

1983

The Parliament of the
Commonwealth of Australia

The Senate

Sex Discrimination Bill 1983

Explanatory Memorandum

(Circulated by the authority of the
Minister Assisting the Prime Minister on the
Status of Women Senator the Honourable Susan Ryan and
the Attorney-General Senator the Honourable Gareth Evans).

SEX DISCRIMINATION BILL 1983General Outline

The purpose of the Bill is to make unlawful discrimination on the grounds of sex, marital status and pregnancy in the areas of employment, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs. The Bill also prohibits discrimination involving sexual harassment in the workplace and in educational institutions.

The Bill establishes a Sex Discrimination Commissioner whose function will be to conciliate complaints of discrimination made under the legislation and to attempt to reach an amicable settlement. Where the process of conciliation is unsuccessful the Human Rights Commission can inquire into the complaint and may make determinations as to future conduct. These determinations may be enforced by action in the Federal Court.

Notes on ClausesClause 1 - Short title

Formal

Clause 2 - Commencement

The legislation will come into operation on a date to be fixed by Proclamation.

Clause 3 - Objects

The objects of the Bill are to give effect to certain provisions of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women; to eliminate, so far as is possible, discrimination on the ground of sex, marital status or pregnancy in the areas of work, accommodation, education, provision of goods, facilities and services, the disposal of land, the activities of clubs, and the administration of Commonwealth laws and programs; to eliminate, so far as is possible, discrimination involving sexual harassment in the workplace and in educational institutions; and to promote recognition and acceptance within the community of the principle of the equality of men and women.

Clause 4 - Interpretation

Sub-clause (1) of this clause contains definition provisions.

Sub-clause (2) provides that refusal or failure to do an act shall be deemed to be the doing of an act.

Clause 5 - Sex discrimination

Sub-clause (1) of this clause defines direct discrimination by a discriminator against an aggrieved person on the ground of sex as less favourable treatment by reason of the aggrieved person's sex or a characteristic that appertains generally or is generally imputed to persons of that sex.

Sub-clause (2) defines indirect discrimination on the ground of sex by a discriminator against an aggrieved person to cover requiring the aggrieved person to comply with a requirement or condition which more persons of the opposite sex to the aggrieved person could comply with, which the aggrieved person does not or cannot comply with and which is not reasonable in the circumstances.

Clause 6 - Discrimination on the ground of marital status

Sub-clauses (1) and (2) of this clause provide for similar definitions of direct and indirect discrimination to those in clause 5, to cover discrimination on the ground of marital status.

Clause 7 - Discrimination on the ground of pregnancy

Sub-clause (1) of this clause defines direct discrimination by a discriminator against an aggrieved person on the ground of pregnancy as less favourable treatment by reason of the aggrieved person's pregnancy or a characteristic that appertains generally or is generally imputed to persons who are pregnant and where the treatment is not reasonable in the circumstances.

Sub-clause (2) provides for a similar definition to those in sub-clauses 5 (2) and 6 (2) to cover indirect discrimination on the ground of pregnancy.

Clause 8 - Act done for 2 or more reasons

This clause provides that where an act is done on two or more grounds including the ground of sex, marital status or pregnancy then sex, marital status or pregnancy does not have to be the dominant or substantial ground to enable a complaint to be brought under the Act.

Clause 9 - Application of Act

This clause provides that the the legislation is to apply throughout Australia and the sub-clauses describe the extent of application of the legislation in specific areas of Commonwealth constitutional responsibility. In particular sub-clause (10) of the clause provides that certain provisions of the legislation have effect in relation to discrimination against women to the extent that these provisions give effect to the Convention on the Elimination of All Forms of Discrimination Against Women, if this Convention is in force for Australia.

Clause 10 - Operation of State and Territory Laws

This clause preserves the operation of State or Territory anti-discrimination laws which are capable of operating concurrently with the legislation.

Sub-clause (4) of the clause provides that where a person has taken action under such a State or Territory law in respect of a matter for which he would also have been entitled to make a complaint under the legislation, then he is not entitled to make a complaint or institute an action under the legislation.

Sub-clause (5) provides that where a person could be prosecuted or convicted under such a State or Territory law and under the legislation, he may be prosecuted or convicted under either, but this would not render him liable to be punished more than once in respect of the same matter.

Clause 11 - Operation of State and Territory Laws that further objects of Convention

This clause preserves the operation of State and Territory anti-discrimination laws that further the objects of the Convention on the Elimination of All Forms of Discrimination against Women and are capable of operating concurrently with the legislation.

Sub-clauses (4) and (5) of the clause make similar provisions in regard to such State and Territory laws as sub-clauses 10 (4) and (5).

Clause 12 - Extent to which legislation binds the Crown

This clause provides that the legislation binds the Crown in right of the Commonwealth and of Norfolk Island but, except as otherwise provided, does not bind the Crown in right of a State. Nothing in the legislation renders the Crown liable to be prosecuted for an offence.

