

Human Rights Bill 2009

No. , 2009

A Bill for an Act to respect, protect and promote human rights

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A Bill for an Act to respect, protect and promote human rights

Preamble

- (1) This is an Act to respect, protect and promote human rights in Australia.
- (2) Human rights are built upon democracy. In a true democracy human rights are assured.
- (3) Human dignity depends upon the free exercise of reason, conscience and belief. When human rights are not respected human dignity is injured.
- (4) All people in Australia have the right to pursue their individual purposes without undue, unjust or arbitrary interference from the State. Without respect for human rights human potential is denied expression.
- (5) The Universal Declaration of Human Rights proclaims freedom of speech and belief and freedom from fear and want as the highest aspirations of the common people. In this Act, the Parliament of Australia seeks to embed these freedoms and their associated rights and responsibilities in law.
- (6) The exercise of human rights implies corresponding responsibilities. It is every individual's responsibility to respect the rights of others, observe the law, engage in useful activity and accept the burdens and sacrifices demanded for the common good.
- (7) Recognition of human rights also implies responsibilities for Australian governments. Chief among these is the responsibility to create the economic, political, social and environmental conditions in which all people may develop their physical, mental and moral capacities.
- (8) All people in Australia are entitled to the rights and freedoms set down in this Act without discrimination of any kind. This includes discrimination on the grounds of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, property, birth, disability, age, sexual orientation or gender identity.

The Parliament of Australia therefore enacts:

Part 1 – Preliminary

1 Short title

This Act may be cited as the *Human Rights Act 2006*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Objects

The objects of this Act are:

- (a) to respect, protect and promote human rights in Australia.
- (b) to make the law of Australia better conform with Australia's obligations under
 - (i) The International Covenant on Civil and Political Rights, 1966;
 - (ii) The International Covenant on Economic, Social and Cultural Rights, 1966;
 - (iii) The International Convention on the Elimination of All Forms of Racial Discrimination, 1965;
 - (iv) The International Convention on the Elimination of All Forms of Discrimination against Women, 1979;
 - (v) The International Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984;
 - (vi) The International Convention on the Rights of the Child, 1989;
 - (vii) The International Convention Relating to the Status of Refugees, 1951;
 - (viii) The International Convention on the Rights of Persons with Disabilities 2008.
- (c) to provide mechanisms to assist the Parliament in considering the human rights implications of proposed legislation.
- (d) to provide for the reconsideration by the Parliament of primary and subordinate legislation that is held by the courts to be inconsistent with the human rights contained in this Act.
- (e) to provide for a just and appropriate remedy where a public authority has infringed an individual's human rights under this Act.

- (f) to promote widespread public education and discussion about people's human rights and responsibilities.

4 Application of this Act

- (1) The human rights in this Act are exercisable by everyone within Australia's jurisdiction.
- (2) The human rights in this Act are exercisable by natural persons.
- (3) This Act operates as a law of the Commonwealth –
 - (a) in relation to, and in relation to the making of, laws of the Commonwealth and laws of a Territory; and
 - (b) in relation to the common law of the Commonwealth,but does not operate in relation to, or in relation to the making of, laws of a State or in relation to the common law of a State.

5 Dictionary

Attorney-General means the Attorney-General of the Commonwealth of Australia.

Court means the following courts:

- (a) The High Court of Australia.
- (b) The Federal Court of Australia.
- (c) The Family Court of Australia.
- (d) The Supreme Courts of the States and Territories in their exercise of federal jurisdiction.

court means the following courts:

- (a) The High Court of Australia.
- (b) The Federal Court of Australia.
- (c) The Family Court of Australia.
- (d) The Federal Magistrates Court.
- (e) The Supreme Courts of the States and the Territories and any other State or Territory courts in their exercise of federal jurisdiction.

law means Acts and legislative and statutory instruments of the Commonwealth.

parliament means the legislatures of the Commonwealth.

person aggrieved means a person whose interests are or may be affected adversely, either directly or indirectly, by the act or conduct of a public authority.

Part 2 – Human rights explained

6 What are human rights?

In this Act:

human rights means the civil, political, economic, social and cultural rights set down in part 3 of this Act.

7 Who has human rights?

For the purposes of this Act, only natural human persons possess human rights.

