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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Human Rights Legislation Amendment Bill 2017

No. , 2017

(Attorney-General)

**A Bill for an Act to amend legislation relating to
human rights, and for other purposes**

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1 **A Bill for an Act to amend legislation relating to**
2 **human rights, and for other purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Human Rights Legislation Amendment Act 2017*.

6 **2 Commencement**

7 (1) Each provision of this Act specified in column 1 of the table
8 commences, or is taken to have commenced, in accordance with
9 column 2 of the table. Any other statement in column 2 has effect
10 according to its terms.
11

1 **Schedule 1—Amendment of the Racial**
2 **Discrimination Act 1975**
3

4 *Racial Discrimination Act 1975*

5 **1 Part IIA (heading)**

6 Repeal the heading, substitute:

7 **Part IIA—Prohibition of harassing or intimidating**
8 **acts done because of race, colour or**
9 **national or ethnic origin**

10 **2 Section 18C (heading)**

11 Repeal the heading, substitute:

12 **18C Harassing or intimidating acts done because of race, colour or**
13 **national or ethnic origin**

14 **3 Paragraph 18C(1)(a)**

15 Omit “offend, insult, humiliate”, substitute “harass”.

16 **4 After subsection 18C(2)**

17 Insert:

18 (2A) For the purposes of subsection (1), the question of whether an act
19 is reasonably likely, in all the circumstances, to have the effect
20 mentioned in paragraph (1)(a) is to be determined by the standards
21 of a reasonable member of the Australian community.

22 (2B) For the purposes of subsection (1), an act may be:

- 23 (a) a single isolated act; or
24 (b) one of a series of acts; or
25 (c) one of a group of related acts.

26 **5 Application of amendments**

27 The amendments made by this Schedule apply in relation to an act done
28 after the commencement of this item.

1 **Schedule 2—Amendment of the Australian**
2 **Human Rights Commission Act 1986**
3

4 *Australian Human Rights Commission Act 1986*

5 **1 Subsection 3(1)**

6 Insert:

7 *alleged acts, omissions or practices*, in relation to a complaint,
8 means the acts, omissions or practices that are alleged in the
9 complaint.

10 Note: See also paragraph 23(b) of the *Acts Interpretation Act 1901*.

11 **2 Subsection 3(1) (definition of *alleged unlawful***
12 ***discrimination*)**

13 Repeal the definition.

14 **3 Subsection 8(2)**

15 Repeal the subsection, substitute:

16 (2) The members must co-operate with each other to achieve common
17 objectives, where practicable.

18 (3) Subsection (2) does not affect the operation of section 44 (which
19 deals with meetings of the Commission).

20 **4 After subsection 8(6)**

21 Insert:

22 (6A) The powers of the Commission under sections 20A and 32A must
23 be exercised by the President, and a reference in this Act to the
24 Commission or to a member of the Commission must, in relation to
25 the exercise of any of those powers, be read as a reference to the
26 President.

27 **5 At the end of section 8A**

28 Add:

1 (5) The President has power to do all things necessary or convenient to
2 be done for or in connection with the performance of his or her
3 functions.

4 **6 Paragraph 11(1)(f)**

5 Repeal the paragraph, substitute:

6 (f) to:

- 7 (i) inquire into any act or practice that may be inconsistent
8 with or contrary to any human right; and
9 (ii) if the Commission considers it appropriate to do so—
10 endeavour, by conciliation, to effect a settlement of the
11 matters that gave rise to the inquiry; and

12 **7 After subsection 19(2B)**

13 Insert:

14 (2BA) Subsection (2) does not allow the President to delegate a power
15 that can be exercised by the President because of subsection 8(6A).

16 **8 After paragraph 20(2)(b)**

17 Insert:

18 (ba) the Commission is satisfied, having regard to all the
19 circumstances, that an inquiry, or the continuation of an
20 inquiry, into the act or practice is not warranted; or

21 **9 After subparagraph 20(2)(c)(ii)**

22 Insert:

- 23 (iiia) the Commission is of the opinion that there is no
24 reasonable prospect that the complaint will be resolved
25 in favour of the complainant or complainants; or
26 (iiib) the Commission is satisfied that there is no reasonable
27 prospect of the matter being settled by conciliation; or

28 **10 At the end of section 20**

29 Add:

30 (9) The Commission must act fairly in the performance of the
31 functions referred to in paragraph 11(1)(f).

