the new Commission of its power to seek leave to intervene in court proceedings the Attorney-General may have regard to a range of matters set out in subsection (5). The inclusion of these matters in subsection (5) is not in any way intended to limit the range of matters to which the Attorney-General may have regard in making his or her decision, nor is it intended that the Attorney-General be required to consider any of these matters.

39. In this new section, the matters to which the Attorney-General may have regard are as follows:

- whether there has been an intervention in the proceedings by or on behalf of the Commonwealth;
- whether, in the Attorney-General's opinion, the proceedings may affect to a significant extent the human rights of, or involve to a significant extent issues of discrimination against, persons who are not parties to the proceedings;
- whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of the *Australian Human Rights Commission Act 1986*, the DDA, the RDA or the SDA;
- whether, in the Attorney-General's opinion, there are special circumstances such that it would be in the public interest for the new Commission to intervene.

40. The requirement for the new Commission to notify the Attorney-General of its intention to seek leave to intervene in court proceedings and its reasons for doing so, but not requiring the Attorney-General's formal approval of this function, when the President is, or was immediately before appointment as President, a federal Judge ensures that there are no constitutional issues arising from the appointment of a federal Judge as President.

Item 27 - Section 17

41. This item repeals section 17 of the HREOCA. That section currently provides for the establishment of advisory committees to advise the old Commission on the performance of its functions and, when requested by the Minister, to report on Australian compliance with certain human rights standards. The new Commission will retain the power - currently in section 15 of the HREOCA - to work with and consult appropriate persons, governmental organisations and non-governmental organisations.

Item 28 - At the end of subsection 19(1)

42. This item and a following item amends subsection 19(1) of the Retitled Act to ensure that the new Commission can delegate its powers under not only the *Australian Human Rights Commission Act 1986*, but also under any other law which confers powers on the new Commission. Section 19 will provide the only source of power for the new Commission to delegate its powers to members or other persons or bodies (with the exception of new sections 19(1A) and 46PNA relating to Complaints Commissioners). It replaces and consolidates the similar delegation powers in section 121 of the DDA, section 40 of the RDA and section 104 of the SDA.

Item 29 – After subsection 19(1)

43. This item inserts new subsection 19(1A) which permits the President to delegate to a Complaints Commissioner the performance of functions in relation to a complaint described in either paragraph 20(1)(b) or 31(1)(b). This includes functions in relation to, respectively, section 29 or section 35 notices relating to, and reports about, the inquiry.

44. The new Complaints Commissioners will be able to be appointed under new section 42A. Other functions of the new Complaints Commissioners are outlined in new section 46PNA. Complaints Commissioners will be delegates of the President but will not be members of the Commission.

Item 30 – At the end of subsection 19(2)

45. This item amends subsection 19(2) of the Retitled Act to ensure that the new Commission can delegate its powers under not only the *Australian Human Rights Commission Act 1986*, but also under any other law which confers powers on the new Commission. This item relates to delegation to a member of the Commission, a member of the staff of the Commission or any other person or body of persons.

Item 31 - Subsections 19(2A) and (2B)

46. This item amends section 19 of the Retitled Act by repealing existing subsections (2A) and (2B) and replacing them with a new subsection (2A).

47. A key element of the Government's policy underlying the amendments made by the HRLAA (No. 1) was the decision to centralise all responsibility for complaint handling in the President of the old Commission (and, after the amendments made by

this Act, the President of the new Commission). Subsection 19(2A), as inserted by the HRLAA (No. 1), gave effect to this policy by prohibiting the President from delegating his or her powers under Parts IIB or IIC of the HREOCA (which deal, respectively, with the handling of complaints of unlawful discrimination under the DDA, the RDA and the SDA, and with the referral of discriminatory awards and determinations to other bodies). However, existing subsection 19(2B) currently permits the President to delegate to the Human Rights Commissioner (but not to any other member of the old Commission) his or her powers in respect of complaints under sections 11 and 31 of the existing HREOCA (which deal, respectively, with breaches of human rights and with discrimination in employment or occupation).

48. New subsection 19(2A) removes this anomaly by extending the prohibition on the President's power of delegation to include his or her powers in respect of complaints under sections 11 and 31 of the Retitled Act. This will ensure that the legislation fully reflects the Government's policy on Presidential responsibility for complaint handling. A later item will permit the Attorney-General to appoint part-time Complaints Commissioners who will be able to assist the President with his or her complaint handling workload (but who will not be members of the Commission).

Item 32 - Subsection 19(6)

49. This item repeals subsection 19(6) of the Retitled Act (consequential on the amendment made by an earlier item which consolidates the powers of delegation under the DDA, the RDA and the SDA into the *Australian Human Rights Commission Act 1986*) and replaces it with a new provision that ensures that in undertaking functions delegated under section 19(1A) a Complaints Commissioner can act effectively by exercising any power conferred on a member of the Commission. For example, if required for an inquiry into a complaint described in paragraph 20(1)(b) a Complaints Commissioner can obtain information and documents (section 21). This power is subject to any provision in the instrument of delegation.

Item 33 - Subsection 24(1A)

Item 34 - Subsection 24 (1A)

50. These items amend subsection 24(1A) of the Retitled Act, consequential on the amendment made by a later item which removes the position of Aboriginal and Torres Strait Islander Social Justice Commissioner. The specific position of Aboriginal and Torres Strait Islander Social Justice Commissioner is no longer required because of the new structure created by earlier items which change the composition of the new Commission's executive.

Item 35 - Paragraph 29(2)(c)

51. This item repeals paragraph 29(2)(c) of the Retitled Act and substitutes a new paragraph 29(2)(c). Where the old Commission has inquired into an act or practice engaged in by a person, and has found that the act or practice is inconsistent with, or contrary to, any human right, existing paragraph 29(2)(c) gives it the power to make recommendations, amongst other things, for the payment of compensation to a person who has suffered loss or damage as a result of the act or practice. These

recommendations cannot currently be pursued in any way because, unlike in the case of discrimination under the DDA, the RDA and the SDA, the acts or practices to which these recommendations relate are not made unlawful under the HREOCA.

52. This item removes that power, leaving the new Commission with a power to recommend the taking of any action, other than the payment of compensation or damages, to remedy or reduce loss or damage suffered by a person as a result of the act or practice.

Item 36 - Before paragraph 31(a)

53. This item and the following item amend section 31 of the Retitled Act to make education, dissemination of information on equality of opportunity and treatment in employment and occupation the central focus of the new Commission's functions, primarily by re-ordering and enhancing the existing functions set out in section 31. These amendments mirror those made by earlier items in relation to subsection 11(1) of the Retitled Act.

54. This item inserts new paragraphs (aa), (ab), (ac) and (ad) into section 31 of the Retitled Act. Paragraphs 31(aa), (ac) and (ad) broadly reflect existing paragraphs 31(c), (d) and (h), with the addition of references to the responsibility of persons and organisations to respect equality of opportunity and treatment in employment and occupation, while paragraph 31(ab) confers on the new Commission a function which was not conferred on the old Commission.

