

## Affidavit

No. \_\_\_\_\_ of 20

Federal Court of Australia  
District Registry: Victoria  
Division: General

### JAN MAREK KANT

Applicant

AUSTRALIAN HUMAN RIGHTS COMMISSIONER and another  
Respondents

Affidavit of: **Jan Marek Kant**

Address: 3/33 Bewdley Street, Ormond VIC 3204

Occupation: litigant

Date: 06 Sep 2024

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I, Jan Marek Kant of 3/33 Bewdley Street, Ormond VIC, litigant affirm:

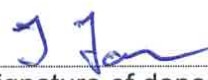
1. I am the Applicant.

Filed on behalf of (name & role of party) Jan Marek Kant, Applicant  
Prepared by (name of person/lawyer) Jan Marek Kant  
Law firm (if applicable) \_\_\_\_\_  
Tel 0450 827 203 Fax \_\_\_\_\_  
Email jmjarosz01@gmail.com  
Address for service 3/33 Bewdley Street, Ormond VIC 3204  
(include state and postcode)

2. On 21 May 2024, I made a "complaint" to the *Australian Human Rights Commission* via online form on their website. True reproduction of a record I created when making the complaint is annexed to this affidavit and labelled "**JMK-1**". True reproduction of a document I submitted together with the complaint is annexed to this affidavit and labelled "**JMK-2**".
3. On 02 September 2024, I received a letter by email from the *Australian Human Rights Commission*. True reproduction of the letter is annexed to this affidavit and labelled "**JMK-3**".

Affirmed by the deponent  
at Melbourne  
in Victoria  
on 06 SEP 2024

)  
)  
)  
)  
)

  
Signature of deponent

Before me:

Ciara McMillan  
Registrar  
Magistrates' Court of Victoria

Signature of witness



## Exhibit "JMK-1"

No. of 20

Federal Court of Australia

District Registry: Victoria

Division: General

**JAN MAREK KANT**

Applicant

**AUSTRALIAN HUMAN RIGHTS COMMISSIONER** and another  
Respondents

Affidavit of: **Jan Marek Kant**

Address: 3/33 Bewdley Street, Ormond VIC 3204

Occupation: litigant

Date: 06 Sep 2024

This is the exhibit "JMK-1" now produced and shown to Jan Marek Kant at the time of affirming his affidavit.

Ciara McMillan  
Registrar  
Magistrates' Court of Victoria

Signature of witness

21 May 2024  
Australian Human Rights Commission  
Make a complaint  
<https://humanrights.gov.au/complaints/make-complaint>  
-----

Part 1 of 4 - Your Details (Your complaint)  
-----

First name: Jan  
Last name: Kant  
Address: 3/33 Bewdley Street  
Suburb: Ormond  
State/Territory [VIC]  
Postcode: 3204  
Email: jmjarosz01@gmail.com  
Do you require assistance to participate in the complaint process? [No]  
Are you making this complaint on behalf of someone else (the aggrieved person)?  
[No]  
Do you have a legal representative or advocate? [No]

Part 2 of 4 - Who is the complaint about?  
-----

Who is the complaint about? [Organisation]  
Organisation name: Australian Human Rights Commission  
Address: GPO Box 5218  
Suburb: Sydney  
State/Territory [NSW]  
Postcode: 2001  
Email: infoservice@humanrights.gov.au  
Phone (business hours): 1300 656 419  
What is their relationship to you or the aggrieved person?: Governmental  
misfeasor  
Do you want to add another respondent? [Yes]

For? [Organisation]  
2nd Respondent's Organisation name: Office of National Intelligence  
2nd Respondent's Address: Locked Bag 6310  
2nd Respondent's Suburb: Kingston  
2nd Respondent's State/Territory [ACT]  
2nd Respondent's Postcode: 2604  
2nd Respondent's Phone (business hours): (02) 6266 0900  
What is their relationship to you or the aggrieved person?: Directorate of human  
rights violation  
Do you want to add another respondent? [No]

Part 3 of 4 - What are you complaining about?  
-----

[x] I believe my human rights have been breached by a Commonwealth government  
agency

When did the alleged event(s) happen?  
> presently

What happened?

- > The Racial Discrimination Act 1975 is not a law of the Commonwealth.
- > The Summary Offences Amendment (Nazi Symbol Prohibition) Act 2022 is not an enactment of the state of Victoria.
- > The Summary Offences Amendment (Nazi Salute Prohibition) Act 2023 is not an enactment of the state of Victoria.
- > The Australian Human Rights Commission does not investigate or conciliate complaints of racial hatred that takes place in public.
- > The Australian Human Rights Commission gives false and misleading information about its duties/functions/powers.
- > There is an Australian "Secret Police" formed of members of the "National Intelligence Community".
- > The Secret Police commits "crimes against humaninty" per Division 268 Criminal Code.
- > The Secret Police is a "criminal organisation" per Division 390 Criminal Code.
- > The Australian Human Rights Commission acts on the behalf of the Secret Police.
- > The Australian Human Rights Commission acts in violation of relevant human rights.

Supporting Information

20240521 AHRC Bundle.pdf (2.13 MB)

Part 4 of 4 - Other information

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How do you think the complaint could be resolved?

- > Do all of the things necessary to give effect to relevant human rights.

Have you complained about this to another organisation? [No]

Were you referred to us by another organisation? [No]

-----

Your complaint has been sent!

Thank you for submitting the form. An officer of the Investigation and Conciliation Section will contact you shortly in relation to it.

## Exhibit "JMK-2"

No. of 20

Federal Court of Australia  
District Registry: Victoria  
Division: General

### JAN MAREK KANT

Applicant

AUSTRALIAN HUMAN RIGHTS COMMISSIONER and another  
Respondents

Affidavit of: **Jan Marek Kant**

Address: 3/33 Bewdley Street, Ormond VIC 3204

Occupation: litigant

Date: 06 Sep 2021

This is the exhibit "JMK-2" now produced and shown to Jan Marek Kant at the time of affirming his affidavit.