32 (10) If a complaint is made under paragraph (1)(b), the Commission:

- 1 (a) must act expeditiously in dealing with the complaint; and
2 (b) must use the Commission's best endeavours to finish dealing
3 with the complaint within 12 months after the complaint was
4 made.

5 (11) Subsections (9) and (10) do not impose a duty on the Commission
6 that is enforceable in court.

7 (12) Subsection (11) does not affect a legally enforceable obligation to
8 observe the rules of natural justice.

9 **11 After section 20**

10 Insert:

11 **20A Reports to the Minister**

12 If:

- 13 (a) the Commission has inquired into an act or practice that may
14 be inconsistent with or contrary to any human right; and
15 (b) the Commission is of the opinion that the act or practice is
16 inconsistent with or contrary to any human right;
17 the Commission may report to the Minister in relation to the
18 inquiry.

19 **12 Paragraph 31(b)**

20 Repeal the paragraph, substitute:

- 21 (b) to:
22 (i) inquire into any act or practice (including any systemic
23 practice) that may constitute discrimination; and
24 (ii) if the Commission considers it appropriate to do so—
25 endeavour, by conciliation, to effect a settlement of the
26 matters that gave rise to the inquiry;

27 **13 After paragraph 32(3)(b)**

28 Insert:

- 29 (ba) the Commission is satisfied, having regard to all the
30 circumstances, that an inquiry, or the continuation of an
31 inquiry, into the act or practice is not warranted; or

1 **14 After subparagraph 32(3)(c)(ii)**

2 Insert:

- 3 (ia) the Commission is of the opinion that there is no
4 reasonable prospect that the complaint will be resolved
5 in favour of the complainant or complainants; or
6 (ib) the Commission is satisfied that there is no reasonable
7 prospect of the matter being settled by conciliation; or

8 **15 At the end of section 32**

9 Add:

- 10 (4) The Commission must act fairly in the performance of the
11 functions referred to in paragraph 31(b).
- 12 (5) If a complaint is made under paragraph (1)(b), the Commission:
13 (a) must act expeditiously in dealing with the complaint; and
14 (b) must use the Commission's best endeavours to finish dealing
15 with the complaint within 12 months after the complaint was
16 made.
- 17 (6) Subsections (4) and (5) do not impose a duty on the Commission
18 that is enforceable in court.
- 19 (7) Subsection (6) does not affect a legally enforceable obligation to
20 observe the rules of natural justice.

21 **16 After section 32**

22 Insert:

23 **32A Reports to the Minister**

24 If:

- 25 (a) the Commission has inquired into an act or practice (whether
26 a systemic practice or otherwise) that may constitute
27 discrimination; and
28 (b) the Commission is of the opinion that the act or practice
29 constitutes discrimination;
30 the Commission may report to the Minister in relation to the
31 inquiry.

1 **17 Section 46**

2 Omit “other than subsection 29(5)”, substitute “(other than section 20A,
3 subsection 29(5) or section 32A)”.

4 **18 Section 46C (heading)**

5 Repeal the heading, substitute:

6 **46C Functions of the Commission that are to be performed by the**
7 **Commissioner etc.**

8 **19 Paragraph 46C(1)(a)**

9 Repeal the paragraph.

10 **20 After subsection 46C(2)**

11 Insert:

12 (2A) The Commissioner may submit reports to the Minister regarding
13 the enjoyment and exercise of human rights by Aboriginal persons
14 and Torres Strait Islanders.

15 (2B) The Commissioner may submit reports to the Minister regarding:

16 (a) the operation of the *Native Title Act 1993*; and

17 (b) the effect of that Act on the enjoyment and exercise of human
18 rights by Aboriginal persons and Torres Strait Islanders.

19 (2C) A report under subsection (2A) or (2B) may include
20 recommendations as to the action that should be taken to ensure the
21 enjoyment and exercise of human rights by Aboriginal persons and
22 Torres Strait Islanders.