55. These amendments are intended to focus the new Commission's attention on the following functions:

- promoting an understanding and acceptance, and public discussion, of equality of opportunity and treatment in employment and occupation, and of the responsibility of persons and organisations in Australia to respect that equality (new paragraph 31(aa));
- disseminating information on equality of opportunity and treatment in employment and occupation, and on the responsibility of persons and organisations to respect that equality (new paragraph 31(ab));
- undertaking research and educational programs, on behalf of the Commonwealth, for the purpose of promoting equality of opportunity and treatment in employment and occupation, and coordinating any such programs undertaken by any other person or authority on behalf of the Commonwealth (new paragraph 31(ac)); and
- preparing, and publishing in a manner the new Commission considers appropriate, guidelines for avoiding acts or practices of a kind in respect of which a function is conferred by paragraph 31(1)(b) of the Retitled Act (new paragraph 31(ad)). Paragraph 31(1)(b) confers a function of inquiring into acts or practices which may constitute discrimination (as defined in subsection 3(1) of the Retitled Act), done by or on behalf of the Commonwealth or a State, or a Commonwealth or State authority, under a Commonwealth or State enactment or within a State or Territory.

Item 37 - Paragraphs 31(c), (d) and (h)

56. This item repeals paragraphs 31(c), (d) and (h) of the Retitled Act, consequential on the amendments made by the item above that re-order and enhance the functions of the Commission.

Item 38 - Paragraph 31(j)

Item 39 – At the end of section 31

57. These items qualify paragraph 31(j) of the Retitled Act to make the exercise by the new Commission of its function of seeking leave to intervene in court proceedings which involve human rights issues conditional on:

- the Attorney-General first having given approval in accordance with new subsection 31(2) unless new subsection (3) applies; or
- if the President of the new Commission is, or was immediately before appointment as President, a federal Judge (subsection (3)) - to require the Commission to notify the Attorney-General of its intention to seek leave to intervene in court proceedings and its reasons for doing so. The notice must be given when there is still a reasonable period before the Commission seeks leave to intervene in the court proceedings.

58. As First Law Officer of the Commonwealth the Attorney-General has a general public interest role in litigation, including human rights litigation. When the new Commission is given leave to intervene in court proceedings, it will effectively become a party to those proceedings, advocating and/or defending a particular legal position, or a particular interpretation of any legislation in issue in the proceedings. Requiring the new Commission to seek the Attorney-General's approval for such an intervention before the new Commission exercises its function to seek leave to intervene will ensure that the intervention function is only exercised after the broader interests of the community have been taken into account.

59. In deciding whether to approve the exercise by the new Commission of its power to seek leave to intervene in court proceedings the Attorney-General may have regard to a range of matters set out in subsection (2). The inclusion of these matters in subsection (2) is not in any way intended to limit the range of matters to which the Attorney-General may have regard in making his or her decision, nor is it intended that the Attorney-General be required to consider any of these matters.

60. In this new section, the matters to which the Attorney-General may have regard are as follows:

- whether there has been an intervention in the proceedings by or on behalf of the Commonwealth;
- whether, in the Attorney-General's opinion, the proceedings may affect to a significant extent the human rights of, or involve to a significant extent issues of discrimination against, persons who are not parties to the proceedings;
- whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of the *Australian Human Rights Commission Act 1986*, the DDA, the RDA or the SDA;

- whether, in the Attorney-General’s opinion, there are special circumstances such that it would be in the public interest for the new Commission to intervene.

61. The requirement for the new Commission to notify the Attorney-General of its intention to seek leave to intervene in court proceedings and its reasons for doing so, but not requiring the Attorney-General’s formal approval of this function, when the President is, or was immediately before appointment as President, a federal Judge ensures that there are no constitutional issues arising from the appointment of a federal Judge as President.

Item 40 - Subsection 32(1)

62. This item amends subsection 32(1) of the Retitled Act to take into account the renumbering of section 31 resulting from the insertion of a new subsection (2) into that section.

Item 41 - Section 33

63. This item amends section 33 of the Retitled Act to take into account the renumbering of section 31 resulting from the insertion of a new subsection (2) into that section.

Item 42 - Paragraph 35(2)(c)

64. This item repeals paragraph 35(2)(c) of the Retitled Act and substitutes a new paragraph 35(2)(c). Currently, where the old Commission has inquired into an act or practice engaged in by a person, and has found that the act or practice constitutes discrimination (as defined in subsection 3(1) of the Retitled Act), existing paragraph 35(2)(c) gives it the power to make recommendations, amongst other things, for the payment of compensation to a person who has suffered loss or damage as a result of the act or practice. These recommendations cannot currently be pursued in any way because, unlike in the case of discrimination under the DDA, the RDA and the SDA, the acts or practices to which these recommendations relate are not made unlawful under the HREOCA.

65. This item removes that power, leaving the new Commission with a power to recommend the taking of any action, other than the payment of compensation or damages, to remedy or reduce loss or damage suffered by a person as a result of the act or practice.

Item 43 - Subsection 36(3)

66. This item amends subsection 36(3) of the Retitled Act, consequential on the amendment made by an earlier item which provides for the appointment of three Human Rights Commissioners.

Item 44 - Paragraph 36(3)(b)

67. This item amends paragraph 36(3)(b) of the Retitled Act, consequential on the amendment made by the above item.

Item 45 - Subsection 36(9)

68. This item amends subsection 36(9) of the Retitled Act, consequential on the amendment made by an earlier item which provides for the appointment of three Human Rights Commissioners. The heading to section 36 is altered accordingly.

Item 46 - Subsection 37(1)

Item 47 - Subsection 37(4)

Item 48 - Subsections 38(1)

Item 49 – Subsection 38(2)

Item 50 – Section 40

Item 51 – Subsection 41(3)

Item 52 – Subsection 41(4)

69. These items amend subsections 37(1), 37(4), 38(1) and 38(2), section 40, and subsections 41(3) and 41(4) of the Retitled Act, consequential on the amendments made by an earlier item which repeals the definition of ‘appointed member’.

Item 53 – After section 42

70. This item establishes a new position of ‘Complaints Commissioner’. An earlier item would have the effect of centralising the complaint handling functions in the President. In order to provide a further option for undertaking complaint handling workloads arising from this, the Attorney-General will be able to appoint legally qualified persons as Complaints Commissioners on a part-time basis, with terms and conditions determined by the Attorney-General. These Complaints Commissioners will act as delegates of the President for the purpose of handling complaints described under section 20(1)(b) and referred under section 46PD. These Complaints Commissioners will be delegates of the President but will not be members of the Commission. Work will be allocated to a Complaints Commissioner by the President.

71. New subsections (4) and (5) concern the appointment of a judicial officer of a State as a Complaints Commissioner. If necessary, the Attorney-General may enter into an arrangement with the appropriate Minister of the State, including an arrangement to reimburse the State for the services of the judicial officer, to secure the services of that person.

72. New subsection (6) provides for the continuity of a person’s tenure and other rights and privileges as the holder of a Commonwealth office where a person appointed as a Complaints Commissioner is the holder of a Commonwealth office.