8 Rights apart from this Act

An existing right or freedom shall not be held to be abrogated or restricted by reason only that the right or freedom is not included in this Act or is included only in part.

9 Rights not to be destroyed

Nothing in this Act may be interpreted as implying for any group or person any right to engage in any activity or to perform any act whose purpose is the destruction of any of the rights and freedoms here set down or their limitation to a greater extent than is here provided for.

Part 3 – Human Rights

10 Human rights may be limited

(1) This Act guarantees the rights and freedoms set down in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

(2) In determining whether a right or freedom may reasonably be limited in this way, all relevant factors should be taken into account including -

- (a) the nature of the right; and
- (b) the importance of the purpose of the limitation; and
- (c) the nature and extent of the limitation; and
- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

I. Civil and Political Rights

11 Right to life

- (1) Everyone has the right to life. Therefore, no-one may be deprived of life arbitrarily.
- (2) No one may be subject to capital punishment.

12 Protection from torture and cruel, inhuman or degrading treatment

- (1) No-one may be -
 - (a) tortured; or
 - (b) treated or punished in a cruel, inhuman or degrading way.
- (2) No-one may be subjected to medical or scientific experimentation, testing or treatment without his or her free and informed consent.

13 Freedom from forced work

- (1) No-one may be held in slavery or servitude.
- (2) No-one may be made to perform forced or compulsory labour.
- (3) In subsection (2):
forced or compulsory labour does not include -

- (a) work or service normally required of a person who is under detention because of a lawful court order, or who has been ordered to work in the community pursuant to a lawful court order; or
- (b) work or service required because of an emergency or calamity threatening the life or wellbeing of the community; or
- (c) work or service that forms part of normal civil obligations.

14 Right to liberty and security of the person

- (1) Everyone has the right to liberty and security of the person. In particular, no-one may be arbitrarily arrested or detained.
- (2) No-one may be deprived of liberty, except on such grounds and in accordance with such procedures as are established by law.
- (3) Anyone who is arrested must be informed at the time of arrest, and in a language and manner they understand, of the reasons for the arrest and must be promptly informed about any charges against him or her.
- (4) Anyone who is arrested or detained on a criminal charge -
 - (a) must be brought promptly before a judge or magistrate; and
 - (b) has the right to be tried within a reasonable time or released.
- (5) It shall not be the general rule that anyone who is awaiting trial must be detained in custody, but his or her release may be subject to guarantees to appear for trial and, should occasion arise, for the execution of judgment.
- (6) Anyone who is deprived of liberty by arrest or detention is entitled to apply to a court so that the court can decide, without delay, the lawfulness of the detention and order the person's release if the detention is not lawful.
- (7) Anyone who is deprived of liberty by arrest or detention has the right to remain silent.
- (8) Anyone who is deprived of liberty by arrest or detention has the right to consult with a lawyer of their choice.
- (9) Anyone who has been unlawfully arrested or detained has the right to fair and reasonable compensation for the arrest or detention.
- (10) No-one may be imprisoned only because of the inability to carry out a contractual obligation.

15 Humane treatment when deprived of liberty

- (1) Any person deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.
 - (2) An accused person who has been detained, or a person detained without charge, must be segregated from convicted people, save in exceptional circumstances.
 - (3) An accused person who has been detained, or a person detained without charge, must be treated in a way that is appropriate for a person who has not been convicted and is, therefore, presumed innocent.
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16 Children in the criminal process

- (1) An accused child shall be kept separately from detained persons over the age of 18 years.
- (2) An accused child must be treated in a manner, and be kept in conditions, that take account of and are appropriate to the child's age.
- (3) An accused child must be brought to trial as quickly as possible.
- (4) An accused child must be informed promptly and directly, in a language and manner which he or she understands, of the charges against him or her. If appropriate, this information may be provided through his or her parents or legal guardians.
- (5) An accused child has the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence in criminal proceedings.
- (6) A convicted child must be treated in a manner, and be kept in conditions, that take account of and are appropriate to the child's age.