Ciara McMillan  
Registrar  
Magistrates' Court of Victoria

Signature of witness



Jan Kant <jmjarosz01@gmail.com>

---

**RE: Your contact with AHRC [SEC=OFFICIAL:Sensitive]**

1 message

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**Info Service** <InfoService@humanrights.gov.au>  
To: Jan Kant <jmjarosz01@gmail.com>

Mon, May 20, 2024 at 12:13 PM

Dear Jan,

Thank you for your email.

I note that your complaint form of 24 April 2024 raises concerns about AHPRA breaching Article 12 of the ICESCR, attached.

As you were previously advised, the ICESCR is not an international instrument scheduled to, or declared under, the *Australian Human Rights Commission Act 1986* (Cth).

Given the above, it does not appear as you have been advised that the Commission can accept a complaint against AHPRA under the ICESCR for the above reasons and because AHPRA is not considered to be the Commonwealth or an agent of the Commonwealth.

Please let me know if you have any further questions I can assist you with.

Kind regards,

**Andrew**

A/g Senior Investigator/Conciliator and Supervisor

National Information Service

**Australian Human Rights Commission**

GPO Box 5218, Sydney NSW 2001

**T** National Information Service 1300 656 419 (Monday to Friday between 10.00am and 4.00pm AEST)

**E** [infoservice@humanrights.gov.au](mailto:infoservice@humanrights.gov.au) **W** [www.humanrights.gov.au](http://www.humanrights.gov.au)

Our experienced staff are currently dealing with a high number of enquiries and complaints. In dealing with your correspondence we will treat you with respect and courtesy, and expect you to do the same. Please note that our staff are authorised not to respond to emails that are abusive or disrespectful.

We acknowledge the Traditional Custodians of Country throughout Australia, and recognise their continuing connection to land, waters and culture. We pay our respects to their Elders - past, present and future.

---

**From:** Jan Kant <[jmjarosz01@gmail.com](mailto:jmjarosz01@gmail.com)>  
**Sent:** Monday, May 20, 2024 11:53 AM  
**To:** Info Service <[InfoService@humanrights.gov.au](mailto:InfoService@humanrights.gov.au)>  
**Subject:** Re: Your contact with AHRC [SEC=OFFICIAL:Sensitive]

**CAUTION:** This email originated from outside of the organisation. Verify the sender before you click links or open attachments. Email purporting to be from staff may be an impersonation attempt.

Hi Andrew,

Thanks for informing me of the VEOHRC. I'm unclear on what it means for the Commission to have not accepted a complaint against AHPRA. Please confirm it is refusal to perform the 11(1)(g) *AHRCA* function of promoting understanding and/or acceptance of relevant human rights (if any) with respect to the matter of my 24 Apr 2024 webform submission. Many thanks.

Kind regards,

Jan Marek Kant

On Mon, May 20, 2024 at 10:49 AM Info Service <[InfoService@humanrights.gov.au](mailto:InfoService@humanrights.gov.au)> wrote:

Dear Jan,

Thank you for your reply email.

As noted in our previous emails, this Commission is not able to consider a complaint against AHPRA under its human rights jurisdiction and therefore the Commission has not accepted a complaint against AHPRA.

As AHPRA appears to be a Victorian Statutory Authority, you may wish to contact the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**), which may be able to consider your concerns under its human rights jurisdiction.

For more information regarding VEOHRC, you may wish to contact them [here](#). Their phone number is 1300 292 153.

I am sorry but we are not able to assist you further with this matter.

Kind regards,

**Andrew**

A/g Senior Investigator/Conciliator and Supervisor

National Information Service

**Australian Human Rights Commission**

GPO Box 5218, Sydney NSW 2001

**T** National Information Service 1300 656 419 (Monday to Friday between 10.00am and 4.00pm AEST)

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**From:** Jan Kant <[jmjarosz01@gmail.com](mailto:jmjarosz01@gmail.com)>  
**Sent:** Friday, May 17, 2024 3:22 PM  
**To:** Info Service <[InfoService@humanrights.gov.au](mailto:InfoService@humanrights.gov.au)>  
**Subject:** Re: Your contact with AHRC [SEC=OFFICIAL:Sensitive]

**CAUTION:** This email originated from outside of the organisation. Verify the sender before you click links or open attachments. Email purporting to be from staff may be an impersonation attempt.

Hi Andrew,

Thanks for your email. My request to the Commission is for performance of the 11(1)(g) *AHRCA* function to promote an understanding and an acceptance (mostly an acceptance, I suspect) of a particular human right in Australia.

I trust this, with my earlier emails, resolves any unclarity you have about the matter. Please let me know if you have further needs of my input for the purposes of my complaint. Many thanks.

Regards,

Jan Marek Kant

On Thu, May 16, 2024 at 3:10 PM Info Service <[InfoService@humanrights.gov.au](mailto:InfoService@humanrights.gov.au)> wrote:

Dear Jan

Thank you for your email.

I am the supervisor of the National Information Service, and I have reviewed the correspondence you have had with Julie regarding your concerns.

### **Human rights breaches**

Human rights claims have a particular meaning under the laws we administer, which I explain further below.

[Section 11\(1\)\(f\)](#) of the *Australian Human Rights Commission Act 1986 (Cth)* (AHRCA) says that the Commission can inquire into an alleged 'act' or 'practice' that may be inconsistent with, or contrary to, any human right.

The terms 'act' and 'practice' are defined in [section 3](#) of the AHRCA as an act or practice by, or on behalf of, the Commonwealth. Therefore, this Commission can only consider complaints about alleged breaches of human rights where the alleged act or practice was done by, or on behalf of, the Commonwealth. The Commission has no power to inquire into alleged breaches of human rights by state/territory government bodies, or private organisations or individuals.

Furthermore, 'human rights' are specifically defined to include those rights and freedoms provided for in the international instruments scheduled to, or declared under, the Australian Human Rights Commission Act 1986 (Cth) such as the International Covenant on Civil and Political Rights.

It is not clear what exactly the concerns you are raising, with regards to the concerns you had initially raised about Australian Health Practitioner Regulation Agency (AHPRA). Please note, [AHPRA is a separate entity from the Commonwealth government](#), as such, unfortunately, it does not appear your concerns may fall within this Commission's jurisdiction.