Clause 13 - Extent to which Act applies to instrumentalities of States

Sub-clause (1) of this clause provides that clause 14 (discrimination in employment) does not apply to employment by an instrumentality of a State.

Sub-clause (2) provides that clause 28 (sexual harassment in employment) does not apply to acts done by employees of a State Government or of an instrumentality of a State.

PART II - PROHIBITION OF DISCRIMINATION

Division 1 - Discrimination in Work

Clause 14 - Discrimination against applicants and employees

Sub-clause (1) of this clause makes it unlawful to discriminate on the ground of sex, marital status or pregnancy in arrangements for offering employment, determining who should be offered employment or the terms and conditions on which employment is offered.

Sub-clause (2) makes it unlawful for an employer to discriminate against an employee on the ground of sex, marital status or pregnancy in such areas as terms and conditions of employment, access to promotion, or by dismissal or subjection to any detriment.

Sub-clause (3) provides for an exception permitting discrimination on the ground of sex in the hiring of staff to perform domestic duties on the premises in which the first-mentioned person resides.

Clause 15 - Discrimination against commission agents

Sub-clause (1) of this clause makes it unlawful to discriminate on the ground of sex, marital status or pregnancy in the arrangements made for engaging of a commission agent, determining who should be so engaged and the terms and conditions of engagement.

Sub-clause (2) makes it unlawful for a principal to discriminate on those grounds in such areas as terms and conditions afforded to a commission agent, access to promotion, termination of engagement or subjection to any detriment.

Clause 16 - Discrimination against contract workers

This clause makes similar provision in regard to discrimination against contract workers as that made in clause 15 in regard to commission agents.

Clause 17 - Partnerships

Sub-clause (1) of this clause makes it unlawful for 6 or more persons who are proposing to form a partnership to discriminate on the ground of sex, marital status or pregnancy in determining who should be invited to become a partner and the terms and conditions on which that invitation is made.

Sub-clause (2) makes similar provision in regard to admission as a partner into an existing partnership and sub-clause (3) makes unlawful discrimination on the same grounds by denying or limiting a partner's access to partnership benefits, by expulsion or by subjection to any detriment.

Clause 18 - Qualifying bodies

This clause makes it unlawful for a body empowered to confer, renew, extend, revoke or withdraw authorizations and qualifications needed for or facilitating the practice of a profession, trade or occupation to discriminate on the ground of sex, marital status or pregnancy by refusing or failing to confer, renew or extend the authorization or qualification, in the terms of conferral etc., or by revoking, withdrawing or varying the terms or conditions of such authorization or qualification.

Clause 19 - Registered organizations under the Conciliation and Arbitration Act

Sub-clause (1) of this clause makes it unlawful for a registered organization or its committee of management or a member of such a committee to discriminate against a person on the ground of sex, marital status or pregnancy in refusing or failing to accept an application for membership or in the terms or conditions of admission.

Sub-clause (2) makes it unlawful for a registered organization, committee of management, or member of such a committee to discriminate on the same grounds in denying a member of the organization access, or limiting access, to any benefit provided by the organization, by deprivation or variation of terms of membership, or by subjection to any detriment.

Clause 20 - Employment agencies

This clause provides that it is unlawful for an employment agency to discriminate on the ground of sex, marital status or pregnancy in refusing to provide a person with any of its services or in the terms, conditions or manner of provision of the services.

Division 2 - Discrimination in Other Areas

Clause 21 - Education

Sub-clause (1) of this clause makes it unlawful for an educational authority to discriminate on the ground of sex, marital status or pregnancy in refusing or failing to accept a person's application for admission as a student or in the terms of admission.

Sub-clause (2) makes unlawful discrimination against a student on the same ground by denying or limiting the student's access to benefits, by expulsion or by subjection to any detriment.

Sub-clause (3) provides an exception in respect of single-sex educational institutions and in respect of institutions (other than tertiary institutions) where at the level at which education or training is sought the institution is conducted only or mainly for students of one sex.

Sub-clause (4) provides that the provision binds the Crown in right of a State.

Clause 22 - Goods, services and facilities

Sub-clause (1) of this clause makes it unlawful to discriminate on the ground of sex, marital status or pregnancy in the provision of goods, services or facilities, by refusing to provide them to a person or in the terms, conditions or manner of provision of the goods, facilities or services.

Sub-clause (2) provides that the provision binds the Crown in right of a State.

Clause 23 - Accommodation

Sub-clause (1) of this clause makes it unlawful for a person to discriminate on the ground of sex, marital status or pregnancy in refusing a person's application for accommodation, in the terms or conditions of offer of accommodation or by deferring an application to a lower order of precedence on any list of persons for that accommodation.

Sub-clause (2) makes unlawful discrimination on the same grounds by denying or limiting access to benefits associated with the accommodation, by eviction or subjection to any detriment.