17 Fair trial

- (1) Everyone is be entitled to equal treatment before courts and tribunals.
- (2) Everyone is entitled to have criminal charges, and rights and obligations in a suit at law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- (3) However, the public may be excluded from all or part of a trial -
 - (a) to protect public order or national security in a democratic society; or
 - (b) if the interest of the private lives of parties or witnesses require the exclusion; or
 - (c) if, and to the extent that, the exclusion is strictly necessary in the special circumstances of the case because publicity would otherwise prejudice the interests of justice.
- (4) Any judgment in a criminal or civil proceeding must be made public except where the interest of children otherwise requires or where the proceedings concern matrimonial disputes or the guardianship of children.

18 Rights in criminal proceedings

- (1) Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.
 - (2) Everyone charged with a criminal offence is entitled to the following minimum guarantees, equally with everyone else -
 - (a) to be informed promptly and in detail, in a language that he or she understands, of the nature and reason for the charge;
 - (b) to have adequate time and facilities to prepare his or her defence and to communicate with lawyers or advisors chosen by him or her;
 - (c) to be tried without unreasonable delay;
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- (d) to be tried in person, and to defend himself or herself personally, or through legal counsel chosen by him or her;
 - (e) to be told, if he or she does not have legal assistance, of the right to legal assistance of his or her own choosing.
 - (f) to have legal assistance provided to him or her, if the interests of justice require that the assistance be provided, and to have the legal assistance provided without payment if he or she cannot afford to pay for the assistance;
 - (g) to examine prosecution witnesses, or have them examined, and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as prosecution witnesses;
 - (h) to have the free assistance of an interpreter if he or she cannot understand or speak the language used in court;
 - (i) not to be compelled to testify against himself or herself or to confess guilt.
- (3) A child who is charged with a criminal offence has the right to be tried according to a procedure that takes account of their age and the desirability of promoting their rehabilitation.
- (4) Everyone convicted of a criminal offence has the right to have the conviction and sentence reviewed by a higher court in accordance with law.

19 Compensation for wrongful conviction

- (1) This section applies if -
- (a) a person is convicted by a final decision of a court of a criminal offence; and
 - (b) the person suffers punishment or detriment because of the conviction; and
 - (c) the conviction is reversed, or he or she is pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice.
- (2) If these conditions apply, the person has the right to be compensated according to law.
- (3) However, subsection (2) does not apply if it is proved that the nondisclosure of the unknown fact in time is wholly or partly attributable to the person.

20 Right not to be tried or punished more than once

No-one may be tried or punished again for substantially the same offence arising out of the same facts, for which he or she has already been finally convicted or acquitted in accordance with law, except where:

- (a) the discovery of reliable and compelling new evidence makes a retrial necessary in the interests of justice.

(b) the discovery that an acquittal in the original trial was tainted makes a retrial necessary in the interests of justice.

21 Retrospective criminal laws

- (1) No-one may be held guilty of a criminal offence because of conduct that was not a criminal offence under federal law when it was engaged in.
- (2) A penalty may not be imposed on anyone for a criminal offence that is heavier than the penalty that applied to the offence when it was committed. If the penalty for an offence is reduced after anyone commits the offence, he or she shall benefit from the reduced penalty.
- (3) Nothing in this section, however, shall prejudice the trial and punishment of any person for any conduct which, at the time when it was committed, was criminal according to general principles of law recognized by the community of nations.

22 Recognition and equality before the law

- (1) Everyone has the right to recognition as a person before the law.
- (2) Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground such as sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, property, birth, disability, age, sexual orientation or gender identity.
- (3) Everyone has the right to enjoy their human rights without distinction or discrimination of any kind including distinction or discrimination on the grounds specified in sub-section (2).
- (4) Measures taken for the purposes of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

23 Privacy

- (1) Everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily, and has the right to be protected against unlawful attacks on their honour or reputation.
- (2) The right to privacy includes the right of a person not to have –
 - (a) their person or home searched;
 - (b) their property searched;
 - (c) their possessions seized;
 - (d) the privacy of their communications infringed;
 - (e) their movements made subject to unnecessary or unreasonable surveillance;

- (f) their personal information (including physical and biometric information) collected, used, secured or disclosed except by and in accordance with law.

24 Right to marry

- (1) All men and women of marriageable age have the right to marry and to found a family.
- (2) No marriage shall be entered into without the free and full consent of the intending spouses.
- (3) The spouses to a marriage shall have equal rights and responsibilities upon marriage, during the marriage and at its dissolution.
- (4) In the case of dissolution, provision shall be made for the necessary protection of any children.