73. New subsection (7) defines ‘Commonwealth office’ and ‘legally qualified person’ for the purposes of the section.

Item 54 - Part IIA (heading)

Item 55 - Division 1 of Part IIA (heading)

Item 56 - Section 46A (definition of *Commissioner*)

74. These items respectively amend the heading to Part IIA, repeal the heading to Division 1 of Part IIA, and repeal the definition of ‘Commissioner’, of the Retitled

Act, consequential on the amendment made by the item below which removes the position of Aboriginal and Torres Strait Islander Social Justice Commissioner. The specific position of Aboriginal and Torres Strait Islander Social Justice Commissioner is no longer required because of the new structure created by earlier items which change the composition of the new Commission's executive.

Item 57 - Section 46B

75. This item repeals section 46B of the Retitled Act. The effect is to remove the position of Aboriginal and Torres Strait Islander Social Justice Commissioner, consistent with the removal of all the special-purpose Commissioner positions which comprise the old Commission.

76. There is no change to the substantive functions which the Aboriginal and Torres Strait Islander Social Justice Commissioner currently performs on behalf of the old Commission. The functions will be conferred on the Commission itself. Section 19 of the *Australian Human Rights Commission Act 1986* will continue to allow the new Commission to delegate the performance of those functions, for example to one of the three Human Rights Commissioners appointed under section 8B.

Item 58 - At the end of subsection 46C(1)

77. This item adds a note at the end of subsection 46C(1) of the Retitled Act to alert the reader to the functions conferred on the Commission by section 209 of the *Native Title Act 1993* (NT Act). These functions are to prepare and submit to the Commonwealth Minister a report on the operation of the NT Act, the effect of the NT Act on the exercise and enjoyment of human rights of Aboriginal peoples and Torres Strait Islanders and to report on any matters relating to the previous functions mentioned when directed to do so by the Commonwealth Minister.

Item 59 - Subsection 46C(2)

78. This item repeals subsection 46C(2) of the Retitled Act, consequential on the amendment made by Item 57. The heading to section 46C is replaced by the heading 'Functions relating to Aboriginal persons and Torres Strait Islanders'.

Item 60 - Subsection 46C(3)

Item 61 - Paragraph 46C(3)(d)

Item 62 - Subsection 46C(4) Item 63 – Division 2 of Part IIA

79. These items amend subsection 46C(3), paragraph 46C(3)(d) and subsection 46C(4), and repeal Division 2 of Part IIA of the Retitled Act, consequential on the amendment made by an earlier item which removes the position of Aboriginal and Torres Strait Islander Social Justice Commissioner. The specific position of Aboriginal and Torres Strait Islander Social Justice Commissioner is no longer required because of the new structure created by earlier items which change the composition of the new Commission's executive.

Item 64 - Division 3 of Part IIA (heading)

80. This item repeals the heading to Division 3 of Part IIA of the Retitled Act. With the repeal of section 46B and Division 2, there is no longer a need to retain a divisional structure within Part IIA.

Item 65 - Section 46K

Item 66 - Section 46L

81. These items amend sections 46K and 46L of the Retitled Act, consequential on the amendment made by an earlier item which removes the position of Aboriginal and Torres Strait Islander Social Justice Commissioner.

82. The heading to section 46M of the Retitled Act is altered for the same reason.

Item 67 - Paragraph 46PE(1)(c)

83. This item amends paragraph 46PE(1)(c) of the Retitled Act, consequential on the amendment made by an earlier item which changes the composition of the new Commission. The heading to section 46PE is altered accordingly.

Item 68 - At the end of subsection 46PF(1)

84. This item inserts a note at the end of subsection 46PF(1) of the Retitled Act to alert readers to the existence of Complaints Commissioners to whom the President may delegate the performance of the complaint handling functions.

Item 69 - After section 46PN

85. This item inserts new section 46PNA which permits the President to request Complaints Commissioners (who are appointed under new section 42A) to undertake complaint handling work under section 46P. All complaints of unlawful discrimination lodged with the Commission under section 46P must be referred to the President under section 46PD. The President may request a Complaints Commissioner to inquire into such a complaint and attempt to conciliate the complaint.

86. Subsection 8(6) describes the functions of the Commission which must be performed by the President. These include the function under subsection 11(1)(aa) of inquiring into, and attempting to conciliate, complaints of unlawful discrimination. Under new subsection 46PNA the Complaints Commissioners are deemed to be the President for this purpose but are not members of the Commission. Other functions of the Complaints Commissioners are described in new section 19(1A) of the Retitled Act.

Item 70 - Subsection 46PV(1)

87. This item amends subsection 46PV(1) of the Retitled Act to omit references to special-purpose Commissioners and to replace them with references to Human Rights Commissioners. This ensures that the three Human Rights Commissioners in the new Commission are responsible for performing the function of seeking leave to appear as *amicus curiae* in Federal Court proceedings under Division 2 of Part IIB of the

retitled Act. The President has not been given any role under this section in order to avoid the possibility of a conflict of interest arising from the President's responsibility for investigating, and attempting to conciliate, complaints of unlawful discrimination. The heading to section 46PV is altered accordingly.

Item 71 - Paragraph 46PV(1)(b)

88. This item repeals paragraph 46PV(1)(b) of the Retitled Act and substitutes a new paragraph 46PV(1)(b). The purpose of this amendment is to clarify the uncertainty which may exist as a result of the use of the phrase 'relevant Act or Acts' in the paragraph dealing with the Commission's function of intervening in court proceedings. The new paragraph makes it clear that any Human Rights Commissioner may seek leave to appear as *amicus curiae* in Federal Court proceedings which may, in his or her opinion, have significant implications for the administration of any one or more of the Acts specified in the paragraph.

Item 72 - Subsection 46PV(3)

89. This item repeals subsection 46PV(3) of the Retitled Act and substitutes a new subsection 46PV(3). This is consequential on the abolition of the positions of special-purpose Commissioners in the old Commission.

90. The new subsection requires the Human Rights Commissioners to consult each other before exercising the function under subsection 46PV(1) of seeking leave to appear as *amicus curiae* in Federal Court proceedings. This requirement is intended to ensure that appropriate consultation takes place between the Human Rights Commissioners in relation to this function. The functions of the Human Rights Commissioners under subsection 46PV(1) are intended to be performed cooperatively, and in the interests of the new Commission as a whole. This requirement is consistent with the general requirement, in subsection 8(2) of the Retitled Act, that the members of the Commission must act in a way which promotes the collegiate nature of the Commission.

Item 73 - Subsection 48(1)

91. This item, and later items, amend section 48 of the Retitled Act to ensure that its scope is sufficiently broad to protect from civil action those persons protected by existing section 126 of the DDA, section 45 of the RDA and section 111 of the SDA. This is because these three sections are being repealed by this Act (see later items) and consolidated into section 48 of the Retitled Act.

92. This item substitutes, in subsection 48(1) of the Retitled Act, the phrase 'for or on behalf of the Commission or a member' for the phrase 'on behalf of the Commission'. This is to ensure that persons acting for or on behalf of a member of the Commission, as well as those acting for or on behalf of the Commission itself, are protected against civil action.