Sub-clause (3) provides exceptions in regard to accommodation where the person or a near relative lives, or intends to continue to live, on the premises and no more than 3 other persons reside on the premises; accommodation provided by a religious body; and certain accommodation provided by a charitable or other non-profit-making body.

Sub-clause (4) provides that the provision binds the Crown in right of a State.

Clause 24 - Land

This clause makes it unlawful for a person to discriminate on the ground of sex, marital status or pregnancy by refusing or failing to dispose of any estate or interest in land to a person or in the terms or conditions on which the estate or interest in land is offered.

Sub-clause (2) provides that the clause does not apply to a disposal of land by way of will or gift.

Sub-clause (3) provides that the provision binds the Crown in right of a State.

Clause 25 - Clubs

Sub-clause (1) of this clause makes it unlawful for a club (as defined in sub-clause 4(1)), the committee of management of a club or a member of such a committee to discriminate on the ground of sex, marital status or pregnancy by refusing or failing to accept an application for membership or in the terms or conditions of an offer of membership.

Sub-clause (2) makes it unlawful for a club, committee of management or member of such a committee to discriminate on the same grounds in the terms and conditions of membership afforded to the member, by refusing to accept an application for a particular class of membership, by denying or limiting a member's access to club benefits, by depriving a member of membership or varying the terms of membership or by subjection to any detriment.

Sub-clause (3) provides an exception for single-sex clubs.

Sub-clause (4) provides an exception in regard to discrimination on the ground of sex in the provision of benefits where it is not practicable for the benefit to be used or enjoyed simultaneously or to the same extent by both men and women and the same or an equivalent benefit is made available for the use of men and women separately and they are each entitled to fair and reasonable use and enjoyment of the benefit. Sub-clause (5) sets out the criteria to determine the application of the exception in sub-clause (4).

Clause 26 - Administration of Commonwealth laws and programs

This clause makes it unlawful for a person who performs functions or exercises powers under a Commonwealth law or for the purposes of a Commonwealth program or a person having any responsibility for administration of such a law or the conduct of such a program to discriminate on the ground of sex, marital status or pregnancy in carrying out such functions or exercising such powers.

Sub-clause (2) provides that the provision binds the Crown in right of a State.

Clause 27 - Application forms, & c.

Sub-clause (1) of this clause provides that where by virtue of a provision of the legislation it is unlawful for a person to discriminate on the ground of sex, marital status or pregnancy in doing a particular act, it is unlawful in connection with the doing of that act to require a person to furnish information, such as by completion of an application form, that persons of another sex, marital status or who are not pregnant would not be requested or required to provide.

Sub-clause (2) provides an exception in regard to sub-clause (1) in relation to certain types of medical information. Sub-clause (3) provides that the provision binds the Crown in right of a State.

Division 3 - Discrimination Involving Sexual Harassment

Clause 28 - Sexual harassment in employment

Sub-clause (1) of this clause makes it unlawful for an employer or a person employed by an employer to harass sexually an employee of the employer, or a person seeking employment with the employer.

Sub-clause (2) makes it unlawful for a principal of a commission agent or contract worker to harass sexually the commission agent or contract worker.

Sub-clauses (3) and (4) describe the matters which constitute sexual harassment for the purposes of the clause.

Clause 29 - Sexual harassment in education

Sub-clause (1) of this clause makes it unlawful for a person who is a member of the staff of an educational institution to harass sexually a student, or person seeking admission as a student, of the educational institution.

Sub-clauses (2) and (3) describe the matters which constitute sexual harassment for the purposes of the clause.

Division 4 - Exemptions

Clause 30 - Certain discrimination on ground of sex not unlawful

This clause provides an exemption in regard to the clauses dealing with discrimination on the ground of sex in relation to the hiring of people as employees, contract workers or commission agents where sex is a genuine occupational qualification. Examples of these positions are set out in sub-clause (2).

Clause 31 - Pregnancy or childbirth

This clause provides an exemption from the provisions of Divisions 1 and 2 of this Part to the effect that rights and privileges granted to a woman in connection with pregnancy or childbirth do not constitute discrimination.

Clause 32 - Services the nature of which is such they can only be provided to people of one sex

This clause provides that nothing in Division 1 or 2 applies to services the nature of which is such that they can only be provided to people of one sex.

Clause 33 - Measures intended to achieve equality

This clause provides an exemption from the provisions of Divisions 1 and 2 of this Part in relation to acts done to ensure equal opportunities for persons who are of a particular sex or marital status or who are pregnant.

Clause 34 - Accommodation provided for employees and students

Sub-clause (1) of this clause provides an exemption from Divisions 1 and 2 of this Part for an employer who provides different standards of accommodation for different employees, based on the number of people in the employee's household where it is not reasonable to expect the employer to provide the same standard of accommodation for all employees.