25 Protection of the family

- (1) The family is the natural and fundamental group unit of society and is entitled to be protected and assisted by society and the State particularly upon its establishment and while it is responsible for the care and education of dependent children.
- (2) Special protection and assistance should be accorded to mothers during a reasonable period before and after childbirth.

26 Children

- (1) Every child has the right –
 - (a) to a name and a nationality from birth;
 - (b) to family care, parental care, or adequate and appropriate alternative care if removed in accordance with law from the family environment;
 - (c) to be protected from maltreatment, neglect, abuse or degradation;
 - (d) to be protected from exploitative labour practices;
 - (e) not to be detained except as a matter of last resort and then only for the shortest appropriate period of time;
 - (f) to have a legal practitioner assigned to the child by the state and at state expense in civil proceedings affecting the child, if substantial injustice may otherwise result;
 - (g) to such measures of protection as are required by the child's status as a minor on the part of his or her family and the State.
- (2) A child's best interests are of paramount importance in every matter concerning the child.

27 Freedom of thought, conscience, religion and belief

Everyone has the right to freedom of thought, conscience, religion and belief.

28 Peaceful assembly and freedom of association

- (1) Everyone has the right of peaceful assembly.
- (2) Everyone has the right to freedom of association including the right to form and join trade unions for the protection of their economic and social interests.

29 Freedom of expression

- (1) Everyone has the right to hold opinions without interference.
- (2) Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds regardless of borders, whether orally or in writing, or in print, in the form of art, or in any other medium chosen by him or her.
- (3) The exercise of the right provided for in subsection (2) may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary -
 - (a) for respect of the rights or reputation of others;
 - (b) for the protection of national security or public order or of public health or morals.
- (4) The restrictions in subsection (3) shall not be interpreted so as to prevent the participation of members of the public in issues of public interest where they do so without malice.
- (5) Any advocacy of national, racial or religious hatred that is intended to, or is reasonably likely to, incite violence shall be prohibited by law.

30 Freedom of movement

- (1) Everyone lawfully within Australia has the right to freedom of movement and residence in Australia.
- (2) Every Australian citizen has the right to enter Australia.
- (3) Everyone has the right to leave Australia.

31 Taking part in public life

Every citizen has the right, and is to have the opportunity -

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - (b) to vote and be elected at periodic elections, held in accordance with universal and equal suffrage, and by secret ballot in a manner that guarantees the free expression of the will of the electors;
-

- (c) to have access, on general terms of equality, to public service and public office.

32 Cultural, religious and linguistic minorities

- (1) Any person in Australia who belongs to a cultural, religious or linguistic minority may not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.
- (2) This right may not be exercised in a manner inconsistent with any of the human rights set down in this Act.

33 Right to asylum

The right to asylum, including the right to have claims for refugee status heard and determined within Australia's jurisdiction, shall be guaranteed with due respect for the rules of the International Convention Relating to the Status of Refugees of July 28, 1951 and the Protocol Relating to the Status of Refugees of January 31, 1967.

34 Protection in the event of removal, expulsion or extradition

- (1) Collective expulsions are prohibited.
- (2) No-one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

35 Property

- (1) No one shall be deprived of their property arbitrarily.
- (2) No one shall be deprived of their property except in terms of a law of general application –
 - (a) for public purposes or in the public interest; and
 - (b) subject to just and equitable compensation which must be agreed to, or be determined by a court.

36 The rights of indigenous peoples

- (1) Indigenous peoples have the collective right to live in freedom, peace and security and to full guarantees against genocide or any other act of violence.
- (2) Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.
- (3) Indigenous peoples have the right to practise and revitalize their spiritual and cultural traditions, customs and ceremonies.
- (4) These rights may not be exercised in a manner inconsistent with any of the human rights set down in this Act.

37 The rights of people with disabilities

(1) The Government shall ensure, within the resources reasonably available to it, that people with disabilities shall enjoy the rights and freedoms contained in this Charter without discrimination or diminution on the grounds of their disability. In particular they have the right to:

- (a) Respect for their physical and mental integrity on an equal basis with others.
- (b) Access, on an equal basis with others, to the physical environment, transportation, information and communication.
- (c) Access on an equal basis with others, and in a manner responsive to their needs, to community services and facilities that are made available to the general population.
- (d) Such assistance from the State as to ensure their personal mobility to the greatest extent possible consistent with their disability.
- (e) Choose their place of residence and where and with whom they live on an equal basis with others.
- (f) In-house, residential and other community support services, including personal assistance necessary to prevent their isolation from the community.
- (g) Comprehensive habilitation and rehabilitation services and programs, particularly in the areas of health, employment, education and social services.