93. In addition, this item will clarify the uncertainty surrounding the protection the section offers to contractors. There is some doubt, arising from the language of the existing section, as to whether contractors providing services to the Commission or a

member are protected from civil action. This item will clarify that contractors acting both on behalf of the Commission or a member (for example, contractors delivering a public anti-discrimination education campaign developed by the Commission) and for the Commission or a member (for example, contractors providing support or administrative services to the Commission itself) are protected by the section.

Item 74 - At the end of subsection 48(1)

94. This item further amends existing subsection 48(1) of the Retitled Act by adding the words ‘or a member’ at the end of the subsection to ensure that persons acting for or on behalf of a member of the Commission, as opposed to acting on behalf of the Commission itself, are protected against civil action.

Item 75 – Subsection 48(3)

Item 76 – Subsections 49(1), (2) and (4A)

95. These items amend existing subsections 48(3), 49(1), (2) and (4A) of the Retitled Act, along the same lines as an earlier item above, by adding the words ‘for or’ after the words ‘a person acting’. This will ensure that these subsections cover persons acting both for or on behalf of the Commission.

Item 77 - Subsection 49(1)

Item 78 - At the end of paragraph 49(1)(c)

Item 79 - At the end of subsection 49(2)

96. These items amend section 49 of the Retitled Act to ensure that the scope of the offence it creates is sufficiently broad to cover those persons covered by existing section 127 of the DDA, section 27F of the RDA and section 112 of the SDA. This is because this Bill would repeal these three sections and consolidate their terms into section 49 of the retitled Act.

97. These items amend subsection 49(1), paragraph 49(1)(c) and subsection 49(2) of the Retitled Act to ensure that the exception to the prohibition on disclosure of private information is sufficiently wide to cover the performance of a duty under or in connection with any law which confers power on the Commission. Existing section 49 covers only duties under or in connection with the HREOCA.

Part 2 - Disability Discrimination Act 1992

98. This part of Schedule 1 contains amendments to the DDA.

Item 80 - Subsection 4(1) (definition of *Commission*)

99. This item repeals the definition of Commission and substitutes a new definition, consequential on the amendments made by earlier items which amend the title of the HREOCA and the name of the Commission.

Item 81 - Subsection 4(1) (definition of *Commissioner*)

100. This item repeals the definition of 'Commissioner', consequential on the amendment made by a later item which repeals Part 6 of the DDA (relating to the position of the Disability Discrimination Commissioner). The specific position of Disability Discrimination Commissioner is no longer required because of the new structure created by earlier items which change the composition of the new Commission's executive structure.

Item 82 - Subsection 4(1) (definition of *Convention*)

101. This item amends the definition of 'Convention', consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 83 - Subsection 4(1) (definition of *Covenant on Civil and Political Rights*)

102. This item amends the definition of 'Covenant on Civil and Political Rights', consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 84 - Subsection 4(1) (definition of *enactment*)

103. This item amends the definition of 'enactment', consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 85 - Subsection 4(1)

104. This item inserts in subsection 4(1) of the DDA a definition of 'Human Rights Commissioner', consequential on the amendment made by an earlier item which establishes three Human Rights Commissioner positions.

Item 86 - Subsection 4(1) (definition of *proposed enactment*)

105. This item amends the definition of 'proposed enactment', consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 87 - Subsections 13(4) and 42(2)

106. This item amends subsections 13(4) and 42(2) of the DDA, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 88 - Part 4 (heading)

107. This item replaces the heading to Part 4 of the DDA, consequential on the amendment made by an earlier item which changes the name of the Commission.

Item 89 - Before paragraph 67(1)(c)

108. This item and the following item amend subsection 67(1) of the DDA to make education and dissemination of information on discrimination on the ground of disability the central focus of the new Commission's functions, primarily by re-ordering and enhancing the existing functions set out in subsection 67(1). These amendments mirror those made in relation to subsection 11(1) of the Retitled Act.

109. This item inserts new paragraphs (a), (b), (ba) and (bb) into subsection 67(1) of the DDA. Paragraphs 67(1)(a), (ba) and (bb) broadly reflect existing paragraphs 67(1)(g), (h) and (k), with the addition of references to the responsibility of persons and organisations to avoid discrimination on the grounds of disability, while paragraph 67(1)(b) confers on the new Commission a function which was not conferred on the old Commission.

110. These amendments are intended to focus the new Commission's attention on the following functions:

- promoting an understanding and acceptance of, and compliance with, the DDA (new paragraph 67(1)(a));
- disseminating information on discrimination on the ground of disability, and on the responsibility of persons and organisations to avoid such discrimination (new paragraph 67(1)(b));
- undertaking research and educational programs, and other programs, on behalf of the Commonwealth, for the purpose of promoting the objects of the DDA (new paragraph 67(1)(ba)); and
- preparing, and publishing in a manner the new Commission considers appropriate, guidelines for avoiding discrimination on the ground of disability (new paragraph 67(1)(bb)).

Item 90 - Paragraphs 67(1)(g), (h) and (k)

111. This item repeals paragraphs 67(1)(g), (h) and (k), consequential on the amendments made by the item above.

Item 91 - Paragraph 67(1)(l)

This item amends paragraph 67(1)(l) of the DDA to be subject to new subsections 67(3) and (4) of the DDA. These new subsections are created by a later item.

112. The heading to section 67 of the DDA is also altered, consequential on the amendment made by an earlier item which changes the name of the Commission.

Item 92 - Subsection 67(1) (note)

113. This item alters the note to subsection 67(1) of the DDA, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 93 – At the end of section 67

114. This item qualifies paragraph 67(1)(l) of the DDA to make the exercise by the new Commission of its function of seeking leave to intervene in court proceedings which involve human rights issues conditional on:

- the Attorney-General first having given approval in accordance with new subsection 67(3) unless new subsection 67(4) applies; or
- if the President of the new Commission is, or was immediately before appointment as President, a federal Judge (subsection (4)) - to require the Commission to notify the Attorney-General of its intention to seek leave to intervene in court proceedings and its reasons for doing so. The notice must be given when there is still a reasonable period before the Commission seeks leave to intervene in the court proceedings.

As First Law Officer of the Commonwealth the Attorney-General has a general public interest role in litigation, including human rights litigation. When the new Commission is given leave to intervene in court proceedings, it will effectively become a party to those proceedings, advocating and/or defending a particular legal position, or a particular interpretation of any legislation in issue in the proceedings. Requiring the new Commission to seek the Attorney-General's approval for such an intervention before the new Commission exercises its function to seek leave to intervene will ensure that the intervention function is only exercised after the broader interests of the community have been taken into account.

115. In deciding whether to approve the exercise by the new Commission of its power to seek leave to intervene in court proceedings the Attorney-General may have regard to a range of matters set out in subsection (3). The inclusion of these matters in subsection (3) is not in any way intended to limit the range of matters to which the Attorney-General may have regard in making his or her decision, nor is it intended that the Attorney-General be required to consider any of these matters.

116. In this new section, the matters to which the Attorney-General may have regard are as follows:

- whether there has been an intervention in the proceedings by or on behalf of the Commonwealth;
- whether, in the Attorney-General's opinion, the proceedings may affect to a significant extent the human rights of, or involve to a significant extent issues of discrimination against, persons who are not parties to the proceedings;

- whether, in the Attorney-General’s opinion, the proceedings have significant implications for the administration of the *Australian Human Rights Commission Act 1986*, the DDA, the RDA or the SDA;
- whether, in the Attorney-General’s opinion, there are special circumstances such that it would be in the public interest for the new Commission to intervene.

