



Human Rights Legislation Amendment Act 2017

No. 32, 2017

**An Act to amend legislation relating to human
rights, and for other purposes**

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Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 2—Amendment of the Australian Human Rights Commission Act 1986		3
	<i>Australian Human Rights Commission Act 1986</i>	3
Schedule 3—Amendment of the Native Title Act 1993		19
	<i>Native Title Act 1993</i>	19



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An Act to amend legislation relating to human rights, and for other purposes

[Assented to 12 April 2017]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	13 April 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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

Australian Human Rights Commission Act 1986

1 Subsection 3(1)

Insert:

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

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

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

Repeal the definition.

3 Subsection 8(2)

Repeal the subsection, substitute:

- (2) The members must co-operate with each other to achieve common objectives, where practicable.
- (3) Subsection (2) does not affect the operation of section 44 (which deals with meetings of the Commission).

4 After subsection 8(6)

Insert:

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

5 At the end of section 8A

Add:

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

6 Paragraph 11(1)(f)

Repeal the paragraph, substitute:

(f) to:

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

7 After subsection 19(2B)

Insert:

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

8 After paragraph 20(2)(b)

Insert:

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

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

Insert:

- (iib) the Commission is satisfied that there is no reasonable prospect of the matter being settled by conciliation; or

10 At the end of section 20

Add:

- (9) The Commission must act fairly in the performance of the functions referred to in paragraph 11(1)(f).
- (10) If a complaint is made under paragraph (1)(b), the Commission:
 - (a) must act expeditiously in dealing with the complaint; and

(b) must use the Commission's best endeavours to finish dealing with the complaint within 12 months after the complaint was made.

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

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

11 After section 20

Insert:

20A Reports to the Minister

If:

(a) the Commission has inquired into an act or practice that may be inconsistent with or contrary to any human right; and

(b) the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right;

the Commission may report to the Minister in relation to the inquiry.

12 Paragraph 31(b)

Repeal the paragraph, substitute:

(b) to:

(i) inquire into any act or practice (including any systemic practice) that may constitute discrimination; and

(ii) if the Commission considers it appropriate to do so—endeavour, by conciliation, to effect a settlement of the matters that gave rise to the inquiry;

13 After paragraph 32(3)(b)

Insert:

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

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

Insert:

- (iib) the Commission is satisfied that there is no reasonable prospect of the matter being settled by conciliation; or

15 At the end of section 32

Add:

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

16 After section 32

Insert:

32A Reports to the Minister

If:

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

17 Section 46

Omit "other than subsection 29(5)", substitute "(other than section 20A, subsection 29(5) or section 32A)".

18 Section 46C (heading)

Repeal the heading, substitute:

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

19 Paragraph 46C(1)(a)

Repeal the paragraph.

20 After subsection 46C(2)

Insert:

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

(2B) The Commissioner may submit reports to the Minister regarding:
(a) the operation of the *Native Title Act 1993*; and
(b) the effect of that Act on the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders.

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

21 Subsections 46C(3) and (4)

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

22 Section 46M

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

23 Section 46MB

Repeal the heading, substitute:

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

24 Paragraph 46MB(1)(a)

Repeal the paragraph.

25 Subsection 46MB(3)

Repeal the subsection, substitute:

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

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

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

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

27 Subsection 46P(1)

Repeal the subsection, substitute:

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

(a) alleging:

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

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

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

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

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

(1B) The complaint must set out, as fully as practicable, the details of the alleged acts, omissions or practices.

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

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

29 Subsection 46PC(1)

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

30 Subsection 46PE(3)

After “46PH(2)”, insert “, (2A)”.

31 Subsection 46PF(1)

Repeal the subsection, substitute:

- (1) Subject to subsections (1A) and (5), if a complaint is referred to the President under section 46PD, the President must:
 - (a) consider whether to inquire into the complaint, having regard to the matters referred to in section 46PH; and
 - (b) if the President is of the opinion that the complaint should be terminated—terminate the complaint without inquiry; and
 - (c) unless the President terminates the complaint under paragraph (b) or section 46PH—inquire into the complaint and attempt to conciliate the complaint.
- (1A) For the purposes of paragraph (1)(a), the President may inform himself or herself of such facts and circumstances as are necessary to form the opinion referred to in paragraph (1)(b).
- (1B) If the President terminates the complaint under paragraph (1)(b), the President must comply with the notification requirements of subsections 46PH(2), (2A) and (3).