(2) The Government shall ensure that all measures that relate to the imposition of restrictions on the exercise of legal capacity, provide for appropriate and effective safeguards to prevent abuse in accordance with international human right law. In particular, such safeguards shall ensure that any restrictions shall:

- (a) respect the rights will and preferences of the person.
- (b) be free from conflicts of interest and undue influence.
- (c) be proportional and tailored to the person's circumstances.
- (d) apply for the shortest time possible.
- (e) be subject to regular review by a competent, independent and impartial tribunal.

II. Economic and Social Rights

38 Education

- (1) Every person has the right to education that seeks to develop each to his or her optimal capacity and character. This right includes a right -
 - (a) to primary education which is compulsory and available free to all without discrimination; and
 - (b) to secondary education which is compulsory up to the age determined by each State and Territory and available free to all without discrimination.
- (2) Higher education must be made equally accessible to all, on the basis of capacity, by every appropriate means.
- (3) To ensure the religious education of their children in conformity with their own convictions, parents may choose schooling for their children, other than that provided by public authorities, so long as that schooling conforms to such minimum standards of education as are required by law and which is consistent with the observance of the human rights set out in this Act.

39 Work

- (1) Everyone has the right to work, which includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept.
- (2) Everyone has the right to decent work including the right to the enjoyment of just and favourable conditions of work.
- (3) Everyone has the right to bargain collectively in pursuit of their economic and social interests.
- (4) Everyone has the right to strike, provided that this right is exercised in accordance with the law.

40 Adequate standard of living

- (1) Everyone has the right to an adequate standard of living for him or herself and his or her family, including a right to adequate food, clothing and housing.
- (2) Everyone has the right to be free from hunger.

41 Physical well-being and health

Everyone has a right to the highest attainable standard of physical and mental health.

42 Social Security

Everyone has the right to social security.

43 Interpretation of economic and social rights

In relation to ss.37-41, it is acknowledged that these human rights are subject to progressive realisation and that their realisation may be limited by the financial resources available to government. Accordingly, in any proceeding under this Act that raises the application and operation of these human rights, a court must consider all the relevant circumstances of the particular case including –

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any person concerned; and
- (b) the financial circumstances and estimated amount of expenditure required to be made by a public authority to act in a manner compatible with human rights

before determining that the provisions of any law or that the acts or conduct of a public authority are incompatible with the Act.

III. Public Emergency

44 Public Emergency

- (1) In a time of public emergency which threatens the life of the nation, and the existence of which is officially proclaimed, the parliament may take measures by legislation derogating from its obligations under this Act to the extent strictly required by the exigencies of the situation.
- (2) No derogation, however, may be made from the human rights set down in section 11 (Right to life), section 12 (Protection from torture and cruel, inhuman or degrading treatment), section 13 (Freedom from forced work), section 17 (Fair trial), section 21 (Retrospective criminal laws), section 22 (Recognition and equality before the law), section 27 (Freedom of thought, conscience, religion and belief).

Part 4 – Scrutiny of proposed Commonwealth laws

45 Attorney-General's statement on government bills

- (1) This section applies to each bill presented to the House of Representatives or the Senate by a Minister or a private member and to any amendments to legislation proposed on the floor of the House.
- (2) The Attorney-General must, before the second reading of the bill, prepare a written statement (the *compatibility statement*) about the bill for presentation to the House of Representatives.
- (3) The compatibility statement must state—
 - (a) whether, in the Attorney-General's opinion, the bill is consistent with human rights; and
 - (b) if it is inconsistent, how it is inconsistent with human rights; and
 - (c) the reasons for these opinions.
- (4) If a statement is made under subsection (3)(b), the proposed Act must specify those parts of the Act that are inconsistent with human rights by stating expressly that those parts of the Act are to operate notwithstanding this Act.