As the Commission may not be the most appropriate body for your matter, for complaints you may have regarding AHPRA, you can find out further information about this [here](#).

### **Legal referrals**

If you have not done so, you can seek legal advice about your options. For free legal advice, you can contact:

- [Legal Aid of Victoria](#)
- [Federation of Community Legal Centres Victoria](#)

Kind regards,

**Andrew**

A/g Senior Investigator/Conciliator and Supervisor

National Information Service

**Australian Human Rights Commission**

GPO Box 5218, Sydney NSW 2001

T National Information Service 1300 656 419 (Monday to Friday between 10.00am and 4.00pm AEST)

E [infoservice@humanrights.gov.au](mailto:infoservice@humanrights.gov.au) W [www.humanrights.gov.au](http://www.humanrights.gov.au)

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---

**From:** Jan Kant <[jmjarosz01@gmail.com](mailto:jmjarosz01@gmail.com)>

**Sent:** Tuesday, May 14, 2024 6:50 PM

**To:** Info Service <[InfoService@humanrights.gov.au](mailto:InfoService@humanrights.gov.au)>

**Subject:** Re: Your contact with AHRC [SEC=OFFICIAL:Sensitive]

**CAUTION:** This email originated from outside of the organisation. Verify the sender before you click links or open attachments. Email purporting to be from staff may be an impersonation attempt.

Hi Julie,

Thank you for your reply. Please note that *International Covenant on Economic, Social and Cultural Rights* (ICESCR) rights are recognised in *International Covenant on Civil and Political Rights* (ICCPR) by extension of Article 5 ICCPR.

Article 5 ICCPR reads:

*1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.*

*2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.*

From your web page on ICESCR:

*Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966*

*ENTRY INTO FORCE: 3 January 1976, in accordance with article 27*

From your web page on ICCPR:

*Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966*

*ENTRY INTO FORCE: 23 March 1976, in accordance with article 49*

ICESCR rights are *fundamental human rights* in the meaning of Article 5 ICCPR; therefore, ICCPR provides for all of the 'rights and freedoms' in ICESCR.

I'm not sure what it means to have 'raised concerns of the Commission's jurisdiction', but the information about RDA doesn't clarify how an Act can exist despite its provisions being contrary to the constitution. Nothing in the 18D list treats political communication.

Kind Regards,

Jan Marek Kant

<https://humanrights.gov.au/our-work/commission-general/international-covenant-economic-social-and-cultural-rights-human-rights>

<https://humanrights.gov.au/our-work/commission-general/international-covenant-civil-and-political-rights-human-rights-your>

On Mon, May 13, 2024 at 4:08 PM Info Service <[InfoService@humanrights.gov.au](mailto:InfoService@humanrights.gov.au)> wrote:

Dear Jan

Thank you for your email.

Unfortunately, from the information you have provided, it is still not clear this Commission may be able to handle the concerns you have raised.

**Human rights breaches**

Please note, the Commission has the power to inquire into complaints alleging a breach of human rights when they involve an act or practice of the Commonwealth. The Commission has no power to inquire into alleged breaches of human rights by state/territory government bodies, or private organisations or individuals.

Furthermore, 'human rights' are specifically defined to include those rights and freedoms provided for in the international instruments scheduled to, or declared under, the [Australian Human Rights Commission Act 1986 \(Cth\)](#), such as the International Covenant on Civil and Political Rights.

It is not clear that you are alleging any specific acts or practices by the Commonwealth that could arguably constitute a breach of a human right contained in the international instruments attached to the AHRCA. It is important to note that the ICESCR does fall within this Commission's jurisdiction regarding human rights breaches, as such it is not clear this Commission may be able to further assist with your matter.

## **Racial hatred**

I understand you have also raised concerns of the Commission's jurisdiction regarding complaints of racial hatred in public.

The racial hatred provisions in section 18C of the [Racial Discrimination Act 1975](#) (RDA) provide that it is against the law to do an act in public which:

- is done because of the race, colour, or national or ethnic origin of that person or group of people; and
- is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate that person or group

There is an exemption to this, contained in section 18D. It says that an act will not be against the law if it is 'done reasonably and in good faith':

- in an artistic work or performance;
- in a statement, publication, discussion or debate made for genuine academic or scientific purposes;
- in making or publishing a fair and accurate report on a matter of public interest; or
- in making a fair comment if the comment is an expression of the person's genuine belief.

As per the exemptions outlined in section 18D, it may appear applicable in relation to your query.

## **Legal referrals**

If you have not done so, you can seek legal advice about your options. For free legal advice, you can contact:

- [Legal Aid of Victoria](#)
- [Federation of Community Legal Centres Victoria](#)

Kind regards,

**Julie**

Complaints Information Officer

National Information Service

### **Australian Human Rights Commission**

GPO Box 5218, Sydney NSW 2001

**T** National Information Service 1300 656 419 (Monday to Friday between 10.00am and 4.00pm AEST)

**E** [infoservice@humanrights.gov.au](mailto:infoservice@humanrights.gov.au) **W** [www.humanrights.gov.au](http://www.humanrights.gov.au)

Our experienced staff are currently dealing with a high number of enquiries and complaints. In dealing with your correspondence we will treat you with respect and courtesy, and expect you to do the same. Please note that our staff are authorised not to respond to emails that are abusive or disrespectful.

We acknowledge the Traditional Custodians of Country throughout Australia, and recognise their continuing connection to land, waters and culture. We pay our respects to their Elders - past, present and future.

---

**From:** Jan Kant <[jmjarosz01@gmail.com](mailto:jmjarosz01@gmail.com)>

**Sent:** Wednesday, May 8, 2024 4:05 PM

**To:** Info Service <[InfoService@humanrights.gov.au](mailto:InfoService@humanrights.gov.au)>

**Subject:** Re: Your contact with AHRC [SEC=OFFICIAL:Sensitive]

**CAUTION:** This email originated from outside of the organisation. Verify the sender before you click links or open attachments. Email purporting to be from staff may be an impersonation attempt.

