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RACIAL DISCRIMINATION ACT 1975

PART II - PROHIBITION OF RACIAL DISCRIMINATION

Exceptions

8. (1) This Part does not apply to, or in relation to the application of, special measures to which paragraph 4 of Article 1 of the Convention applies except measures in relation to which subsection 10 (1) applies by virtue of subsection 10 (3).

(2) This Part does not apply to:

(a) any provision of a deed, will or other instrument, whether made before or after the commencement of this Part, that confers charitable benefits, or enables charitable benefits to be conferred, on persons of a particular race, colour or national or ethnic origin; or

(b) any act done in order to comply with such a provision.

(3) In this section, "charitable benefits" means benefits for purposes that are exclusively charitable according to the law in force in any State or Territory.

Racial discrimination to be unlawful

9. (1) It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

(1A) Where:

(a) a person requires another person to comply with a term, condition or requirement which is not reasonable having regard to the circumstances of the case; and

(b) the other person does not or cannot comply with the term, condition or requirement; and

(c) the requirement to comply has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by persons of the same race, colour, descent or national or ethnic origin as the other person, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life; the act of requiring such compliance is to be treated, for the purposes of this Part, as an act involving a distinction based on, or an act done by reason of, the other person's race, colour, descent or national or ethnic origin.

(2) A reference in this section to a human right or fundamental freedom in the political, economic, social, cultural or any other field of public life includes any right of a kind referred to in Article 5 of the Convention.
(3) This section does not apply in respect of the employment, or an application for the employment, of a person on a ship or aircraft (not being an Australian ship or aircraft) if that person was engaged, or applied, for that employment outside Australia.

(4) The succeeding provisions of this Part do not limit the generality of this section.

Rights to equality before the law

10. (1) If, by reason of, or of a provision of, a law of the Commonwealth or of a State or Territory, persons of a particular race, colour or national or ethnic origin do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or enjoy a right to a more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first-mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin.

(2) A reference in subsection (1) to a right includes a reference to a right of a kind referred to in Article 5 of the Convention.

(3) Where a law contains a provision that:

(a) authorizes property owned by an Aboriginal or a Torres Strait Islander to be managed by another person without the consent of the Aboriginal or Torres Strait Islander; or

(b) prevents or restricts an Aboriginal or a Torres Strait Islander from terminating the management by another person of property owned by the Aboriginal or Torres Strait Islander; not being a provision that applies to persons generally without regard to their race, colour or national or ethnic origin, that provision shall be deemed to be a provision in relation to which subsection (1) applies and a reference in that subsection to a right includes a reference to a right of a person to manage property owned by the person.

Access to places and facilities

11. It is unlawful for a person:

(a) to refuse to allow another person access to or use of any place or vehicle that members of the public are, or a section of the public is, entitled or allowed to enter or use, or to refuse to allow another person access to or use of any such place or vehicle except on less favourable terms or conditions than those upon or subject to which he would otherwise allow access to or use of that place or vehicle;

(b) to refuse to allow another person use of any facilities in any such place or vehicle that are available to members of the public or to a section of the public, or to refuse to allow another person use of any such facilities except on less favourable terms or conditions than those upon or subject to which he would otherwise allow use of those facilities; or

(c) to require another person to leave or cease to use any such place or vehicle or any such facilities;

by reason of the race, colour or national or ethnic origin of that other person or of any relative or associate of that other person.
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Land, housing and other accommodation

12. (1) It is unlawful for a person, whether as a principal or agent:

(a) to refuse or fail to dispose of any estate or interest in land, or any residential or business accommodation, to a second person;

(b) to dispose of such an estate or interest or such accommodation to a second person on less favourable terms and conditions than those which are or would otherwise be offered;

(c) to treat a second person who is seeking to acquire or has acquired such an estate or interest or such accommodation less favourably than other persons in the same circumstances;

(d) to refuse to permit a second person to occupy any land or any residential or business accommodation; or

(e) to terminate any estate or interest in land of a second person or the right of a second person to occupy any land or any residential or business accommodation;

by reason of the race, colour or national or ethnic origin of that second person or of any relative or associate of that second person.

(2) It is unlawful for a person, whether as a principal or agent, to impose or seek to impose on another person any term or condition that limits, by reference to race, colour or national or ethnic origin, the persons or class of persons who may be the licensees or invitees of the occupier of any land or residential or business accommodation.

(3) Nothing in this section renders unlawful an act in relation to accommodation in a dwelling-house or flat, being accommodation shared or to be shared, in whole or in part, with the person who did the act or a person on whose behalf the act was done or with a relative of either of those persons.

Provision of goods and services

13. It is unlawful for a person who supplies goods or services to the public or to any section of the public:

(a) to refuse or fail on demand to supply those goods or services to another person; or

(b) to refuse or fail on demand to supply those goods or services to another person except on less favourable terms or conditions than those upon or subject to which he would otherwise supply those goods or services;

by reason of the race, colour or national or ethnic origin of that other person or of any relative or associate of that other person.