46 Joint Standing Committee on Human Rights

- (1) A Committee to be known as the Parliamentary Joint Standing Committee on Human Rights is to be established as soon as practicable after the commencement of this Act and after the commencement of the first session of each Parliament.
- (2) The Committee is to consist of 7 members, 3 of whom must be Senators and 4 of whom must be members of the House of Representatives.
- (3) The functions of the Committee are:
 - (a) to consider matters relating to human rights in Australia;
 - (b) to consider (and review) compatibility statements made under section 44 of this Act;
 - (c) to review, within twelve months, any legislation enacted despite the Attorney-General having issued a compatibility statement expressing his or her opinion that the legislation is inconsistent with human rights;
 - (d) to consider findings of inconsistency made by courts under section 52 of this Act;
 - (e) to report the Committee's comments and recommendations about the matters it has considered to each House of Parliament and to the responsible Minister;
 - (f) to present an annual report of its deliberations and conclusions to each House of Parliament and to the responsible Minister.

47 Noncompliance with s 44 and s 45

A failure to comply with section 44 or section 45 in relation to a bill does not affect the validity, operation or enforcement of any Commonwealth law.

Part 5 – Application to Commonwealth laws

48 Application of Part 5

This Part applies to all Commonwealth laws.

49 Interpretation of rights by courts

- (1) International law, and the judgments of foreign and international courts and tribunals relevant to a human right, may be considered in interpreting that human right.
- (2) In deciding whether material mentioned in subsection (1) or any other material should be considered, the following matters must be taken into account:
 - (a) the desirability of being able to rely on the ordinary meaning of this Act, having regard to its purpose and its provisions read in the context of the Act as a whole; and
 - (b) the undesirability of prolonging proceedings without compensating advantage.

50 Interpretation of legislation

- (1) So far as it is possible to do so compatibly with its purpose, primary and subordinate legislation must be read and given effect in a way that is consistent with human rights.
- (2) This section –
 - (a) applies to primary and subordinate legislation whenever enacted;
 - (b) does not affect the validity, continuing operation or enforcement of any inconsistent primary legislation; and
 - (c) does not affect the validity, continuing operation or enforcement of any inconsistent subordinate legislation if primary legislation prevents the removal of that incompatibility.

51 Interpretation of this Act

When interpreting this Act a court must have regard to the objects of the Act as set out in s. 3 of this Act.

52 Findings of Inconsistency

- (1) Where a Court determines that a provision of primary legislation is incapable of interpretation in a manner consistent with the human rights set down in this Act, it may make a finding of inconsistency.
- (2) If a Court is satisfied that a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is inconsistent with a right or freedom set down in this Act, and that the primary legislation concerned prevents removal of the inconsistency, it may make a finding of that inconsistency.
- (3) If a Court is satisfied that a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is inconsistent with a right or freedom set down in this Act, and that the primary legislation concerned does not prevent removal of the inconsistency, it may invalidate that provision.
- (4) Where a finding of inconsistency is made by a Court, a party to the proceedings in which the finding has been made may notify the Australian Human Rights Commission of that finding. Upon receipt of such a notification, the Commission must notify the Attorney-General of the fact that the finding has been made.
- (5) The Australian Human Rights Commission, similarly, must notify the Attorney-General of a finding of inconsistency as and when it becomes aware of that finding.
- (6) This section applies when a court is exercising jurisdiction in any cause or matter pending before it.

53 Attorney-General's action on receiving notice of a finding of inconsistency

- (1) This section applies if the Attorney-General is notified by the Australian Human Rights Commission of a finding of inconsistency.
- (2) The Attorney-General must present a copy of the notification by the Commission to the House of Representatives within 15 sitting days after the day the Attorney-General receives the copy.
- (3) The Attorney-General must prepare a written response to the notification of the finding indicating what action if any is proposed in relation to it and the reasons for that action or non-action, and present it to the House of Representatives not later than 6 months after the day the copy of the notification is presented to the House of Representatives.

54 Acts of public authorities

- (1) It is unlawful for a public authority to act in a way that is inconsistent with a right or freedom set down in the Act.
 - (2) Sub-section (1) does not apply to an act if, as the result of one or more provisions of primary legislation, the authority could not have acted differently.
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- (3) In this section, public authority includes –
- (a) a court or tribunal; and
 - (b) any person or entity, irrespective of its structure or organisation, whose functions include functions of a public nature to be exercised on behalf of the Commonwealth;
- but does not include either House of Parliament or a person exercising functions in connection with proceedings in parliament.
- (4) ‘An act’ includes a failure to act.