Sub-clause (2) provides an exemption from Divisions 1 and 2 for single-sex accommodation for students at an educational institution.

Sub-clause 35 - Residential care of children

Sub-clause (1) of this clause provides an exemption permitting discrimination on the ground of sex in the hiring or dismissal of staff for the residential care of children.

Sub-clause (2) provides an exemption on the ground of marital status for the residential care of children where the person's spouse would also work for the same employer.

Clause 36 - Charities

This clause provides an exemption from Divisions 1 and 2 of this Part in regard to provisions of deeds, wills or other documents conferring charitable benefits (as defined), on persons of a particular sex or marital status or who are pregnant and in regard to acts done to give effect to such provisions.

Clause 37 - Religious bodies

This clause provides an exemption from Divisions 1 and 2 of this Part in regard to certain activities of religious bodies including the education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order.

Clause 38 - Educational institutions established for religious purposes

Sub-clause (1) of this clause provides an exemption in relation to discrimination on the ground of sex, marital status or pregnancy for the hiring or dismissal of staff for employment at an educational institution conducted in accordance with the doctrines, tenets, beliefs or

teachings of a religion or creed where the discrimination is done in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

Sub-clause (2) provides a similar exemption in relation to the hiring or dismissal of contract workers.

Sub-clause (3) provides a similar exemption in relation to discrimination on the grounds of marital status or pregnancy for educational institutions with regard to their educational practices.

Clause 39 - Voluntary bodies

This clause provides an exemption from Divisions 1 and 2 of this Part in regard to discrimination on the ground of sex, marital status or pregnancy by voluntary bodies (as defined in clause 4) in connection with admission of persons to membership of the body or in the provision of benefits, facilities or services to members of the body.

Clause 40 - Acts done under statutory authority

Sub-clause (1) of this clause provides an exemption from Divisions 1 and 2 of this Part in regard to discrimination which occurs because a person is directly complying with an Act or other law, a determination of the Human Rights Commission, an order of a court or an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment.

Sub-clauses (2) and (3) provide that, except in regard to certain legislation specified, the exemption in regard to acts done under statutory authority shall cease to be in force, at the expiration of two years after the commencement of the sex discrimination legislation, unless the two year period is extended by regulation either generally or in regard to particular legislation.

Sub-clause (6) preserves the operation of legislation the purpose of which is to ensure that people of a particular sex or marital status or pregnant women have equal opportunities.

Clause 41 - Superannuation and insurance

Sub-clause (1) of this clause provides an exemption from Divisions 1 and 2 of this Part in regard to discrimination on the ground of sex or marital status in the terms or conditions appertaining to a superannuation or provident fund or scheme.

Sub-clause (2) provides that the exemption may be repealed by regulation. Such a regulation shall not come into operation until 12 months after it is made and, in any event, until two years after the legislation comes into operation.

Sub-clause (4) provides an exemption from Divisions 1 and 2 of this Part in regard to discrimination on the ground of sex in the terms on which an annuity, life assurance policy, accident or other insurance policy is offered or may be obtained, where the discrimination is based on actuarial or statistical data from a reliable source and the discrimination is reasonable having regard to the matter of the data and any other relevant factors.

Clause 42 - Sport

This clause provides an exemption from Divisions 1 and 2 of this Part in relation to participation in sporting activities where strength, stamina or physique are relevant but not to coaching, umpiring, refereeing, administration or any prescribed sporting activity.

Clause 43 - Combat duties, &c.

This clause provides an exemption from Divisions 1 and 2 of this Part to the effect that it is not unlawful for a person to discriminate against a woman on the ground of her sex in connection with employment, engagement or appointment in the Defence Force in a position involving the performance of combat duties or combat-related duties or in prescribed circumstances relating to those duties. "Combat duties" and "combat-related" duties means those duties prescribed for the purposes of the provision.

Clause 44 - Commission may grant exemptions

Sub-clause (1) of this clause provides that the Human Rights Commission may on application in writing grant to a person an exemption from the operation of a provision of Division 1 or 2 of this Part.

Sub-clause (2) provides for the grant of a further exemption on application made before expiration of the first exemption.

Sub-clause (3) provides that an exemption or further exemption may be granted subject to terms and conditions, in respect of certain circumstances or activities, and for a specified period not exceeding 5 years.

Clause 45 - Review by Administrative Appeals Tribunal

This clause provides for applications to be made to the Administrative Appeals Tribunal for review of decisions made by the Commission under the previous clause.

Clause 46 - Notice of decisions to be published

This clause provides that the Commission is required to publish notice of its decisions in regard to applications for exemptions and sets out details of matters to be included in the notice.

Clause 47 - Effect of exemptions

This clause provides that nothing in Division 1 or 2 of this Part makes it unlawful for a person granted an exemption from a provision of either Division or an employee etc., of that person to do an act in accordance with the provisions of the exemption.