Hi Julie,

Thank you for your email. On review of the materials, I have decided not to change my position that my complaint is one for the *Australian Human Rights Commission(er)* (**AHRC**). My reasons follow.

Article 2.1 ICESCR reads:

*"Each State Party to the present Covenant undertakes to take steps (...) to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized*

*in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."*

Article 28 ICESCR reads:

*"The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions."*

1. AHPRA failed to do things necessary to give effect to human rights as in Article 12 ICESCR; and,
2. Article 28 ICESCR requires the Commonwealth to make up for any shortcomings of state governments; therefore
3. The Commonwealth breached a duty to take necessary steps to realization of human rights recognized in ICESCR.

That AHPRA is not a Federal Government entity makes my complaint one of the Commonwealth having breached human rights by inaction.

The "*reasons for the decision*" given by AHPRA doesn't suggest any solid grounds for a complaint of unfair treatment in administrative processes, nor is my information in itself sufficient cause for making a "public interest disclosure" per relevant AHPRA policy. The AHRC appears best equipped/powers-having to fix the underlying problem. That doing of things which need to be done to promote human rights is what the AHRC does makes the Commission an appropriate body for my complaint.

Please let me know if you have further needs of my input for the purposes of my complaint.

On a separate note:

I'm perplexed by the AHRC having power to act on complaints of "*racial hatred that takes place in public*" while there exists a constitutional freedom of political speech. Lay knowledge suggests this is a paradox and the statement on your website that reads "*The Racial Hatred Act (...) was brought in to provide legal recourse to people in the community who might be offended by serious expressions of racism*" must be a hoax or similar untruth. If you could point me towards the relevant thing-explaining materials, that would be awesome. Many thanks.

Kind regards,

Jan Marek Kant

<https://humanrights.gov.au/our-work/commission-general/international-covenant-economic-social-and-cultural-rights-human-rights>

<https://humanrights.gov.au/our-work/racial-hatred-act-what-racial-hatred-act>

On Tue, May 7, 2024 at 2:32 PM Info Service <[InfoService@humanrights.gov.au](mailto:InfoService@humanrights.gov.au)> wrote:

Dear Jan

I refer to your recent contact with the Australian Human Rights Commission (the **Commission**).

### **What we do**

For your information, the Australian Human Rights Commission has the power to investigate and conciliate complaints about:

- discrimination because of a person's race, sex, gender identity, sexual orientation, intersex status, pregnancy, marital or relationship status, age or disability as well as sexual harassment in specific areas of public life, such as, employment, education and the provision of goods and services;
- racial hatred that takes place in public;
- discrimination in employment because of a person's criminal record, trade union activity, religion, political opinion or social origin; or
- breaches of human rights by the Commonwealth of Australia.

### **Your concerns**

I appreciate the concerns you have raised, and I am sorry to hear of your experiences.

Whilst the Commission can investigate claims of a breach of human rights, our ability to do so is limited to claims made against the Commonwealth of Australia (this is the Federal Government). We are unable to consider claims for a breach of human rights against State Government (or their entities), private organisations, or individuals. Please note, [Ahpra](#) is a separate entity from the Commonwealth government, as such, unfortunately, it does not appear your concerns may fall within this Commission's jurisdiction.

As the Commission may not be the most appropriate body for your matter, for complaints you may have regarding AHPRA, you can find out further information about this [here](#).

### **Legal referrals**

If you have not done so, you can seek legal advice about your options. For free legal advice, you can contact:

- [Legal Aid of Victoria](#)
- [Federation of Community Legal Centres Victoria](#)

Kind regards,

**Julie**

Complaints Information Officer

National Information Service

**Australian Human Rights Commission**

GPO Box 5218, Sydney NSW 2001

**T** National Information Service 1300 656 419 (Monday to Friday between 10.00am and 4.00pm AEST)

**E** [infoservice@humanrights.gov.au](mailto:infoservice@humanrights.gov.au) **W** [www.humanrights.gov.au](http://www.humanrights.gov.au)

Our experienced staff are currently dealing with a high number of enquiries and complaints. In dealing with your correspondence we will treat you with respect and courtesy, and expect you to do the same. Please note that our staff are authorised not to respond to emails that are abusive or disrespectful.

We acknowledge the Traditional Custodians of Country throughout Australia, and recognise their continuing connection to land, waters and culture. We pay our respects to their Elders - past, present and future.

---

**From:** Australian Human Rights Commission <[noreply@humanrights.gov.au](mailto:noreply@humanrights.gov.au)>

**Sent:** Wednesday, April 24, 2024 7:30 PM

**To:** Complaints Mailbox <[complaints@humanrights.gov.au](mailto:complaints@humanrights.gov.au)>

**Subject:** AHRC Make a Complaint Form



# Complaint

## Your Details (Your complaint)

Name: **Jan Marek Kant**

Address:

**3/33 Bewdley Street**  
**Ormond VIC 3204**

Email: [jmjarosz01@gmail.com](mailto:jmjarosz01@gmail.com)

Phone (After hours):

Phone (Business hours):

Mobile:

Fax:

TTY:

Would you like a copy of your complaint emailed to you:

(A copy of the complaint form will be sent to )

Do you require assistance to participate in the complaint process?:

**No**

Do you require assistance to participate in the complaint process?:

**No**

Do you have a legal representative or advocate?

**No**

## Who is the complaint about

### Organisation Details

Organisation name: **Australian Health Practitioner Regulation Agency**

ABN:

Address:

Email:

Phone (Business hours): **1300 419 495**

Mobile:

Fax:

What is their relationship to you or the aggrieved person?:

Do you want to add another respondent?

**No**

## **What are you complaining about**

**I believe my human rights have been breached by a Commonwealth government agency**

When did the alleged event(s) happen?

**18 October 2023**

Reason(s) for delay

What happened?

**The Australian Health Practitioner Regulation Agency failed to do the things that were necessary to give effect to human rights as in Article 12 of International Covenant on Economic, Social and Cultural Rights. (see: <https://humanrights.gov.au/our-work/commission-general/international-covenant-economic-social-and-cultural-rights-human-rights>)**

Do you intend to email the Commission supporting information?