Right to join trade unions

14. (1) Any provision of the rules or other document constituting, or governing the activities of, a trade union that prevents or hinders a person from joining that trade union by reason of the race, colour or national or ethnic origin of that person is invalid.

(2) It is unlawful for a person to prevent or hinder another person from joining a trade union by reason of the race, colour or national or ethnic origin of that other person.
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Employment

15. (1) It is unlawful for an employer or a person acting or purporting to act on behalf of an employer:

(a) to refuse or fail to employ a second person on work of any description which is available and for which that second person is qualified;

(b) to refuse or fail to offer or afford a second person the same terms of employment, conditions of work and opportunities for training and promotion as are made available for other persons having the same qualifications and employed in the same circumstances on work of the same description; or

(c) to dismiss a second person from his employment;

by reason of the race, colour or national or ethnic origin of that second person or of any relative or associate of that second person.

(2) It is unlawful for a person concerned with procuring employment for other persons or procuring employees for any employer to treat any person seeking employment less favourably than other persons in the same circumstances by reason of the race, colour or national or ethnic origin of the person so seeking employment or of any relative or associate of that person.

(3) It is unlawful for an organization of employers or employees, or a person acting or purporting to act on behalf of such an organization, to prevent, or to seek to prevent, another person from offering for employment or from continuing in employment by reason of the race, colour or national or ethnic origin of that other person or of any relative or associate of that other person.

(4) This section does not apply in respect of the employment, or an application for the employment, of a person on a ship or aircraft (not being an Australian ship or aircraft) if that person was engaged, or applied, for that employment outside Australia.

(5) Nothing in this section renders unlawful an act in relation to employment, or an application for employment, in a dwelling-house or flat occupied by the person who did the act or a person on whose behalf the act was done or by a relative of either of those persons.

Advertisements

16. It is unlawful for a person to publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of a provision of this Part or an act that would, but for subsection 12 (3) or 15 (5), be unlawful by reason of section 12 or 15, as the case may be.
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Acts done for two or more reasons

18. Where:

(a) an act is done for 2 or more reasons; and

(b) one of the reasons is the race, colour, descent or national or ethnic origin of a person
(whether or not it is the dominant reason or a substantial reason for doing the act);

then, for the purposes of this Part, the act is taken to be done for that reason.

Vicarious liability

18A. (1) Subject to subsection (2), if:

(a) an employee or agent of a person does an act in connection with his or her duties as an
employee or agent; and

(b) the act would be unlawful under this Part if it were done by that person;

this Act applies in relation to that person as if that person had also done the act.

(2) Subsection (1) does not apply to an act done by an employee or agent of a person if it is
established that the person took all reasonable steps to prevent the employee or agent from doing
the act.

PART IIA - PROHIBITION OF OFFENSIVE BEHAVIOUR BASED ON RACIAL HATRED

Reason for doing an act

18B. If:

(a) an act is done for 2 or more reasons; and

(b) one of the reasons is the race, colour or national or ethnic origin of a person (whether or not
it is the dominant reason or a substantial reason for doing the act);

then, for the purposes of this Part, the act is taken to be done because of the person's race,
colour or national or ethnic origin.

Offensive behaviour because of race, colour or national or ethnic origin

18C. (1) It is unlawful for a person to do an act, otherwise than in private, if:

(a) the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate
another person or a group of people; and

(b) the act is done because of the race, colour or national or ethnic origin of the other person
or of some or all of the people in the group.

Note: Subsection (1) makes certain acts unlawful. Section 22 allows people to make complaints
to the Human Rights and Equal Opportunity Commission about unlawful acts. However, an
unlawful act is not necessarily a criminal offence. Section 26 says that this Act does not make
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it an offence to do an act that is unlawful because of this Part, unless Part IV expressly says that the act is an offence.

(2) For the purposes of subsection (1), an act is taken not to be done in private if it:
   (a) causes words, sounds, images or writing to be communicated to the public; or
   (b) is done in a public place; or
   (c) is done in the sight or hearing of people who are in a public place.

(3) In this section:
   "public place" includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

Exemptions

18D. Section 18C does not render unlawful anything said or done reasonably and in good faith:
   (a) in the performance, exhibition or distribution of an artistic work; or
   (b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
   (c) in making or publishing:
      (i) a fair and accurate report of any event or matter of public interest; or
      (ii) a fair comment on any event or matter of public interest if the comment is an expression of a genuine belief held by the person making the comment.

Vicarious liability

18E. (1) Subject to subsection (2), if:
   (a) an employee or agent of a person does an act in connection with his or her duties as an employee or agent; and
   (b) the act would be unlawful under this Part if it were done by the person;
   this Act applies in relation to the person as if the person had also done the act.