PART III - INQUIRIES AND CIVIL PROCEEDINGS

Division 1 - PreliminaryClause 48 - Functions of Human Rights Commission

This clause confers a number of functions on the Human Rights Commission in addition to those it has under the Human Rights Commission Act 1981.

These functions include inquiries into infringements of Part II with an endeavour by conciliation to effect a settlement; inquiries and determinations about such matters; and promotional and educational activities in accordance with the objects of the legislation.

Sub-clause (3) provides that if the Commissioner is a member of the Commission, the Commissioner shall not participate in any inquiry of the Commission under Division 3 or be present during the Commission's deliberations or take part in a decision of the Commission in connection with such an inquiry.

Clause 49 - Functions of the Commissioner

Sub-clause (1) of this clause provides that certain functions of the Commission shall be performed by the Commissioner on behalf of the Commission. These functions are to inquire into alleged infringements and endeavour by conciliation to effect a settlement and any functions incidental to such an inquiry.

Sub-clause (2) provides that the Commissioner is subject to the directions of the Commission. However sub-clause (3) provides that certain directions cannot be given.

Clause 50 - Complaints

This clause provides that complaints of unlawful acts under Part II may be made in writing by certain persons on their own behalf or on behalf of other persons or a class of persons or by trade unions on behalf of members.

Clause 51 - Commissioner deemed to be a complainant

This clause provides that where the Commissioner refers to the Commission a matter that came before the Commissioner other than by way of a complaint made to the Commission, or where the Minister has referred a matter to the Commission, then the matter is to be dealt with as if it had been the subject of a complaint and the Commissioner is deemed to be a complainant.

Division 2 - Inquiries by CommissionerClause 52 - Inquiries by Commissioner

Sub-clause (1) of this clause provides that where a complaint is made to the Commission or it appears a person has done an act made unlawful by a provision of Part II, the Commission is to notify the Commissioner who shall inquire into the complaint and endeavour, by conciliation, to effect a settlement.

Sub-clause (2) describes the circumstances in which the Commissioner can decide not to inquire, or continue an inquiry, into an act.

Sub-clause (3), (4) and (5) provide that where the Commissioner decides not to inquire or continue to inquire into a matter, notice is to be given to the complainant of that decision, of the reasons for the decision and the rights of the complainant. The complainant can within a specified time require the Commissioner to refer the complaint to the Commission. The Commissioner is then to so refer the complaint together with a report of inquiries made.

Sub-clause (6) provides that the Commissioner may obtain information from such persons and make such inquiries as the Commissioner thinks fit.

Clause 53 - Application for interim determination under clause 80

This clause provides for an application to be made by the Commissioner to the Commission for an interim determination in regard to a complaint or for the variation or revocation of such a determination.

Clause 54 - Power to obtain information and documents

Sub-clause (1) of this clause empowers the Commissioner to serve notice on a person requiring the furnishing of information, or the production of documents, relevant to an inquiry under this Division.

Sub-clause (2) describes the powers of the Commissioner in regard to documents so produced.

Clause 55 - Directions to persons to attend compulsory conference

This clause provides that the Commissioner may direct persons to attend a conference for the purposes of inquiry into an act or to endeavour to settle a matter to which the legislation relates.

Clause 56 - Compulsory conference

This clause deals with matters concerning the conduct of a compulsory conference including the requirement for the conference to be conducted in private.

Clause 57 - Reference of matters to the Commission

Sub-clause (1) of this clause provides that the Commissioner shall refer a matter to the Commission, together with a report about the Commissioner's inquiries, where the matter cannot be settled by conciliation or the nature of the matter is such that it should be referred to the Commission.

Sub-clause (2) provides that the Commissioner's report shall not include details of anything said or done in conciliation proceedings under the Division.

Sub-clause (3) provides that evidence of these matters is not admissible in subsequent proceedings under this Part.

Division 3 - Inquiries by Human Rights CommissionClause 58 - Reference of matter to the Commission by the Minister

This clause provides that the Minister may refer any matter to the Commission for inquiry as a complaint.

Clause 59 - Inquiries into complaints

This clause provides that the Commission shall hold inquiries into complaints referred to it unless the complainant, or the Minister, in regard to a clause 58 matter, notifies the Commission that it does not wish the inquiry to be held or to continue.

Clause 60 - Quorum for purpose of inquiry

Sub-clause (1) of this clause provides that for the purposes of an inquiry, a quorum of the Commission is three members, at least one of whom is legally qualified.

Sub-clause (2) provides that if the Chairman is not present a legally qualified member must preside, with provision for an election if more than one legally qualified member is present.

Sub-clause (3) provides that a legally qualified member is a Judge or legal practitioner.

Clause 61 - Single inquiry in relation to several complaints

This clause empowers the Commission to hold a single inquiry where two or more complaints arise out of the same circumstances.