**No**

Upload Document File ID: **113527**

ahpra.pdf

## **Other Information**

How do you think the complaint could be resolved?

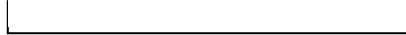
**Fix the problem.**

Have you complained about this to another organisation?

**No**

Have you complained about this to another organisation?

**No**



\*\*\*\*\*  
WARNING: The information contained in this email may be confidential.  
If you are not the intended recipient, any use or copying of any part  
of this information is unauthorised. If you have received this email in  
error, we apologise for any inconvenience and request that you notify  
the sender immediately and delete all copies of this email, together  
with any attachments.  
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----- Forwarded message -----

From: Australian Human Rights Commission <noreply@humanrights.gov.au>

To: Complaints Mailbox <complaints@humanrights.gov.au>

Cc:

Bcc:

Date: Wed, 24 Apr 2024 09:30:25 +0000

Subject: AHRC Make a Complaint Form



**Australian  
Human Rights  
Commission**

# Complaint

## Your Details (Your complaint)

Name: **Jan Marek Kant**

Address:

**3/33 Bewdley Street  
Ormond VIC 3204**

Email: [jmjarosz01@gmail.com](mailto:jmjarosz01@gmail.com)

Phone (After hours):

Phone (Business hours):

Mobile:

Fax:

TTY:

Would you like a copy of your complaint emailed to you:  
(A copy of the complaint form will be sent to )

Do you require assistance to participate in the complaint process?:

**No**

Do you require assistance to participate in the complaint process?:

**No**

Do you have a legal representative or advocate?

**No**

## Who is the complaint about

### Organisation Details

Organisation name: **Australian Health Practitioner Regulation Agency**

ABN:

Address:

Email:

Phone (Business hours): **1300 419 495**

Mobile:

Fax:

What is their relationship to you or the aggrieved person?:

Do you want to add another respondent?

**No**

## What are you complaining about

**I believe my human rights have been breached by a Commonwealth government agency**

When did the alleged event(s) happen?

**18 October 2023**

Reason(s) for delay

What happened?

**The Australian Health Practitioner Regulation Agency failed to do the things that were necessary to give effect to human rights as in Article 12 of International Covenant on Economic, Social and Cultural Rights. (see: <https://humanrights.gov.au/our-work/commission-general/international-covenant-economic-social-and-cultural-rights-human-rights>)**

Do you intend to email the Commission supporting information?

**No**

Upload Document File ID: **113527**

ahpra.pdf

## Other Information

How do you think the complaint could be resolved?

**Fix the problem.**

Have you complained about this to another organisation?

**No**

Have you complained about this to another organisation?

**No**



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## 2 attachments



**ahpra.pdf**  
935K



**AHRC Make a Complaint Form.eml**  
1292K

## Schedule 2—International Covenant on Civil and Political Rights

### Section 3

*The States Parties to the present Covenant,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Recognizing* that these rights derive from the inherent dignity of the human person,

*Recognizing* that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

*Realizing* that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

*Agree* upon the following articles:

### PART I

#### Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of

international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## **PART II**

### *Article 2*

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

### *Article 3*

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

*Article 4*

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

*Article 5*

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

### **PART III**

#### *Article 6*

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

#### *Article 7*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### *Article 8*

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:

- (i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
- (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.

#### *Article 9*

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide

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without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

*Article 10*

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

*Article 11*

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

*Article 12*

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

*Article 13*

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

*Article 14*

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality;

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### *Article 15*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

#### *Article 16*

Everyone shall have the right to recognition everywhere as a person before the law.

*Article 17*

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

*Article 18*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

*Article 19*

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to

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certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

#### Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

#### Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

#### Article 23

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1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

*Article 24*

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

*Article 25*

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and **without unreasonable restrictions:**

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) **To have access, on general terms of equality, to public service in his country.**

*Article 26*

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, **the law shall prohibit any discrimination** and guarantee to all persons equal and effective

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protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*Article 27*

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

**PART IV**

*Article 28*

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

*Article 29*

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

*Article 30*

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

#### *Article 31*

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

#### *Article 32*

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

#### *Article 33*

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1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

#### *Article 34*

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

#### *Article 35*

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

#### *Article 36*

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

*Article 37*

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

*Article 38*

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

*Article 39*

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

*Article 40*

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports

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shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

#### *Article 41*

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communications shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

- (i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article.

Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall

be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

*Article 42*

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it

shall submit to the Chairman of the Committee a report for communication to the States Parties concerned.

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached.

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned.

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

#### *Article 43*

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### *Article 44*

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The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

*Article 45*

The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, an annual report on its activities.

**PART V**

*Article 46*

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

*Article 47*

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

**PART VI**

*Article 48*

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

*Article 49*

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

*Article 50*

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

*Article 51*

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds

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majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

#### Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

#### Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Covenant, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.

# The ban on Nazi symbols and gestures in Victoria


**From 29 December 2022**, it is an offence to intentionally display a Nazi symbol in public or public view. Other symbols used by the Nazi party and its associated paramilitary arms are also banned. The Hakenkreuz or the Nazi swastika is the most widely recognised symbol. Symbols that closely resemble these are also banned.

**From 21 October 2023**, it is also an offence to perform a Nazi gesture in public or in public view. This includes the Nazi salute.

There are very serious penalties for intentionally displaying or performing a Nazi symbol or gesture in public or in public view. These can include large fines and imprisonment.

The law does not ban the display of the Nazi symbol and gestures for genuine educational, scientific or artistic purposes.

## When is it against the law?

It is an [offence](#)  to intentionally display a Nazi symbol or intentionally perform a Nazi gesture:

- in a public place
- or in public view

if you knew, or should have known, it is a Nazi symbol or gesture.

This means that police have to prove that you knew, or should have known, that the symbol was a Nazi symbol or gesture. They also have to prove that you meant to display the symbol or perform the gesture publicly.

## What is the penalty?

If you are found guilty of committing either of these offences, you could face a maximum penalty of:

- a fine of approximately \$23,000 or 120 penalty units
- 12 months imprisonment
- or both a fine/penalty units and imprisonment.