117. The requirement for the new Commission to notify the Attorney-General of its intention to seek leave to intervene in court proceedings and its reasons for doing so, but not requiring the Attorney-General’s formal approval of this function, when the President is, or was immediately before appointment as President, a federal Judge ensures that there are no constitutional issues arising from the appointment of a federal Judge as President.

Item 94 - Part 6

118. This item repeals Part 6 of the DDA, which provides for the appointment, and terms and conditions, of the Disability Discrimination Commissioner. The specific position of Disability Discrimination Commissioner is no longer required because of the new structure created by earlier items which change the composition of the new Commission’s executive.

Item 95 - Sections 121, 126, 127 and 129

119. This item repeals:

- section 121 of the DDA, consequential on the amendment made by an earlier item which amends section 19 of the Retitled Act to ensure that the new Commission can delegate its powers under any law which confers powers on the new Commission;
- section 126 of the DDA, consequential on the amendments made by earlier items which amend section 48 of the Retitled Act to ensure that its scope is sufficiently broad to protect from civil action those persons protected by existing section 126 of the DDA;
- section 127 of the DDA, consequential on the amendments made by earlier items which amend section 49 of the Retitled Act to ensure that the scope of the offence it creates is sufficiently broad to cover those persons covered by existing section 127 of the DDA; and
- section 129 of the DDA, consequential on the amendment made by an earlier item which repeals Part 6 of the DDA (relating to the position of the Disability Discrimination Commissioner).

Part 3 - Privacy Act 1988

120. This part of Schedule 1 contains amendments to the *Privacy Act 1988* ('Privacy Act'), consequential on the amendments made by Part 1 of Schedule 1.

Item 96 - Preamble

121. This item amends the preamble to the Privacy Act, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 97 - Paragraph 36(4)(a)

122. This item amends paragraph 36(4)(a) of the Privacy Act consequential on the amendment made by an earlier item which changes the name of the Commission.

Item 98 - Subsection 50(1) (definition of *Human Rights and Equal Opportunity Commission*)

123. This item repeals the definition of 'Human Rights and Equal Opportunity Commission', consequential on the amendment made by an earlier item which changes the name of the Commission. This is replaced by a definition in the item below.

Item 99 - Subsection 50(1)

124. This item inserts a definition of 'Australian Human Rights Commission' in subsection 50(1) of the Privacy Act, which is defined to include a person performing functions of that Commission. This replaces the definition repealed by the item above.

Item 100 - Subsection 50(2)

125. This item amends subsection 50(2) of the Privacy Act, consequential on the amendment made by an earlier item which changes the name of the Commission.

Item 101 - Subparagraphs 50(2)(a)(i) and (3)(a)(i)

126. This item amends subparagraphs 50(2)(a)(i) and (3)(a)(i) of the Privacy Act, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 102 - Subparagraph 50(3)(a)(i)

127. This item amends subparagraph 50(3)(a)(i) of the Privacy Act, consequential on the amendment made by an earlier item which changes the name of the Commission.

Part 4 - Racial Discrimination Act 1975

128. This part of Schedule 1 contains amendments to the RDA.

Item 103 - Subsection 3(1) (definition of *Chairman*)

129. This item repeals the definition of ‘Chairman’, consequential on the amendment made by a later item which repeals Part V (relating to the establishment and functions of the Community Relations Council) of the RDA.

Item 104 - Subsection 3(1) (definition of *Commission*)

130. This item repeals the definition of ‘Commission’ and substitutes a new definition, consequential on the amendments made by earlier items which amend the title of the HREOCA and change the name of the Commission.

Item 105 - Subsection 3(1) (definition of *Commissioner*)

131. This item repeals the definition of ‘Commissioner’, consequential on the amendment made by a later item which removes the position of Race Discrimination Commissioner. The specific position of Race Discrimination Commissioner is no longer required because of the new structure created by earlier items which change the composition of the new Commission’s executive.

Item 106 - Subsection 3(1) (definition of *conciliation committee*)

132. This item repeals the definition of ‘conciliation committee’, which is no longer needed. The substantive provisions which made use of the definition were repealed by an earlier Act, and the failure to repeal the definition was merely an omission.

Item 107 - Subsection 3(1) (definition of *Council*)

133. This item repeals the definition of ‘Council’, consequential on the amendment made by a later item which repeals Part V (relating to the establishment and functions of the Community Relations Council) of the RDA.

Item 108 - Subsection 3(1) (definition of *Deputy Chairman*)

134. This item repeals the definition of ‘Deputy Chairman’, consequential on the amendment made by a later item which repeals Part V (relating to the establishment and functions of the Community Relations Council) of the RDA.

Item 109 - Subsection 3(1)

135. This item inserts in subsection 3(1) of the RDA a definition of ‘Human Rights Commissioner’, consequential on the amendment made by an earlier item which changes the composition of the Commission.

Item 110 - Subsection 3(1) (definition of *member*)

136. This item repeals the definition of ‘member’, consequential on the amendment made by a later item which repeals Part V (relating to the establishment and functions of the Community Relations Council) of the RDA.

Item 111 - Subsection 6A(2)

137. This item amends subsection 6A(2) of the RDA, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 112 - Subsection 18C(1) (note)

151. This item amends the note following subsection 18C(1) of the RDA, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 113 - Subsection 18C(1) (note)

152. This item amends the note following subsection 18C(1) of the RDA, consequential on the amendment made by an earlier item which changes the name of the Commission.

Item 114 - Part III (heading)

138. This item alters the heading to Part III of the RDA, consequential on the amendment made by the item below.

Item 115 - Section 19

139. This item repeals section 19 of the RDA, which establishes the position of Race Discrimination Commissioner.

Item 116 - Paragraph 20(1)(b)

140. This item re-letters paragraph 20(1)(b) as paragraph (a). This is because HRLAA (No 1) repealed the previous paragraph 20(1)(a).

Item 117 - Before paragraph 20(1)(c)

141. This item inserts into section 20 of the RDA a new paragraph (b), which will confer on the new Commission the function of disseminating information on racial discrimination, and on the responsibility of persons and organisations to avoid such discrimination.

142. Together, this and the previous item are intended to focus the new Commission’s attention on the following functions:

- promoting an understanding and acceptance of, and compliance with, the RDA (new paragraph 20(1)(a));
- disseminating information on racial discrimination, and on the responsibility of persons and organisations to avoid such discrimination (new paragraph 20(1)(b));
- developing, conducting and fostering research and educational programs and other programs for various purposes under the RDA (existing paragraph 20(1)(c); and
- preparing, and publishing in a manner the new Commission considers appropriate, guidelines for avoiding racial discrimination (existing paragraph 20(1)(d)).

Item 118 - Paragraph 20(1)(e)

143. This item amends paragraph 20(1)(e) of the RDA to be subject to new subsections 20(2) and (3) of the RDA. These new subsections are created by a later item.