Clause 62 - Joinder of parties by the Commission

This clause empowers the Commission to join a person as a party to an inquiry.

Clause 63 - Notice of inquiry and rights of parties at inquiry

This clause provides for giving of notice of an inquiry, opportunity to give evidence, etc. An inquiry may be held in the absence of a party who fails to attend after notice has been given.

Clause 64 - Parties to an inquiry

This clause describes who are to be parties to an inquiry.

Clause 65 - Right of appearance and to representation

This clause provides that parties to an inquiry are entitled to appear personally, or where the party is a body of persons, by an officer, employee or agent of the

body. Where the Commission has made arrangements for counsel to assist it, parties may be represented by a solicitor, counsel or agent. In other cases legal representation is with the leave of the Commission. Only solicitors or counsel are entitled to remuneration for representing a party to an inquiry.

Clause 66 - Inquiries may be held in private

This clause provides that inquiries shall be held in public unless the Commission decides on its own motion or on the application of a party to the inquiry that the inquiry, or part of the inquiry, should be held in private.

Clause 67 - Commission may prohibit publication of evidence, &c.

Sub-clause (1) of this clause provides that the Commission may direct that evidence or the contents of a document or details that might identify a party or witness are not to be published or are to be published subject to restrictions.

Sub-clause (2) provides that this does not derogate from the power of the Commission to hold an inquiry in private.

Clause 68 - Counsel assisting the Commission

This clause provides that the Commission may make arrangements for counsel to appear to assist the Commission at an inquiry.

Clause 69 - Determination of representative complaints

This clause provides for the Commission to determine as a preliminary matter to an inquiry whether a complaint should be dealt with as a representative complaint.

Clause 70 - Matters to be considered in determination of representative complaint

This clause sets out the matters to be considered by the Commission in deciding whether a complaint should be dealt with as a representative complaint.

Clause 71 - Amendment of representative complaints

This clause empowers the Commission to amend a complaint so that it can be dealt with as a representative complaint and vice versa.

Clause 72 - Ordinary complaints not excluded by representative complaints

This clause provides that a complaint may be lodged notwithstanding that the same conduct is the subject of a representative complaint.

Clause 73 - Resolution of complaint by conciliation

This clause requires the Commission to endeavour to resolve complaints by conciliation and to effect an amicable settlement.

Clause 74 - Evidence and findings in other proceedings

This clause provides that the Commission may, in its discretion, receive certain matters in evidence and adopt relevant findings of a court or tribunal.

Clause 75 - Powers of Commission to take evidence

Sub-clauses (1) and (2) of this clause provide that the Commission may administer an oath or affirmation and summon persons to give evidence and produce documents.

Sub-clause (3) provides that parties to proceedings may call witnesses. Sub-clause (4) provides that a person appearing as a witness may be examined, cross-examined and re-examined.

Clause 76 - Retention and copying of documents

This clause provides that the Commission may retain for a reasonable period documents produced to it and may make copies of the documents.

Clause 77 - Application of rules of evidence, &c.

This clause provides that for the purposes of an inquiry, the Commission, inter alia, is not bound by rules of evidence, shall conduct the inquiry with as little formality and with as much expedition as the requirements of the Act and the subject of the complaint allows and can give directions as to procedure.

Clause 78 - Consideration of exceptions and exemptions

This clause provides that in determining whether an act is unlawful under the legislation, the Commission is not required to have regard to any exemption or exception unless evidence of the applicability of the exemption or exception is before the Commission.

Clause 79 - Commission may dismiss frivolous, &c., complaints

This clause enables the Commission to dismiss a complaint if it is satisfied it is frivolous, vexatious, misconceived, lacking in substance or relates to an act not unlawful by reason of a provision of Part II.

Clause 80 - Making of interim determination

This clause empowers the Commission or the Chairman to make an interim determination, after the lodgment of a complaint, of such nature as would, if it were binding or conclusive, preserve the status quo or rights of parties to the complaint, but the determination is not to be binding or conclusive between the parties.

Clause 81 - Determination or other decision of the Commission

This clause provides that the Commission after holding an inquiry may dismiss a complaint or if it finds the complaint substantiated may make a determination. The clause lists matter which can be included in the determination which is not binding or conclusive between the parties.

The determination that can be made by the Commission can include, inter alia:

- . a declaration that the respondent should perform any reasonable act to redress loss or damage;
- . a declaration that the respondent should employ or re-employ the complainant; and
- . a declaration that the respondent should pay damages by way of compensation - this course is not available if the complaint has been dealt with as a representative complaint.

Clause 82 - Proceedings in Federal Court

Sub-clause (1) of this clause provides that the Commission or complainant may institute proceedings in the Federal Court to enforce a Commission determination.

Sub-clauses (2) and (3) provide for the making of orders by the Federal Court where it is satisfied that a respondent has engaged in conduct that is unlawful under the legislation.