23 **21 Subsections 46C(3) and (4)**

24 After “functions”, insert “, or the exercise of powers,”.

25 **22 Section 46M**

26 Omit “paragraph 46C(1)(a)”, substitute “subsection 46C(2A) or (2B)”.

27 **23 Section 46MB**

28 Repeal the heading, substitute:

1 **46MB Functions of Commission that are to be performed by the**
2 **National Children’s Commissioner etc.**

3 **24 Paragraph 46MB(1)(a)**

4 Repeal the paragraph.

5 **25 Subsection 46MB(3)**

6 Repeal the subsection, substitute:

7 (3) The National Children’s Commissioner may submit reports to the
8 Minister that deal with such matters, relating to the enjoyment and
9 exercise of human rights by children in Australia, as the National
10 Children’s Commissioner considers appropriate.

11 (3A) A report under subsection (3) may include recommendations that
12 the National Children’s Commissioner considers appropriate as to
13 the action that should be taken to ensure the enjoyment and
14 exercise of human rights by children in Australia.

15 **26 Subsections 46MB(4), (5) and (6)**

16 After “functions”, insert “, or exercising powers,”.

17 **27 Subsection 46P(1)**

18 Repeal the subsection, substitute:

19 (1) A written complaint may be lodged with the Commission:

20 (a) alleging:

21 (i) that one or more acts have been done; or

22 (ii) that one or more omissions or practices have occurred;
23 and

24 (b) alleging that those acts, omissions or practices are unlawful
25 discrimination.

26 Note: *Unlawful discrimination* is defined in subsection 3(1).

27 (1A) It must be reasonably arguable that the alleged acts, omissions or
28 practices are unlawful discrimination.

29 (1B) The complaint must set out the details of the alleged acts,
30 omissions or practices.

1 **28 Paragraphs 46P(2)(a), (b) and (c)**

2 Omit “unlawful discrimination” (wherever occurring), substitute “acts,
3 omissions or practices”.

4 **29 Subsection 46PC(1)**

5 After “the complaint under”, insert “paragraph 46PF(1)(b) or”.

6 **30 Subsection 46PE(3)**

7 After “46PH(2)”, insert “, (2A)”.

8 **31 Subsection 46PF(1)**

9 Repeal the subsection, substitute:

10 (1) Subject to subsections (1A) and (5), if a complaint is referred to the
11 President under section 46PD, the President must:

12 (a) consider whether to inquire into the complaint, having regard
13 to the matters referred to in section 46PH; and

14 (b) if the President is of the opinion that, having regard to any of
15 the matters referred to in section 46PH, the complaint should
16 be terminated—terminate the complaint without inquiry; and

17 (c) unless the President terminates the complaint under
18 paragraph (b) or section 46PH—inquire into the complaint
19 and attempt to conciliate the complaint.

20 (1A) For the purposes of paragraph (1)(a), the President may inform
21 himself or herself of such facts and circumstances as are necessary
22 to form the opinion referred to in paragraph (1)(b).

23 (1B) If the President terminates the complaint under paragraph (1)(b),
24 the President must comply with the notification requirements of
25 subsections 46PH(2), (2A) and (3).

26 **32 Subsection 46PF(3)**

27 Omit “alleged unlawful discrimination”, substitute “alleged acts,
28 omissions or practices”.

29 **33 Subsection 46PF(3) (note)**

30 Omit “unlawful discrimination”, substitute “acts or omissions”.

1 **34 Subsection 46PF(4)**

2 After “under”, insert “paragraph (1)(b) or”.

3 **35 Paragraph 46PF(5)(a)**

4 Omit “unlawful discrimination”, substitute “acts, omissions or
5 practices”.

6 **36 At the end of section 46PF**

7 Add:

8 (6) The President must act fairly to:

9 (a) the complainant or complainants; and

10 (b) the respondent;

11 in dealing with the complaint in accordance with this section.

12 (7) The President must notify the complaint to the respondent, unless
13 the President is satisfied that notification would be likely to
14 prejudice the safety of a person.

15 (8) If the complaint is amended under subsection (3) by adding a
16 respondent, the President must notify the complaint to that
17 respondent, unless the President is satisfied that notification would
18 be likely to prejudice the safety of a person.