Item 119 - Paragraph 20(1)(f)

144. This item amends paragraph 20(1)(f) of the RDA. This is consequential on the amendment made by an earlier item which removes the specific position of Race Discrimination Commissioner. The position is no longer required because of the new structure created by earlier items which change the composition of the new Commission's executive.

Item 120 - Section 20 (note)

145. This item alters the note following section 20 of the RDA, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 121 – At the end of section 20

146. This item qualifies paragraph 20(1)(e) of the RDA to make the exercise by the new Commission of its function of seeking leave to intervene in court proceedings which involve human rights issues conditional on:

- the Attorney-General first having given approval in accordance with new subsection 20(2) unless new subsection (3) applies; or
- if the President of the new Commission is, or was immediately before appointment as President, a federal Judge (subsection (3)) - to require the Commission to notify the Attorney-General of its intention to seek leave to intervene in court proceedings and its reasons for doing so. The notice must be given when there is still a reasonable period before the Commission seeks leave to intervene in the court proceedings.

147. As First Law Officer of the Commonwealth the Attorney-General has a general public interest role in litigation, including human rights litigation. When the new Commission is given leave to intervene in court proceedings, it will effectively become a party to those proceedings, advocating and/or defending a particular legal position, or a particular interpretation of any legislation in issue in the proceedings. Requiring the new Commission to seek the Attorney-General's approval for such an

intervention before the new Commission exercises its function to seek leave to intervene will ensure that the intervention function is only exercised after the broader interests of the community have been taken into account.

148. In deciding whether to approve the exercise by the new Commission of its power to seek leave to intervene in court proceedings the Attorney-General may have regard to a range of matters set out in subsection (2). The inclusion of these matters in subsection (2) is not in any way intended to limit the range of matters to which the Attorney-General may have regard in making his or her decision, nor is it intended that the Attorney-General be required to consider any of these matters.

149. In this new section, the matters to which the Attorney-General may have regard are as follows:

- whether there has been an intervention in the proceedings by or on behalf of the Commonwealth;
- whether, in the Attorney-General's opinion, the proceedings may affect to a significant extent the human rights of, or involve to a significant extent issues of discrimination against, persons who are not parties to the proceedings;
- whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of the *Australian Human Rights Commission Act 1986*, the DDA, the RDA or the SDA;
- whether, in the Attorney-General's opinion, there are special circumstances such that it would be in the public interest for the new Commission to intervene.

The requirement for the new Commission to notify the Attorney-General of its intention to seek leave to intervene in court proceedings and its reasons for doing so, but not requiring the Attorney-General's formal approval of this function, when the President is, or was immediately before appointment as President, a federal Judge ensures that there are no constitutional issues arising from the appointment of a federal Judge as President.

Item 122 - Paragraphs 27(2)(e), (f) and (g)

150. This item amends paragraphs 27(2)(e), (f) and (g) of the RDA, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 123 - Section 27F

151. This item repeals section 27F of the RDA, consequential on the amendments made by earlier items. These items amend section 49 of the Retitled Act to ensure that the scope of the offence it creates is sufficiently broad to cover those persons covered by existing section 27F of the RDA.

Item 124 - Parts V and VI

152. This item repeals Parts V and VI of the RDA. Part V provides for the establishment and functions of the Community Relations Council. Part VI provides for the appointment, and terms and conditions, of the Race Discrimination Commissioner and the members of the Community Relations Council, as well as

administrative provisions relating to both. The effect of the amendment is to remove both the Community Relations Council and the specific position of Race Discrimination Commissioner. The specific position of Race Discrimination Commissioner is no longer required because of the new structure created by earlier items which change the composition of the new Commission's executive.

153. No members have ever been appointed to the Community Relations Council, although some of its functions (for example, providing advice to the Commissioner for Community Relations - the predecessor of the Race Discrimination Commissioner - on the promotion of understanding, tolerance and friendship among racial and ethnic groups) were in the past performed by voluntary committees established on an ad hoc basis by the Commissioner. The new Commission will retain the power - currently in section 15 of the HREOCA - to work with and consult appropriate persons, governmental organisations and non-governmental organisations.

Item 125 - Sections 45 and 45A

154. This item repeals section 45 of the RDA, consequential on the amendments made by earlier items which amend section 48 of the Retitled Act to ensure that its scope is sufficiently broad to protect from civil action those persons protected by section 45 of the RDA.

155. This section also repeals section 45A of the RDA, consequential on the amendment made by an earlier item which removes the specific position of Race Discrimination Commissioner, which is no longer required because of the new structure created by earlier items which change the composition of the new Commission's executive.

Item 126 - Section 47

156. This item amends section 47 of the RDA, consequential on the amendment made by an earlier item which repeals the definition of 'conciliation committee' which is no longer needed as the substantive provisions making use of that definition have already been repealed.

Part 5 - Sex Discrimination Act 1984

157. This part of Schedule 1 contains amendments to the SDA.

Item 127 - Subsection 4(1) (definition of *Commission*)

158. This item repeals the definition of ‘Commission’ and substitutes a new definition, consequential on the amendments made by earlier items which amend the title of the HREOCA and change the name of the Commission.

Item 128 - Subsection 4(1) (definition of *Commissioner*)

159. This item repeals the definition of ‘Commissioner’, consequential on the amendment made by a later item which removes the position of Sex Discrimination Commissioner. The specific position of Sex Discrimination Commissioner is no longer required because of the new structure created by earlier items which change the composition of the new Commission’s executive.

Item 129 - Subsection 4(1) (definition of *enactment*)

160. This item amends the definition of ‘enactment’, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 130 - Subsection 4(1)

161. This item inserts in subsection 4(1) of the RDA a definition of ‘Human Rights Commissioner’, consequential on the amendment made by an earlier item which changes the composition of the new Commission’s executive structure.

Item 131 - Subsection 4(1) (definition of *proposed enactment*)

162. This item amends the definition of ‘proposed enactment’, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 132 - Subsections 10(4) and 11(4)

163. This item amends subsections 10(4) and 11(4) of the SDA, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 133 - Part III (heading)

164. This item replaces the heading to Part III of the SDA, consequential on the amendment made by an earlier item which changes the name of the Commission.

Item 134 - Before paragraph 48(1)(c)

165. This item and the following item amend subsection 48(1) of the SDA to make education and dissemination of information on the various forms of discrimination made unlawful by the SDA a key focus of the new Commission's functions, primarily by re-ordering and enhancing the existing functions set out in subsection 48(1). These amendments mirror those made by earlier items in relation to subsection 11(1) of the Retitled Act.

166. This item inserts new paragraphs (a), (b), (ba) and (bb) into subsection 48(1) of the SDA. Paragraphs 48(1)(a), (ba) and (bb) broadly reflect existing paragraphs 48(1)(d), (e) and (ga), with the addition of references to the responsibility of persons and organisations to avoid the various forms of discrimination made unlawful by the SDA, while paragraph 48(1)(b) confers on the new Commission a function which was not conferred on the old Commission.