Clause 83 - Assistance in proceedings before the Commission

Sub-clause (1) of this clause provides that the Commission may recommend to the Attorney-General that assistance be given to a person in respect of expenses incurred in proceedings before the Commission.

Sub-clause (2) provides for the authorization by the Attorney-General of the grant of assistance either unconditionally or subject to such conditions as the Attorney-General determines.

Clause 84 - Assistance in proceedings before the Federal Court

Sub-clause (1) of this clause provides that a person may apply to the Attorney-General for assistance in regard to proceedings before the Federal Court.

Sub-clause (2) provides for the authorization by the Attorney-General of the grant of assistance either unconditionally or subject to such conditions as the Attorney-General determines.

PART IV - OFFENCES

Clause 85 - Unlawful act not offence unless expressly so provided

This clause provides that, unless there is express provision, nothing in the legislation makes it an offence to do an act made unlawful by a provision of Part II.

Clause 86 - Advertisement

This clause provides that a person shall not publish or display an advertisement or notice indicating an intention to do an act that is unlawful by virtue of a provision of Part II.

Clause 87 - Failure to provide actuarial or statistical data

This clause provides that the Commission may by notice require disclosure of the source of actuarial or statistical data upon which reliance is placed in accordance with sub-clause 41 (4). It is an offence to fail to comply with the notice.

Clause 88 - Failure to attend conference

This clause makes it an offence to fail to attend a conference when directed.

Clause 89 - Failure to furnish information, &c.

This clause makes it an offence to fail to furnish information or produce a document without reasonable excuse when required to do so by the Commissioner.

Clause 90 - Offences in relation to Commission

Sub-clauses (1) and (2) of this clause make it an offence to fail to attend before the Commission when required, and to refuse to be sworn, answer questions, etc. without reasonable excuse.

Sub-clause (3) creates offences, inter alia, of interrupting proceedings of the Commission, and using insulting language towards a member of the Commission.

Clause 91 - Self-incrimination

Sub-clause (1) of this clause provides that for the purposes of the offence created by clause 89, it is not a reasonable excuse for a person to refuse or fail to furnish information or produce a document to the Commissioner that to do so might incriminate the person. Evidence of the information or the production of the document is not admissible in evidence against the person in any civil or criminal proceedings in a court, other than a proceeding for an offence of knowingly furnishing false or misleading information under clause 93.

Sub-clause (2) provides that it is a reasonable excuse for the purposes of the offence created by clause 90, for a person to refuse or fail to answer a question put at an inquiry before the Commission or to refuse to produce a document to the Commission that to do so might incriminate the person.

Clause 92 - Particulars of complaint not to be communicated

Sub-clause (1) of this clause provides that when a complaint is made alleging that a person has done an act that is unlawful under Division 3 of Part II (Sexual harassment), no person may make a record or communicate to any other person any particulars of the complaint until an inquiry into an alleged unlawful act is under way or a decision has been made not to hold an inquiry.

Sub-clause (2) sets out the circumstances in which this prohibition will not apply.

Clause 93 - False or misleading information

This clause makes it an offence to knowingly furnish false or misleading information.

Clause 94 - Victimization

Sub-clause (1) of this clause makes it an offence to commit an act of victimization. Sub-clause (2) describes the circumstances in which victimization is said to occur. Sub-clause (3) provides a defence to the offence of victimization where an allegation that the person has committed an unlawful act was false and not made in good faith.

Clause 95 - Obstruction, &c.

This clause makes it an offence to insult, hinder, obstruct, molest or interfere with a person exercising a power or performing a function under the legislation.

PART V - SEX DISCRIMINATION COMMISSIONER

Clause 96 - Sex Discrimination Commissioner

This clause provides for the appointment by the Governor-General of a Sex Discrimination Commissioner.

Clause 97 - Terms and conditions of appointment

This clause provides the terms and conditions of appointment for the Commissioner.

Clause 98 - Remuneration of Commissioner

This clause provides for the remuneration of the Commissioner.

Clause 99 - Leave of absence

This clause provides for the granting of leave of absence to the Commissioner.

Clause 100 - Outside employment

This clause provides that the Commissioner may not, except with the approval of the Minister, engage in paid employment outside the duties of the Commissioner.

Clause 101 - Resignation

This clause provides that the Commissioner may resign from office by writing delivered to the Governor-General.

Clause 102 - Termination of appointment

This clause provides the conditions under which the Governor-General may terminate the appointment of the Commissioner.

Clause 103 - Acting Commissioner

This clause provides for the appointment of an acting Commissioner by the Minister in certain circumstances.

PART VI - MISCELLANEOUS

Clause 104 - Delegation

Sub-clause (1) of this clause provides for the delegation by the Commission to a member of the Commission, the Commissioner, a member of the staff of the Commission or another person or body of persons, all or any of the powers of the Commission under the legislation except for those powers in connection with the performance of functions under clause 49 by the Commissioner on behalf of the Commission, and the power of delegation itself.