32 Subsection 46PF(3)

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

33 Subsection 46PF(3) (note)

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

34 Subsection 46PF(4)

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

35 Paragraph 46PF(5)(a)

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

36 At the end of section 46PF

Add:

- (6) The President must act fairly to:
 - (a) the complainant or complainants; and

- (b) the respondent;
in dealing with the complaint in accordance with this section.
- (7) If the President has decided to inquire into a complaint, the President:
 - (a) must notify the complaint to the respondent, unless the President is satisfied that notification would be likely to prejudice the safety of a person; and
 - (b) if the complaint is amended under subsection (3) by adding a respondent—must notify the complaint to that respondent, unless the President is satisfied that notification would be likely to prejudice the safety of a person; and
 - (c) if any person (other than the respondent) is the subject of an adverse allegation arising from the complaint—must notify the person of the adverse allegation, unless the President is satisfied:
 - (i) that notification would be likely to prejudice the safety of a person; or
 - (ii) that it is not practicable to do so; and
 - (d) may notify the complaint to any person who, in the opinion of the President, is likely to be able to provide information relevant to the complaint.
- (8) For the purposes of paragraphs (7)(a), (b) and (c), the President must notify the respondent or the other person, as the case may be:
 - (a) under paragraph (7)(a)—as soon as the President has decided to inquire into the complaint; or
 - (b) under paragraph (7)(b)—as soon as the complaint has been amended; or
 - (c) under paragraph (7)(c)—as soon as the President forms the opinion that the person is the subject of an adverse allegation arising from the complaint.
- (9) For the purposes of subsections (7) and (8), **adverse allegation** means an allegation:
 - (a) that:
 - (i) one or more acts have been done; or
 - (ii) one or more omissions or practices have occurred; and
 - (b) that those acts, omissions or practices are unlawful discrimination.

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

(10) The President:

(a) must, having regard to:

- (i) the nature of the complaint; and
- (ii) the needs of the complainant or complainants; and
- (iii) the needs of the respondent;

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

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

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

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

37 Before subsection 46PH(1)

Insert:

Discretionary termination of complaint

38 Paragraph 46PH(1)(a)

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

39 Paragraph 46PH(1)(b)

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

40 Paragraph 46PH(1)(b)

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

41 Paragraph 46PH(1)(c)

Repeal the paragraph, substitute:

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

41A Paragraph 46PH(1)(h)

Omit “Court;”, substitute “Court.”.

41B Paragraph 46PH(1)(i)

Repeal the paragraph.

42 At the end of subsection 46PH(1)

Add:

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

43 After subsection 46PH(1)

Insert:

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

Mandatory termination of complaint

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

- (a) the complaint is trivial, vexatious, misconceived or lacking in substance; or
- (b) there is no reasonable prospect of the matter being settled by conciliation.

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

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

44 Before subsection 46PH(2)

Insert:

Notification

45 Subsection 46PH(2)

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

46 Subsection 46PH(2)

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

47 Before subsection 46PH(3)

Insert:

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

48 Before subsection 46PH(4)

Insert:

Revocation

49 Sections 46PJ and 46PK

Repeal the sections, substitute:

46PJ President may hold conferences

President may decide to hold a conference

- (1) For the purpose of attempting to conciliate a complaint in accordance with section 46PF, the President may decide to hold a conference, to be presided over by:
- (a) the President; or
 - (b) a suitable person (other than a Commission member) determined by the President.

President may invite people to attend

- (2) The President may:
- (a) invite any or all of the complainants or respondents to attend the conference; and

- (b) invite any other person to attend the conference, if:
 - (i) the President reasonably believes that the person is capable of giving information that is relevant to the conciliation of the complaint; or
 - (ii) the President considers that the person's presence at the conference is likely to be conducive to the conciliation of the complaint.

President may require people to attend

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

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

- (4) A notice under subsection (3):
 - (a) must specify the place and time of the conference, not being a time that is less than 14 days after the notice is given; and
 - (b) must set out the effect of subsection (5).
- (5) A person commits an offence if:
 - (a) the person has been given a notice under subsection (3) requiring the person to attend a conference; and
 - (b) the person refuses or fails to comply with the requirement.

Penalty: 10 penalty units.