55 Proceedings in relation to public authorities

- (1) An aggrieved person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 53(1) may –
- (a) bring proceedings against the authority under this Act in an appropriate court; or
 - (b) rely on the right or rights concerned in any legal proceedings, but only if he or she is (or would be) a victim of the unlawful act.
- (2) Proceedings under sub section (1)(a) must be brought before the end of –
- (a) the period of one year commencing from the date on which the act complained of took place; or
 - (b) such longer period as the court considers equitable having regard to all the circumstances.

56 Judicial remedies

- (1) In relation to any act (or proposed act) of a public authority which the court finds is (or would be) unlawful, it may grant such relief or remedy, or make such order, within its powers as it considers just and appropriate including –
- (a) an order declaring that a public authority has committed an unlawful act or engaged in unlawful conduct and directing the public authority not to repeat or continue such unlawful act or conduct;
 - (b) subject to (2), the court may order a public authority to pay damages by way of compensation for any loss or damage suffered by the aggrieved person because of an act or the conduct of the public authority;
 - (c) an order requiring a public authority to perform any reasonable act or course of conduct to redress any loss or damage suffered by the aggrieved person;
 - (d) an order declaring that it would be inappropriate for any further action to be taken in the matter.
- (2) No award of damages is to be made unless the court considers that such an award is necessary to provide just satisfaction to the aggrieved person, taking into account all of the circumstances of the case and any other order (by that or any other court) made in relation to the unlawful act or conduct.

57 Notice to Attorney-General

- (1) This section applies if -
 - (a) a Court is considering making a finding of inconsistency in a proceeding relating to federal law; and
 - (b) the Commonwealth is not a party to the proceeding.
- (2) The Court must not make the finding unless the Court is satisfied that -
 - (a) notice of the issue has been given to the Attorney-General; and
 - (b) a reasonable time has passed since the giving of the notice for the Attorney-General to decide whether to intervene in the proceeding.
- (3) For the purpose of sub section (2), the Court may direct a party to give notice of the issue to the Attorney-General.

58 Attorney-General's right to intervene on human rights

The Attorney-General may intervene in any proceeding before a court that involves the application of this Act.

59 Australian Human Rights Commission may intervene

- (1) The Australian Human Rights Commission may intervene in a proceeding before a court that involves the application of this Act with the leave of the court.
- (2) The court may give leave subject to conditions.

60 Intervention by third parties

- (3) Any person, group or entity may intervene in a proceeding before a court that involves the application of this Act with the leave of the court.
- (4) The court may give leave subject to conditions.

61 Costs

Where, in proceedings under this Act, a Court has made a finding of inconsistency, the fact that such a finding has been made is a matter that the Court must take into account in the award of costs as between the parties in the proceedings.

Part 6 - Australian Human Rights Commission

62 Functions of the Australian Human Rights Commission

The Australian Human Rights Commission has the following functions:-

- (a) To present to the Attorney-General an annual report that examines –
 - (i) The operation of this Act; and
 - (ii) all findings of inconsistency made during the year; and
- (b) to review every four years the effect of Commonwealth law, including the common law, on human rights and report in writing to the Attorney-General on the results of the review; and
- (c) when requested, to review government departments to determine the consistency of programs and practices with human rights; and
- (d) to provide education about human rights and this Act; and
- (e) where the Commission considers it necessary to do so, to intervene in any proceedings before any court that involves the application of this Act; and
- (f) to notify the Attorney-General of findings of inconsistency; and
- (g) to assist the Attorney-General in the review of this Act under sections 64 and 65;
- (h) to advise the Attorney-General in a periodic report on anything relevant to the operation of this Act; and
- (i) any other function conferred on the Australian Human Rights Commission under any other Act.

63 Powers

The Australian Human Rights Commission has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Act.

Part 7 – Miscellaneous

64 Regulation-making power

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

65 Review of Act after third year of operation

The Attorney-General must review the first three years of the operation of this Act and present a report of the review to the Parliament not later than three years and six months after the commencement of the Act.

66 Review of Act

The Attorney-General must review this Act again five years after the initial review provided for in section 64 and present a report of the review to the Parliament not later than six months after that time.