Sub-clause (2) provides for the delegation by the Commissioner, to a member of the staff of the Commission or to any other person or body of persons approved by the Commission, of all or any of the powers exercisable by the Commissioner under the legislation except for the power of delegation itself.

Sub-clause (3) provides that where a power is delegated by the Commission, pursuant to sub-clause (1) or by the Commissioner, pursuant to sub-clause (2), then any exercise of the power by the delegate for the purposes of the legislation is deemed to have been exercised by the Commission or by the Commissioner.

Sub-clause (4) provides that where a delegation is made by the Commission or the Commissioner the power may still continue to be exercised by the Commission or the Commissioner.

Clause 105 - Liability of persons involved in unlawful acts

This clause provides that anyone who causes, instructs, induces, aids or permits another person to do any act that is unlawful under Division 1 or 2 of Part II shall be taken to have done the act.

Clause 106 - Vicarious liability, &c.

Sub-clause (1) of this clause provides that where an employee or an agent of a person, in connection with employment or duties as an agent, does an act that would, if done by the person, be unlawful under Division 1 or 2 of Part II, the legislation applies in relation to the person as if the person had done the act.

Sub-clause (1) also provides that where an employee or agent of a person does an act in connection with employment or duties as an agent which is unlawful under Division 3 of Part II, the legislation applies in relation to the person as if the person had done the act.

Sub-clause (2) provides that an employer or principal shall not be taken to have done such an act if it is established that the employer or principal took all reasonable steps to prevent the employee or agent from doing acts of that kind.

Clause 107 - Acts done on behalf of bodies

This clause provides that where, for the purposes of this legislation it has to be established that a body corporate has done an act on a particular ground, it is sufficient to establish that a person who acted on behalf of the body corporate in relation to the matter acted on that ground.

Sub-clause (2) provides that conduct at a compulsory conference or before the Commission by a person representing a body is deemed to be conduct of the body.

Clause 108 - Commonwealth deemed to be employer

This clause provides that for the purposes of the legislation all Commonwealth employees are deemed to be employed by the Commonwealth.

Clause 109 - Awards inconsistent with this legislation not to be made

This clause provides that the Sex Discrimination Act is to be a prescribed act for the purposes of sub-section 41A(1) of the Conciliation and Arbitration Act 1904

Clause 110 - Unlawful act not basis of civil action unless expressly provided.

This clause provides that nothing in this Act confers any right of action in respect of the doing of an act that is unlawful by reason of a provision of Part II, unless express provision is made by the legislation.

Clause 111 - Protection from civil actions

Sub-clause (1) of this clause provides protection from civil actions for the Commission, a member of the Commission, the Commissioner or a person acting under the direction or authority of the Commission or of the Commissioner or pursuant to a delegation, in relation to anything done or omitted to be done in good faith in the performance or purported performance of any function or in the exercise or purported exercise of any power or authority, conferred on the Commission or the Commissioner.

Sub-clause (2) provides that where a person has made a complaint to the Commission or has made a submission, furnished a document or information or given evidence to the Commission or the Commissioner, that person is not liable to a civil suit in respect of loss or damage suffered by another person by reason only that the complaint or submission was made, the document or information was furnished or the evidence was given.

Clause 112 - Non-disclosure of private information

Sub-clause (1) of this clause provides that any person who is or who has been the Commissioner, a member of the Commission, a member of the staff assisting the Commission, or who is or who has been authorised to perform or exercise any function or power of, or on behalf of the Commission or the Commissioner, is not to directly or indirectly, except in the performance or exercise of any duty, function or power under or in connection with the legislation, disclose private information about other persons acquired by reason of that office, employment or authorisation.

Sub-clause (2) provides that the persons mentioned in sub-clause (1) cannot be required to divulge such private information to any court except where to do so is necessary for the purposes of this legislation.

Sub-clause (3) provides a number of exceptions to the prohibition on disclosure.

Sub-clause (4) sets out certain definitions for the purposes of the clause.

Clause 113 - Information stored otherwise than in written form

This clause provides that any duty imposed by the legislation to produce a document is to be construed to mean a duty to provide a document containing a clear reproduction in writing of information where the information in question is recorded or stored by means of a mechanical, electronic or other device.

Clause 114 - Commissioner to furnish information

This clause provides that the Commissioner is to provide the Commission with any information relating to the operations of the Commissioner under the legislation that the Commission requires.

Clause 115 - Jurisdiction of Federal Court

This clause provides that the Federal Court is to have jurisdiction in matters arising under Part III.

Clause 116 - Regulations

This clause provides for a regulation-making power.

SCHEDULE

CONVENTION ON THE ELIMINATION OF ALL FORMS OF
DISCRIMINATION AGAINST WOMEN