19 (9) The President:

20 (a) must notify the complaint to any person (other than the
21 respondent) who is the subject of an adverse allegation in the
22 complaint, unless the President is satisfied that notification
23 would be likely to prejudice the safety of a person; and

24 (b) may notify the complaint to any person who, in the opinion
25 of the President, is likely to be able to provide information
26 relevant to the complaint.

27 (10) The President:

28 (a) must, having regard to:

29 (i) the nature of the complaint; and

30 (ii) the needs of the complainant or complainants; and

31 (iii) the needs of the respondent;

32 act expeditiously in dealing with the complaint in accordance
33 with this section; and

1 (b) must use the President's best endeavours to finish dealing
2 with the complaint within 12 months after the complaint was
3 referred to the President under section 46PD.

4 **37 Before subsection 46PH(1)**

5 Insert:

6 *Discretionary termination of complaint*

7 **38 Paragraph 46PH(1)(a)**

8 Omit "unlawful discrimination is", substitute "acts, omissions or
9 practices are".

10 **39 Paragraph 46PH(1)(b)**

11 Omit "12 months", substitute "6 months".

12 **40 Paragraph 46PH(1)(b)**

13 Omit "unlawful discrimination", substitute "acts, omissions or
14 practices".

15 **41 Paragraph 46PH(1)(c)**

16 Repeal the paragraph, substitute:

17 (c) the President is satisfied, having regard to all the
18 circumstances, that an inquiry, or the continuation of an
19 inquiry, into the complaint is not warranted;

20 **42 At the end of subsection 46PH(1)**

21 Add:

22 Note: An act, omission or practice may not be unlawful discrimination
23 because an exemption applies (for example, section 18D of the *Racial*
24 *Discrimination Act 1975*). Accordingly, consideration by the President
25 of the question of whether an act, omission or practice is not unlawful
26 discrimination will involve consideration of whether an exemption
27 applies.

28 **43 After subsection 46PH(1)**

29 Insert:

30 (1A) A complaint may be terminated under subsection (1) at any time,
31 even if an inquiry into the complaint has begun.

1 *Mandatory termination of complaint*

2 (1B) The President must terminate a complaint if the President is
3 satisfied that:

- 4 (a) the complaint is trivial, vexatious, misconceived or lacking in
5 substance; or
6 (b) there is no reasonable prospect that the complaint will be
7 resolved in favour of the complainant or complainants.

8 (1C) The President must terminate a complaint if the President is
9 satisfied that there would be no reasonable prospect that the
10 Federal Court or the Federal Circuit Court would be satisfied that
11 the alleged acts, omissions or practices are unlawful
12 discrimination.

13 (1D) A complaint may be terminated under subsection (1B) or (1C) at
14 any time, even if an inquiry into the complaint has begun.

15 **44 Before subsection 46PH(2)**

16 Insert:

17 *Notification*

18 **45 Subsection 46PH(2)**

19 Omit “decides to terminate a complaint”, substitute “terminates a
20 complaint”.

21 **46 Subsection 46PH(2)**

22 Omit “that decision” (wherever occurring), substitute “the termination”.

23 **47 Before subsection 46PH(3)**

24 Insert:

25 (2A) A notice under subsection (2) must include a statement explaining
26 that the Federal Court and the Federal Circuit Court can award
27 costs in proceedings under section 46PO.

28 **48 Before subsection 46PH(4)**

29 Insert:

1 *Revocation*

2 **49 Sections 46PJ and 46PK**

3 Repeal the sections, substitute:

4 **46PJ President may hold conferences**

5 *President may decide to hold a conference*

6 (1) For the purpose of attempting to conciliate a complaint in
7 accordance with section 46PF, the President may decide to hold a
8 conference, to be presided over by:

- 9 (a) the President; or
10 (b) a suitable person (other than a Commission member)
11 determined by the President.

12 *President may invite people to attend*

13 (2) The President may:

- 14 (a) invite any or all of the complainants or respondents to attend
15 the conference; and
16 (b) invite any other person to attend the conference, if:
17 (i) the President reasonably believes that the person is
18 capable of giving information that is relevant to the
19 conciliation of the complaint; or
20 (ii) the President considers that the person's presence at the
21 conference is likely to be conducive to the conciliation
22 of the complaint.