## When can the symbol be displayed?

The Hakenkreuz and the Nazi salute are the most widely recognised symbol and gesture used by the Nazi Party. Other symbols used by the Nazi party, and its associated paramilitary arms, are also banned. This includes symbols closely resembling the Nazi symbol.

The law does not ban the following uses of the Nazi symbol:

- the public display of the symbol for genuine religious or cultural purposes, such as its use as a significant symbol in Buddhist, Hindu, Jain, and other faith communities
- the use of the symbol for genuine academic, artistic, religious or scientific purposes
- using the symbol while making or publishing a fair and accurate report which is in the public interest
- use of the symbol in opposition to neo-Nazism or other related ideologies.

You are not breaking the law if you have a tattoo of a Nazi symbol.

### When can the gesture be performed?

The law does not ban the following uses of the Nazi gesture:

- the use of the symbol for genuine academic, artistic, religious or scientific purposes
- where a person performs the Nazi salute within a theatre performance
- where a teacher shows a film in which the SS symbol can be seen as part of a history class.
- use of the gesture in opposition to neo-Nazism or other related ideologies.

The law only covers Nazi symbols or gestures that are visible in a public place and not online.

## What can the police do?

Police can charge you if they suspect you have committed the offence of publicly displaying a Nazi symbol or performing a Nazi gesture.

Police can also tell you or an owner or occupier of a property to remove a Nazi symbol from public view, if they reasonably believe you are committing an offence

If you do not follow the direction of the police, they may charge you with failing to follow a police direction to remove a Nazi symbol or gesture from public view. This can result in a fine of approximately \$1,900 or 10 penalty units.

## Other support and information

Find out how you can get [other support for going to court](http://www.legalaid.vic.gov.au/other-support-going-court) <http://www.legalaid.vic.gov.au/other-support-going-court>.

The Victorian government has also prepared a [fact sheet](https://www.vic.gov.au/fact-sheet-nazi-symbol-prohibition) <https://www.vic.gov.au/fact-sheet-nazi-symbol-prohibition> about the new laws criminalising the public display of Nazi symbols.

**Disclaimer:** The material in this print-out relates to the law as it applies in the state of Victoria. It is intended as a general guide only. Readers should not act on the basis of any material in this print-out without getting legal advice about their own particular situations. Victoria Legal Aid disclaims any liability howsoever caused to any person in respect of any action taken in reliance on the contents of the publication.

We help Victorians with their legal problems and represent those who need it most. Find legal answers, chat with us online, or call us. You can speak to us in English or ask for an interpreter. You can also find more legal information at [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

**I NEED LEGAL INFORMATION ABOUT** <http://www.legalaid.vic.gov.au/topic/i-need-legal-information-about>

Reviewed 01 November 2023

**Authorised Version**

**Summary Offences Amendment (Nazi Symbol  
Prohibition) Act 2022**

**No. 29 of 2022**

**TABLE OF PROVISIONS**

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## Authorised Version



Victoria

# Summary Offences Amendment (Nazi Symbol Prohibition) Act 2022<sup>†</sup>

No. 29 of 2022

[Assented to 28 June 2022]

**The Parliament of Victoria enacts:**

### **1 Purpose**

The main purpose of this Act is to amend the **Summary Offences Act 1966** to make the public display of Nazi symbols an offence.

### **2 Commencement**

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation within 6 months from the day on which it receives the Royal Assent, it comes into operation on the day after the end of that period.

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Authorised by the Chief Parliamentary Counsel

### **3 New Division 4C of Part I inserted**

After Division 4B of Part I of the **Summary Offences Act 1966** insert—

#### **"Division 4C—Public display of Nazi symbols**

##### **41I Statement for this Division**

In enacting this Division, the Parliament recognises the continued importance of the swastika as an ancient and auspicious symbol of purity, love, peace and good fortune in Buddhist, Hindu, Jain and other religions. The swastika has had immense significance to these faiths for millennia, long before it was misappropriated by the Nazi party and Third Reich in Germany. The misuse of the swastika is an affront and cause of deep regret to people of the Buddhist, Hindu and Jain religions. The swastika continues to be embraced by members of these religions and can be found in places of worship, architecture and religious books, as well as in commercial and personal settings such as people's homes.

The distorted version of the symbol is also known as the Hakenkreuz (meaning twisted or hooked cross in German). The Hakenkreuz became a symbol of the Third Reich, under which heinous crimes were perpetrated against humanity, particularly the Jewish people. The Hakenkreuz is a symbol of antisemitism and hatred and of an ideology fundamentally incompatible with Victoria's multicultural, multiethnic and democratic society.

#### **41J Definitions**

In this Division—

***child*** means a person under the age of 18 years;

***intelligence agency*** means—

- (a) the Australian Security Intelligence Organisation; or
- (b) the Australian Secret Intelligence Service; or
- (c) the Australian Signals Directorate; or
- (d) the Office of National Intelligence;

***law enforcement officer*** has the same meaning as in section 40;

***like process*** has the same meaning as in section 42(1AA);

***Nazi symbol*** means—

- (a) a Hakenkreuz, being a symbol of a cross with the arms bent at right angles in a clockwise direction; or
- (b) a symbol that so nearly resembles the symbol referred to in paragraph (a) that it is likely to be confused with or mistaken for that symbol;

**Example**

A cross with the arms bent at right angles in a counter clockwise direction.

***non-Government school*** has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**;

*post-secondary education institution* has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**.

**41K Public display of Nazi symbols**

- (1) A person must not intentionally display a Nazi symbol if—
- (a) the person knows, or ought reasonably to know, that the symbol is associated with Nazi ideology; and
  - (b) the display—
    - (i) occurs in a public place, a non-Government school or a post-secondary education institution; or
    - (ii) occurs in sight of a person who is in a public place, a non-Government school or a post-secondary education institution.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (2) A person does not contravene subsection (1) if the person establishes that the display was engaged in reasonably and in good faith—
- (a) for a genuine academic, artistic, religious or scientific purpose; or

**Examples**

- 1 A person of Hindu faith displays a swastika in the front window of the person's shop as a symbol of good luck.
- 2 A person of Jain faith draws a swastika on the person's new vehicle before using it as a symbol of good fortune.