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

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

Expenses for attendance

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

46PK Proceedings at conferences

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

- (2) The conference is to be conducted in private.
- (3) The person presiding at the conference must take all reasonable steps to ensure that the conduct of the conference does not disadvantage any complainant or respondent.
- (4) Unless the person presiding at the conference consents:
 - (a) an individual is not entitled to be represented at the conference by another person; and
 - (b) a body (whether or not incorporated) is not entitled to be represented at the conference otherwise than by a person who is an officer or employee of the body.
- (5) Despite paragraph (4)(a), an individual who is unable to attend the conference because the individual has a disability is entitled to nominate another person to attend instead on his or her behalf.
- (6) If the person presiding at the conference considers that an individual is unable to participate fully in the conference because the individual has a disability, the individual is entitled to nominate another person to assist him or her at the conference.
- (7) For the purposes of this section, *disability* has the same meaning as in the *Disability Discrimination Act 1992*.

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

- (1) Evidence of anything said or done by a person in the course of the conciliation of a complaint in accordance with section 46PF is not admissible in any proceedings relating to the alleged acts, omissions or practices.
- (2) Subsection (1) does not apply for the purposes of the application of section 46PSA.

50 Section 46PL

Repeal the section.

51 Subsection 46PM(1)

Omit “, 46PJ or 46PK”.

52 Paragraph 46PO(1)(a)

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

53 After subsection 46PO(3)

Insert:

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

- (a) the court concerned grants leave to make the application; or
- (b) the complaint was terminated under paragraph 46PH(1)(h);
or
- (c) the complaint was terminated under paragraph 46PH(1B)(b).

54 At the end of subsection 46PO(4)

Add:

- Note 1: The Federal Court, or a judge of that court, may award costs in proceedings under this section—see section 43 of the *Federal Court of Australia Act 1976*.
- Note 2: The Federal Circuit Court, or a judge of that court, may award costs in proceedings under this section—see section 79 of the *Federal Circuit Court of Australia Act 1999*.

55 Subsection 46PP(3)

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

56 Subsection 46PS(1)

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

57 After section 46PS

Insert:

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

If:

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

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

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

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

58 Application of amendments

- (1) The amendments made by items 6, 11, 12 and 16 apply in relation to an inquiry if:
 - (a) the inquiry is in response to a complaint made to the Commission after the commencement of this item; or
 - (b) both:
 - (i) the inquiry is not in response to a complaint made to the Commission; and
 - (ii) the inquiry began after the commencement of this item.
- (2) The amendments made by items 1, 27 to 38 and 40 to 51 apply in relation to a complaint lodged after the commencement of this item.
- (3) The amendments made by items 9 and 14 apply in relation to a complaint made after the commencement of this item.
- (4) Subsection 20(9) of the *Australian Human Rights Commission Act 1986* (as amended by this Schedule) applies in relation to the performance of functions referred to in paragraph 11(1)(f) of that Act if:
 - (a) the performance of the functions is in response to a complaint made to the Commission after the commencement of this item; or
 - (b) both:
 - (i) the performance of the functions is not in response to a complaint; and
 - (ii) the performance of the functions began after the commencement of this item.
- (5) Subsection 32(4) of the *Australian Human Rights Commission Act 1986* (as amended by this Schedule) applies in relation to the performance of functions referred to in paragraph 31(b) of that Act if:

- (a) the performance of the functions is in response to a complaint made to the Commission after the commencement of this item; or
 - (b) both:
 - (i) the performance of the functions is not in response to a complaint; and
 - (ii) the performance of the functions began after the commencement of this item.
- (6) Subsection 20(10) of the *Australian Human Rights Commission Act 1986* (as amended by this Schedule) applies in relation to a complaint made after the commencement of this item.
- (7) Subsection 32(5) of the *Australian Human Rights Commission Act 1986* (as amended by this Schedule) applies in relation to a complaint made after the commencement of this item.
- (8) The amendment made by item 39 applies in relation to a complaint lodged after the commencement of this item if the alleged acts, omissions or practices took place after the commencement of this item.
- (9) The amendments made by items 52, 53 and 57 apply in relation to an application made to the Federal Court or the Federal Circuit Court under section 46PO of the *Australian Human Rights Commission Act 1986* after the commencement of this item, if the relevant complaint mentioned in paragraph 46PO(1)(a) of that Act was lodged after the commencement of this item.

59 Transitional—tabling of reports

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

Schedule 3—Amendment of the Native Title Act 1993

Native Title Act 1993

1 Section 209

Repeal the section, substitute:

209 Reports by Aboriginal and Torres Strait Islander Social Justice Commissioner

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

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

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

*[Minister's second reading speech made in—
Senate on 22 March 2017
House of Representatives on 31 March 2017]*

(49/17)