23 *President may require people to attend*

24 (3) The President may, by written notice given to a person referred to
25 in subsection (2), require the person to attend the conference
26 (whether or not the person has already been invited to attend the
27 conference).

28 Note: Failure to comply with a notice is an offence—see subsection (5).

29 (4) A notice under subsection (3):

- 30 (a) must specify the place and time of the conference, not being
31 a time that is less than 14 days after the notice is given; and
32 (b) must set out the effect of subsection (5).
-

- 1 (5) A person commits an offence if:
2 (a) the person has been given a notice under subsection (3)
3 requiring the person to attend a conference; and
4 (b) the person refuses or fails to comply with the requirement.

5 Penalty: 10 penalty units.

- 6 (6) Subsection (5) is an offence of strict liability.

7 Note: For strict liability, see section 6.1 of the *Criminal Code*.

8 *Expenses for attendance*

- 9 (7) A person who is required to attend the conference is entitled to be
10 paid, by the Commonwealth, a reasonable sum for the person's
11 expenses of attendance.

12 **46PK Proceedings at conferences**

- 13 (1) Subject to this section, a conference mentioned in
14 subsection 46PJ(1) is to be conducted in such manner as the person
15 presiding at the conference considers appropriate.

16 (2) The conference is to be conducted in private.

17 (3) The person presiding at the conference must take all reasonable
18 steps to ensure that the conduct of the conference does not
19 disadvantage any complainant or respondent.

20 (4) Unless the person presiding at the conference consents:

21 (a) an individual is not entitled to be represented at the
22 conference by another person; and

23 (b) a body (whether or not incorporated) is not entitled to be
24 represented at the conference otherwise than by a person who
25 is an officer or employee of the body.

26 (5) Despite paragraph (4)(a), an individual who is unable to attend the
27 conference because the individual has a disability is entitled to
28 nominate another person to attend instead on his or her behalf.

29 (6) If the person presiding at the conference considers that an
30 individual is unable to participate fully in the conference because
31 the individual has a disability, the individual is entitled to nominate
32 another person to assist him or her at the conference.

1 (7) For the purposes of this section, *disability* has the same meaning as
2 in the *Disability Discrimination Act 1992*.

3 **46PKA Things said in conciliation are not admissible in evidence in**
4 **certain proceedings**

5 (1) Evidence of anything said or done by a person in the course of the
6 conciliation of a complaint in accordance with section 46PF is not
7 admissible in any proceedings relating to the alleged acts,
8 omissions or practices.

9 (2) Subsection (1) does not apply for the purposes of the application of
10 section 46PSA.

11 **50 Section 46PL**

12 Repeal the section.

13 **51 Subsection 46PM(1)**

14 Omit “, 46PJ or 46PK”.

15 **52 Paragraph 46PO(1)(a)**

16 Omit “or”, substitute “, paragraph 46PF(1)(b) or section”.

17 **53 After subsection 46PO(3)**

18 Insert:

19 (3A) The application must not be made unless:

20 (a) the court concerned grants leave to make the application; or

21 (b) the complaint was terminated under paragraph 46PH(1)(h).

22 **54 At the end of subsection 46PO(4)**

23 Add:

24 Note 1: The Federal Court, or a judge of that court, may award costs in
25 proceedings under this section—see section 43 of the *Federal Court of*
26 *Australia Act 1976*.

27 Note 2: The Federal Circuit Court, or a judge of that court, may award costs in
28 proceedings under this section—see section 79 of the *Federal Circuit*
29 *Court of Australia Act 1999*.

1 **55 Subsection 46PP(3)**

2 Omit “46PE or”, substitute “46PE, paragraph 46PF(1)(b) or section”.

3 **56 Subsection 46PS(1)**

4 After “terminated under”, insert “paragraph 46PF(1)(b) or”.

5 **57 After section 46PS**

6 Insert:

7 **46PSA Costs—court may have regard to an offer to settle**

8 If:

- 9 (a) proceedings have been instituted under section 46PO against
10 a respondent to a terminated complaint; and
11 (b) the respondent has made, or makes, an offer to settle the
12 matter the subject of the complaint; and
13 (c) the offer was or is rejected;

14 the court, or a judge of the court, in deciding whether to award
15 costs in the proceedings, may have regard to the offer.