(2) Subsection (1) does not apply to an act done by an employee or agent of a person if it is established that the person took all reasonable steps to prevent the employee or agent from doing the act.
PART III - INQUIRIES AND CIVIL PROCEEDINGS

Complaints

22. (1) A complaint in writing alleging that a person has done an act that is unlawful by virtue of a provision of Part II or Part IIA may be lodged with the Commission by:

(a) a person aggrieved by the act, on that person's own behalf or on behalf of that person and another person or other persons aggrieved by the act;

(b) 2 or more persons aggrieved by the act, on their own behalf or on behalf of themselves and another person or other persons aggrieved by the act;

(c) a person or persons included in a class of persons aggrieved by the act, on behalf of the persons included in that class of persons; or

(d) a trade union of which a person or persons, or persons included in a class of persons, aggrieved by the act is a member or are members, on behalf of that person, those persons or persons included in that class of persons, as the case may be.

(1A) In the case of a representative complaint, this section has effect subject to section 25L.

(2) In this section, "trade union" means:

(a) an organisation of employees that is a registered organisation;

(b) a trade union within the meaning of any State Act or law of a Territory; or

(c) any other similar body.

Inquiries by Commissioner

24. (1) Where:

(a) a complaint relating to an alleged unlawful act is made to the Commission under section 22; or

(b) it appears to the Commission that a person has done an act that is unlawful by virtue of a provision of Part II or Part IIA;

the Commission shall notify the Commissioner accordingly and the Commissioner shall, subject to subsection (2), inquire into the act and endeavour, by conciliation, to effect a settlement of the matter to which the act relates.

(2) The Commissioner may decide not to inquire into an act, or, if the Commissioner has commenced to inquire into an act, decide not to continue to inquire into the act, if:

(a) the Commissioner is satisfied that the act is not unlawful by reason of a provision of Part II or Part IIA:
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(b) the Commissioner is of the opinion that the person aggrieved by the act does not desire, or none of the persons aggrieved by the act desires, that the inquiry be made or continued;

(c) in a case where a complaint has been made to the Commission in relation to the act, a period of more than 12 months has elapsed since the act was done; or

(d) in a case where a complaint has been made to the Commission in relation to the act, the Commissioner is of the opinion that the complaint was frivolous, vexatious, misconceived or lacking in substance.

(3) Where the Commissioner decides not to inquire into, or not to continue to inquire into, an act in respect of which a complaint was made to the Commission, the Commissioner shall give notice in writing to the complainant or each of the complainants of that decision, of the reasons for that decision and of the rights of the complainant or each of the complainants under subsection (4). NB: Subsections 3A - 6 of section 24 have not been reproduced in this appendix.

Power to obtain documents

24B. (1) Where the Commissioner has reason to believe that a person is capable of furnishing information (in this subsection referred to as "relevant information") or producing documents (in this subsection referred to as "relevant documents") relevant to an inquiry under this Division, the Commissioner may, by notice in writing served on the person, require the person, at such place, and within such period or on such date and at such time, as are specified in the notice:

(a) to furnish to the Commissioner, by writing signed by the person or, in the case of a body corporate, by an officer of the body corporate, such relevant information (if any) as is specified in the notice; and

(b) to produce to the Commissioner such relevant documents (if any) as are specified in the notice.

(2) Where documents are produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner:

(a) may take possession of, and may make copies of, or take extracts from, the documents;

(b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry to which the documents relate; and

(c) during that period shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Commissioner to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.

Directions to persons to attend compulsory conference

24C. (1) For the purpose of inquiring into an act, and endeavouring to settle the matter to which the act relates, in accordance with section 24, the Commissioner may, by notice in writing, direct the persons referred to in subsection (2) of this section to attend, at a time and
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place specified in the notice, a conference presided over by the Commissioner or a person appointed by the Commissioner.

(2) Directions under subsection (1) to attend a conference in relation to an act shall be given to:

(a) where a complaint was made to the Commission in relation to that act - the complainant, or all the complainants, as the case requires;

(b) the person who is alleged to have done the act; and

(c) any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the inquiry or whose presence at the conference is, in the opinion of the Commissioner, likely to be conducive to the settlement of the matter to which the act relates.

(3) A person who has been given a direction under subsection (1) to attend a conference is entitled to be paid by the Commonwealth a reasonable sum for the person’s attendance at the conference.

(4) The Commissioner may, in a notice given to a person under subsection (1), require the person to produce such documents at the conference as are specified in the notice.

Conditions for making a representative complaint

25L (1) A representative complaint may be lodged under section 22 only if:

(a) the class members have complaints against the same person; and

(b) all the complaints are in respect of, or arise out of, the same, similar or related circumstances; and

(c) all the complaints give rise to a substantial common issue of law or fact.

(2) A representative complaint under section 22 must:

(a) describe or otherwise identify the class members; and

(b) specify the nature of the complaints made on behalf of the class members; and

(c) specify the nature of the relief sought; and

(d) specify the questions of law or fact that are common to the complaints of the class members.

In describing or otherwise identifying the class members, it is not necessary to name them or specify how many there are.

(3) A representative complaint may be lodged without the consent of class members.