167. These amendments are intended to focus the new Commission's attention on the following functions:

- promoting an understanding and acceptance of, and compliance with, the SDA (new paragraph 48(1)(a));
- disseminating information on discrimination on the grounds of sex, marital status, pregnancy or potential pregnancy, and discrimination involving sexual harassment, and on the responsibility of persons and organisations to avoid such discrimination (new paragraph 48(1)(b));
- undertaking research and educational programs, and other programs, on behalf of the Commonwealth, for the purpose of promoting the objects of the SDA (new paragraph 48(1)(ba)); and
- preparing, and publishing in a manner the new Commission considers appropriate, guidelines for avoiding the various forms of discrimination made unlawful by the SDA (new paragraph 48(1)(bb)).

Item 135 - Paragraphs 48(1)(d), (e) and (ga)

168. This item repeals paragraphs 48(1)(d), (e) and (ga), consequential on the amendments made by the item above.

Item 136 - At the end of paragraph 48(1)(gb)

169. This item amends paragraph 48(1)(gb) of the SDA to be subject to new subsections 48(3) and (4) of the SDA. These new subsections are created by a later item.

Item 137 - Subsection 48(1) (note)

170. This item alters the note to subsection 48(1) of the SDA, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

171. The heading to section 48 of the SDA is also altered, consequential on the amendment made by an earlier item which changes the name of the Commission.

Item 138 – At the end of section 48

172. This item qualifies paragraph 48(1)(gb) of the SDA to make the exercise by the new Commission of its function of seeking leave to intervene in court proceedings which involve human rights issues conditional on:

- the Attorney-General first having given approval in accordance with new subsection 48(3) unless new subsection (4) applies; or
- if the President of the new Commission is, or was immediately before appointment as President, a federal Judge (subsection (4)) - to require the Commission to notify the Attorney-General of its intention to seek leave to intervene in court proceedings and its reasons for doing so. The notice must be given when there is still a reasonable period before the Commission seeks leave to intervene in the court proceedings.

173. As First Law Officer of the Commonwealth the Attorney-General has a general public interest role in litigation, including human rights litigation. When the new Commission is given leave to intervene in court proceedings, it will effectively become a party to those proceedings, advocating and/or defending a particular legal position, or a particular interpretation of any legislation in issue in the proceedings. Requiring the new Commission to seek the Attorney-General's approval for such an intervention before the new Commission exercises its function to seek leave to intervene will ensure that the intervention function is only exercised after the broader interests of the community have been taken into account.

174. In deciding whether to approve the exercise by the new Commission of its power to seek leave to intervene in court proceedings the Attorney-General may have regard to a range of matters set out in subsection (3). The inclusion of these matters in subsection (3) is not in any way intended to limit the range of matters to which the Attorney-General may have regard in making his or her decision, nor is it intended that the Attorney-General be required to consider any of these matters.

175. In this new section, the matters to which the Attorney-General may have regard are as follows:

- whether there has been an intervention in the proceedings by or on behalf of the Commonwealth;
- whether, in the Attorney-General's opinion, the proceedings may affect to a significant extent the human rights of, or involve to a significant extent issues of discrimination against, persons who are not parties to the proceedings;
- whether, in the Attorney-General's opinion, the proceedings have significant implications for the administration of the *Australian Human Rights Commission Act 1986*, the DDA, the RDA or the SDA;
- whether, in the Attorney-General's opinion, there are special circumstances such that it would be in the public interest for the new Commission to intervene.

176. The requirement for the new Commission to notify the Attorney-General of its intention to seek leave to intervene in court proceedings and its reasons for doing so, but not requiring the Attorney-General's formal approval of this function, when the President is, or was immediately before appointment as President, a federal Judge ensures that there are no constitutional issues arising from the appointment of a federal Judge as President.

Item 139 - Subsections 92(1)

Item 140 - Paragraph 92(2)(b)

Item 141 - Subsection 94(2)

177. These items amend subsection 92(1), 92(2)(b) and 94(2) of the SDA, consequential on the amendment made by an earlier item which amends the title of the HREOCA.

Item 142 - Part V

178. This item repeals Part V of the SDA, which provides for the appointment, and terms and conditions, of the Sex Discrimination Commissioner. The specific position of Sex Discrimination Commissioner is no longer required because of the new structure created by earlier items which change the composition of the new Commission's executive.

Item 143 - Sections 104, 111, 112 and 114

179. This item repeals:

- section 104 of the SDA, consequential on the amendment made by an earlier item which amends section 19 of the Retitled Act to ensure that the new Commission can delegate its powers under any law which confers powers on the new Commission;
- section 111 of the SDA, consequential on the amendments made by earlier items which amend section 48 of the Retitled Act to ensure that its scope is sufficiently broad to protect from civil action those persons protected by existing section 111 of the SDA;
- section 112 of the SDA, consequential on the amendments made by earlier items which amend section 49 of the Retitled Act to ensure that the scope of the offence it creates is sufficiently broad to cover those persons covered by existing section 112 of the SDA;
- section 114 of the SDA, consequential on the amendment made by an earlier item which repeals Part V of the SDA (which provides for the appointment, and terms and conditions, of the Sex Discrimination Commissioner).

Part 6 - Application and transitional

180. This part of Schedule 1 contains a number of provisions which deal with arrangements for the transition from the old Commission to the new Commission.

Item 144 - Continuity of Commission and President not affected

181. This item provides that, to avoid doubt, neither the continuity of the Commission's existence nor the continuity of the appointment of the President or the Human Rights Commissioner are affected by the change to the Commission's name, or any other amendment, made by this Act.

Item 145 - Re-appointment of President as a full-time member

182. This item ensures the preservation of the benefits of a part-time President who is appointed full-time after its commencement ('the transition time').

183. This item provides that if a person, who was a part-time President of the old Commission immediately before the transition time, ceases to be appointed as a part-time President and is re-appointed as a full-time President, that person is taken to have accrued an entitlement to benefits, in connection with the re-appointment, which is equivalent to the entitlement which he or she had accrued as a part-time President as at the transition time. This item ensures that a part-time President in the old Commission who is re-appointed as a full-time President in the new Commission is treated, for the purpose of calculating entitlements to benefits (for example, superannuation and leave), as if he or she had served continuously, without a break in his or her appointment.

Item 146 - Commissioners become Human Rights Commissioners

184. This item provides that the persons who were the Commissioners of the old Commission at the commencement of this item become Human Rights Commissioners of the new Commission, provided that at that time there are no more than three such Commissioners. Each such person holds office as Human Rights Commissioner for a period equivalent to the remaining period of the person's appointment as a Commissioner of the old Commission but the person is eligible for reappointment. Each such person is taken to have accrued an entitlement to benefits, as a new Human Rights Commissioner, that is equivalent to the entitlements that the person had accrued as a Commissioner immediately before the transition time.

Item 147 - Pre-commencement delegations remain in effect

185. Subitem (1) provides that delegations made by the old Commission, before the transition time, under section 121 of the DDA, section 40 of the RDA and section 104 of the SDA (which are repealed by earlier items), remain in force after the repeal of those sections as if the repeal had not happened. This is to ensure that the new Commission does not unnecessarily have to re-execute instruments of delegation

made by the old Commission, and that such delegations can continue in force unchanged.