16 Note 1: The Federal Court, or a judge of that court, may award costs in
17 proceedings under section 46PO—see section 43 of the *Federal Court*
18 *of Australia Act 1976*.

19 Note 2: The Federal Circuit Court, or a judge of that court, may award costs in
20 proceedings under section 46PO—see section 79 of the *Federal*
21 *Circuit Court of Australia Act 1999*.

22 **58 Application of amendments**

23 (1) The amendments made by items 6, 11, 12 and 16 apply in relation to an
24 inquiry if:

- 25 (a) the inquiry is in response to a complaint made to the
26 Commission after the commencement of this item; or
27 (b) both:
28 (i) the inquiry is not in response to a complaint made to the
29 Commission; and
30 (ii) the inquiry began after the commencement of this item.

31 (2) The amendments made by items 1, 27 to 38 and 40 to 51 apply in
32 relation to a complaint lodged after the commencement of this item.

- 1 (3) The amendments made by items 9 and 14 apply in relation to a
2 complaint made after the commencement of this item.
- 3 (4) Subsection 20(9) of the *Australian Human Rights Commission Act 1986*
4 (as amended by this Schedule) applies in relation to the performance of
5 functions referred to in paragraph 11(1)(f) of that Act if:
6 (a) the performance of the functions is in response to a complaint
7 made to the Commission after the commencement of this
8 item; or
9 (b) both:
10 (i) the performance of the functions is not in response to a
11 complaint; and
12 (ii) the performance of the functions began after the
13 commencement of this item.
- 14 (5) Subsection 32(4) of the *Australian Human Rights Commission Act 1986*
15 (as amended by this Schedule) applies in relation to the performance of
16 functions referred to in paragraph 31(b) of that Act if:
17 (a) the performance of the functions is in response to a complaint
18 made to the Commission after the commencement of this
19 item; or
20 (b) both:
21 (i) the performance of the functions is not in response to a
22 complaint; and
23 (ii) the performance of the functions began after the
24 commencement of this item.
- 25 (6) Subsection 20(10) of the *Australian Human Rights Commission Act*
26 *1986* (as amended by this Schedule) applies in relation to a complaint
27 made after the commencement of this item.
- 28 (7) Subsection 32(5) of the *Australian Human Rights Commission Act 1986*
29 (as amended by this Schedule) applies in relation to a complaint made
30 after the commencement of this item.
- 31 (8) The amendment made by item 39 applies in relation to a complaint
32 lodged after the commencement of this item if the alleged acts,
33 omissions or practices took place after the commencement of this item.
- 34 (9) The amendments made by items 52, 53 and 57 apply in relation to an
35 application made to the Federal Court or the Federal Circuit Court
36 under section 46PO of the *Australian Human Rights Commission Act*
-

1 *1986* after the commencement of this item, if the relevant complaint
2 mentioned in paragraph 46PO(1)(a) of that Act was lodged after the
3 commencement of this item.

4 **59 Transitional—tabling of reports**

5 Despite the amendment of section 46M of the *Australian Human Rights*
6 *Commission Act 1986* made by this Schedule, that section continues to
7 apply, in relation to a report received by the Minister under
8 paragraph 46C(1)(a) of that Act before the commencement of this item,
9 as if that amendment had not been made.

1 **Schedule 3—Amendment of the Native Title**
2 **Act 1993**
3

4 *Native Title Act 1993*

5 **1 Section 209**

6 Repeal the section, substitute:

7 **209 Reports by Aboriginal and Torres Strait Islander Social Justice**
8 **Commissioner**

9 The Commonwealth Minister may, by written notice, direct the
10 Aboriginal and Torres Strait Islander Social Justice Commissioner
11 to report to the Commonwealth Minister about:

- 12 (a) the operation of this Act; or
13 (b) the effect of this Act on the exercise and enjoyment of human
14 rights of Aboriginal peoples and Torres Strait Islanders.

15 Note: The Aboriginal and Torres Strait Islander Social Justice
16 Commissioner is appointed under the *Australian Human Rights*
17 *Commission Act 1986*.