- 3 A person of Buddhist faith displays a sculpture of Buddha with a swastika on the chest, as a symbol of auspiciousness, at a Buddhist temple.

(b) for a genuine cultural or educational purpose; or

**Examples**

- 1 The floor of a shop is patterned with swastikas in the hope of bringing prosperity.
- 2 A member of the Hindu community wears a T-shirt in public with a swastika on the front as a symbol of peace.
- 3 A bookshop displays for sale an educational textbook on World War II, which has a Hakenkreuz on the cover.

(c) in making or publishing a fair and accurate report of any event or matter of public interest; or

(d) in opposition to fascism, Nazism, neo-Nazism or other related ideologies.

**Examples**

- 1 A person who displays a flag of Nazi Germany with a marking through it to signal the person's opposition to Nazism.
- 2 A person participating in a protest who displays a Nazi symbol on a placard which also contains words stating opposition to fascism.

(3) A person does not contravene subsection (1) if the Nazi symbol is displayed on the person's body by means of tattooing or other like process.

(4) A law enforcement officer or a member of an intelligence agency does not contravene subsection (1) if the display occurs in the

performance of the officer's or member's duties and is done in good faith.

- (5) A person does not contravene subsection (1) if the display occurs in the course of official duties connected with the administration of the justice system, including the investigation or prosecution of offences, and is done in good faith.
- (6) A prosecution of a child for an offence against subsection (1) must not be commenced without the written consent of the Director of Public Prosecutions.

**41L Direction to remove Nazi symbol from public display**

- (1) A police officer may give a direction to a person to remove from display a Nazi symbol if the police officer reasonably believes the person is committing an offence against section 41K by displaying the Nazi symbol.
- (2) A police officer may give a direction to a person to remove from display a Nazi symbol if—
  - (a) the person is the owner or occupier of a property on which the Nazi symbol is being displayed; and
  - (b) the police officer reasonably believes an offence is being committed against section 41K by the display of that Nazi symbol.
- (3) A direction under subsection (1) or (2)—
  - (a) may be given orally or in writing; and
  - (b) must include the period within which it is to be complied with.

- (4) If a direction cannot be given in person, a police officer may leave the written direction under subsection (1) or (2)—
  - (a) at the property on which the Nazi symbol is being displayed; or
  - (b) if the display is in or on a vehicle, by affixing or placing the direction on that vehicle in a conspicuous manner.
- (5) A person must not, without reasonable excuse, contravene a direction given to the person under subsection (1) or (2).

Penalty: 10 penalty units.

**41M Issue of search warrant by magistrate**

Section 465 of the **Crimes Act 1958** applies to and in respect of an offence against section 41K of this Act as if it were an indictable offence."

**4 Repeal of this Act**

This Act is **repealed** on the first anniversary of the day on which it receives the Royal Assent.

**Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 12 May 2022*

*Legislative Council: 9 June 2022*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Summary Offences Act 1966** to make the public display of Nazi symbols an offence and for other purposes."

## Authorised Version

### Summary Offences Amendment (Nazi Salute Prohibition) Act 2023

No. 27 of 2023

#### TABLE OF PROVISIONS

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Authorised by the Chief Parliamentary Counsel

## Authorised Version



Victoria

# Summary Offences Amendment (Nazi Salute Prohibition) Act 2023<sup>†</sup>

No. 27 of 2023

[Assented to 20 October 2023]

**The Parliament of Victoria enacts:**

### **1 Purpose**

The purpose of this Act is to amend the **Summary Offences Act 1966**—

- (a) to make the public display or performance of Nazi gestures an offence; and
- (b) to extend the application of the offence of public display of Nazi symbols.

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Authorised by the Chief Parliamentary Counsel

## 2 Commencement

This Act comes into operation on the day after the day on which it receives the Royal Assent.

## 3 Principal Act

In this Act, the **Summary Offences Act 1966** is called the Principal Act.

## 4 Heading to Division 4C of Part I amended

In the heading to Division 4C of Part I of the Principal Act, for "**of Nazi symbols**" **substitute** "**or performance of Nazi symbols or gestures**".

## 5 Statement for this Division

- (1) In section 41I of the Principal Act, for "Nazi party" **substitute** "Nazi Party".
- (2) At the end of section 41I of the Principal Act **insert** the following—

"While the Hakenkreuz is perhaps the most recognised symbol of the Third Reich, gestures and other symbols associated with the regime, including the Nazi salute, also incite antisemitism and hatred. As with the Hakenkreuz, the Nazi salute and these other symbols and gestures used by the Nazi Party have no place in Victoria and cause harm to many Victorian communities."

## 6 Definitions

- (1) In section 41J of the Principal Act **insert** the following definitions—  
"**Nazi gesture** means—
  - (a) a Nazi salute; or
  - (b) any other gesture used by the Nazi Party; or

- (c) a gesture that so nearly resembles a gesture referred to in paragraph (a) or (b) that it is likely to be confused with or mistaken for that gesture;

**Nazi Party** means the National Socialist German Workers' Party (NSDAP) and includes, but is not limited to, the following paramilitary arms—

- (a) the SA (Sturmabteilung);
  - (b) the SS (Schutzstaffel);
  - (c) the NSKK (National Socialist Motor Corps);
  - (d) the NSFK (National Socialist Flyers Corps);".
- (2) In section 41J of the Principal Act, in the definition of **Nazi symbol**—
- (a) after paragraph (a) **insert**—  
"(ab) any other symbol used by the Nazi Party; or";
  - (b) in paragraph (b), for "the symbol referred to in paragraph (a)" **substitute** "a symbol referred to in paragraph (a) or (ab)".

## **7 Section 41K amended**

- (1) In the heading to section 41K of the Principal Act, for "**of Nazi symbols**" **substitute** "**or performance of Nazi symbols or gestures**".
- (2) In section 41K(1) of the Principal Act—
- (a) after "Nazi symbol" **insert** "or Nazi gesture";
  - (b) in paragraph (a), for "is associated with Nazi ideology" **substitute** "or gesture is a Nazi symbol or Nazi gesture".