186. Subitem (2) excludes from the operation of subitem (1) any delegations made by or to the special-purpose Commissioners whose positions are removed by this Act. These delegations will cease to have any effect.

187. Subitem (3) makes clear that any delegations to the special-purpose Human Rights Commissioner appointed under the HREOCA in force immediately before the commencement of this item are, under subitem (2), excluded from the operation of subitem (1).

Item 148 - Repealed civil liability provisions continue to apply in relation to pre-commencement acts etc.

188. This item ensures that the repealed civil liability protection provisions (section 126 of the DDA, section 45 of the RDA and section 111 of the SDA), and section 48 of the existing HREOCA in its unamended form, continue to apply to actions taken prior to the transition time. This item provides that although the provisions of the DDA, the RDA and the SDA are repealed, and section 48 of the HREOCA is amended, those sections continue to apply as if they had not been repealed or amended (as the case may be).

Item 149 - Repealed non-disclosure provisions continue to apply in relation to certain pre-commencement matters

189. This item ensures that the repealed non-disclosure provisions (section 127 of the DDA, section 27F of the RDA and section 112 of the SDA) continue to apply to certain people as if they had not been repealed. This item provides that, although the sections are repealed by Schedule 1 to this Act, they continue to apply, in relation to information a person acquired before the repeal, or documents a person had before the repeal, as if the repeal had not happened. Thus, the obligations of non-disclosure, along with the offences which provide the sanction for non-compliance with those obligations, continue to apply in relation to information and documents acquired before the transition time.

SCHEDULE 2 - AMENDMENT OF OTHER ACTS

Part 1 - References to the *Human Rights and Equal Opportunity Commission Act 1986*

Items 1 to 19 Amendment of Acts

190. This part of Schedule 2 contains amendments of provisions in other Acts to alter references to the HREOCA, consequential on the amendment made by an earlier item in Schedule 1 which amends the title of the HREOCA.

191. The following provisions are amended:

- subsection 3(1) of the *Crimes (Torture) Act 1988*;
- the Dictionary in the *Criminal Code Act 1995*;
- subsection 58HA(1) and section 58HB of the *Defence Act 1903*;
- subsection 138(3) of the *Evidence Act 1995*;
- the Preamble to the *Housing Assistance Act 1996*;
- subsection 4(1) of the *Human Rights (Sexual Conduct) Act 1994*;
- subsection 3(1) of the *Inspector-General of Intelligence and Security Act 1986*;
- paragraph 193(3)(a) of the *Migration Act 1958*;
- subsection 8B(1) and section 8C of the *Remuneration Tribunal Act 1973*;
- the Preamble to the *Supported Accommodation Assistance Act 1994*; and
- section 113, subsections 4(1) and 111A(1), and paragraphs 45(1)(ed) and 170CK(1)(a) of the *Workplace Relations Act 1996*.

Part 2 - Other amendments

192. This part of Schedule 2 contains a number of other amendments consequential on the amendments made in Schedule 1.

Defence Act 1903

Item 20 - Subsection 58HA(5)

193. This item amends subsection 58HA(5) of the *Defence Act 1903*, consequential on the amendment made by earlier items in Schedule 1 which changes the composition of the new Commission's executive structure and removes the specific position of Sex Discrimination Commissioner, which is no longer required as a result of the new structure.

Inspector-General of Intelligence and Security Act 1986

Item 21 - Subparagraphs 8(1)(a)(v), (2)(a)(iv) and (3)(b)(i)

194. This item amends subparagraphs 8(1)(a)(v), (2)(a)(iv) and (3)(b)(i) of the *Inspector-General of Intelligence and Security Act 1986*, consequential on the

amendment made by an earlier item in Schedule 1 which changes the name of the Commission.

Migration Act 1958

Item 22 - Paragraph 193(3)(a)

195. This item amends paragraph 193(3)(a) of the *Migration Act 1958*, consequential on the amendment made by an earlier item in Schedule 1 which changes the name of the Commission.

Native Title Act 1993

Item 23 – After the Preamble

196. The Preamble, as it was originally made, has historical importance so the reference in it to the HREOCA has not been amended. However, this item inserts a note at the end of the Preamble explaining that the HREOCA has been renamed the *Australian Human Rights Commission Act 1986*.

Item 24 - Subsection 209(1)

197. Subsection 209(1) of the *Native Title Act 1993* (NTA) provides for an annual report to the Commonwealth Minister on the operation of the NTA and its effect on the exercise and enjoyment of human rights of Aboriginal peoples and Torres Strait Islanders.

198. This item amends subsection 209(1) of the NTA to confer the reporting function on the new Commission, rather than on the Aboriginal and Torres Strait Islander Social Justice Commissioner, as the position of Aboriginal and Torres Strait Islander Social Justice Commissioner is removed by an earlier item in Schedule 1.

199. The heading to section 209 is also altered accordingly.

Item 25 - Subsection 209(2)

200. This item amends subsection 209(2) of the NTA, consequential on the amendment made by the item above.

Item 26 - At the end of section 209

201. This item amends section 209 of the NTA to add a new subsection (3). The new subsection imposes on the Commonwealth Minister an obligation to table before each House of Parliament a report which he or she receives from the Australian Human Rights Commission under subsection 209(1) or (2). The report must be tabled within 15 sitting days after the date on which the Commonwealth Minister receives the report. This is consistent with the current obligation under the HREOCA for the Minister to table within 15 sitting days after the date on which the Minister receives them, reports furnished to him by the Commission under section 46 of that Act (except reports tabled under subsection 29(5) which are reports of any matters that the Commission has excluded from another report). This section 46 obligation will

continue under the Retitled Act.

Remuneration and Allowances Act 1990

Item 27 - Part 3 of Schedule 2 (table item relating to the Human Rights Commissioner)

202. This item repeals the table item relating to the Human Rights Commissioner in Part 3 of Schedule 2 to the *Remuneration and Allowances Act 1990*, consequential on the amendment made by a Schedule 1 item to remove the specific position of Human Rights Commissioner provided for by section 8B of the HREOCA as in force immediately before the commencement of the *Australian Human Rights Commission Legislation Act 1986*.

Remuneration Tribunal Act 1973

Item 28 - Subsection 8B(5)

203. This item amends subsection 8B(5) of the *Remuneration Tribunal Act 1973*, consequential on the amendment made by earlier items in Schedule 1 which change the composition of the Commission and remove the position of Sex Discrimination Commissioner because it is no longer required as a result of the new Commission's executive structure.

Workplace Relations Act 1996

Item 29 - Paragraph 111A(2)(b)

204. This item amends paragraph 111A(2)(b) of the *Workplace Relations Act 1996*, consequential on the amendment made by earlier items in Schedule 1 which change the composition of the Commission and remove the position of Sex Discrimination Commissioner because it is no longer required as a result of the new Commission's executive structure.

Item 30 - Paragraph 170BD(b)

205. This item amends paragraph 170BD(b) of the *Workplace Relations Act 1996*, consequential on the amendment made by earlier items in Schedule 1 which change the composition of the Commission and remove the position of Sex Discrimination Commissioner because it is no longer required as a result of the new Commission's executive structure.