(3) For section 41K(2) of the Principal Act  
**substitute—**

"(1A) A person must not intentionally perform a  
Nazi gesture if—

- (a) the person knows, or ought reasonably  
to know, that the gesture is a Nazi  
gesture; and
- (b) the performance—
  - (i) occurs in a public place, a  
non-Government school or a  
post-secondary education  
institution; or
  - (ii) occurs in sight of a person who is  
in a public place, a  
non-Government school or a  
post-secondary education  
institution.

Penalty: 120 penalty units or imprisonment  
for 12 months or both.

- (2) A person does not contravene subsection (1)  
or (1A) if the display or performance was  
engaged in reasonably and in good faith—
- (a) for a genuine academic, artistic,  
educational or scientific purpose; or

**Examples**

- 1 A person performs the Nazi salute during  
a theatre performance.
- 2 A bookshop displays for sale an  
educational textbook on World War II,  
which has a Hakenkreuz on the cover.
- 3 A teacher shows a film as part of a history  
class in which the SS symbol can be seen.

(b) in making or publishing a fair and accurate report of any event or matter of public interest.

(2A) A person does not contravene subsection (1) if the display of the Nazi symbol was engaged in reasonably and in good faith for a genuine cultural or religious purpose.

**Examples**

- 1 A person of Hindu faith displays a swastika in the front window of the person's shop as a symbol of good luck.
- 2 A person of Jain faith draws a swastika on the person's new vehicle before using it as a symbol of good fortune.
- 3 A person of Buddhist faith displays a sculpture of Buddha with a swastika on the chest, as a symbol of auspiciousness, at a Buddhist temple.
- 4 The floor of a shop is patterned with swastikas in the hope of bringing prosperity.
- 5 A member of the Hindu community wears a T-shirt in public with a swastika on the front as a symbol of peace.

(2B) A person does not contravene subsection (1) if the display of the Nazi symbol or the Nazi gesture was engaged in reasonably and in good faith in opposition to fascism, Nazism, neo-Nazism or other related ideologies.

**Examples**

- 1 A person who displays a flag of Nazi Germany with a marking through it to signal the person's opposition to Nazism.
- 2 A person participating in a protest who displays a Nazi symbol on a placard which also contains words stating opposition to fascism.
- 3 A person who displays the pink triangle used by LGBTIQ+ communities."

- (4) In section 41K(3) of the Principal Act, after "Nazi symbol" **insert** "or Nazi gesture".
- (5) In section 41K(4) of the Principal Act, for "if the display" **substitute** "or (1A) if the display or performance".
- (6) In section 41K(5) of the Principal Act—
  - (a) for "if the display" **substitute** "or (1A) if the display or performance";
  - (b) after "offences" **insert** "or the giving of evidence in a proceeding in a court or tribunal".
- (7) In section 41K(6) of the Principal Act, after "subsection (1)" **insert** "or (1A)".

#### **8 Section 41L amended**

- (1) In the heading to section 41L of the Principal Act, after "Nazi symbol" **insert** "or Nazi gesture".
- (2) For section 41L(1) and (2) of the Principal Act **substitute**—
  - "(1) A police officer may give a direction to a person to remove from display a Nazi symbol or Nazi gesture if the police officer reasonably believes the person is committing an offence against section 41K(1) by displaying the Nazi symbol or Nazi gesture.
  - (2) A police officer may give a direction to a person to remove from display a Nazi symbol or Nazi gesture if—
    - (a) the person is the owner or occupier of a property on which the Nazi symbol or Nazi gesture is being displayed; and

- (b) the police officer reasonably believes an offence is being committed against section 41K(1) by the display of that Nazi symbol or Nazi gesture."
- (3) In section 41L(4)(a) of the Principal Act, after "Nazi symbol" **insert** "or Nazi gesture".

**9 Issue of search warrant by magistrate**

In section 41M of the Principal Act, for "section 41K" **substitute** "section 41K(1)".

**10 New section 67 inserted**

At the end of Part III of the Principal Act **insert**—

**"67 Transitional provision—Summary Offences Amendment (Nazi Salute Prohibition) Act 2023**

- (1) Division 4C of Part I as amended by the **Summary Offences Amendment (Nazi Salute Prohibition) Act 2023** applies only to offences alleged to have been committed on or after the commencement of that Act.
- (2) For the purposes of subsection (1), if an offence is alleged to have been committed between 2 dates, one before and one after the commencement of the **Summary Offences Amendment (Nazi Salute Prohibition) Act 2023**, the offence is alleged to have been committed before that commencement."

## **11 Repeal of this Act**

This Act is **repealed** on the first anniversary of the day after the day on which it receives the Royal Assent.

### **Note**

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

<sup>†</sup> *Minister's second reading speech—*

*Legislative Assembly: 30 August 2023*

*Legislative Council: 5 October 2023*

The long title for the Bill for this Act was "A Bill for an Act to amend the **Summary Offences Act 1966** to make the public display or performance of Nazi gestures an offence, to extend the application of the offence of public display of Nazi symbols and for other purposes."



# **Racial Discrimination Act 1975**

**No. 52, 1975**

## **Compilation No. 19**

<b>Compilation date:</b>	13 December 2022
<b>Includes amendments up to:</b>	Act No. 85, 2022
<b>Registered:</b>	20 December 2022

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Racial Discrimination Act 1975* that shows the text of the law as amended and in force on 13 December 2022 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **An Act relating to the Elimination of Racial and other Discrimination**

WHEREAS a Convention entitled the “International Convention on the Elimination of all Forms of Racial Discrimination” (being the Convention a copy of the English text of which is set out in the Schedule) was opened for signature on 21 December 1965:

AND WHEREAS the Convention entered into force on 2 January 1969:

AND WHEREAS it is desirable, in pursuance of all relevant powers of the Parliament, including, but not limited to, its power to make laws with respect to external affairs, with respect to the people of any race for whom it is deemed necessary to make special laws and with respect to immigration, to make the provisions contained in this Act for the prohibition of racial discrimination and certain other forms of discrimination and, in particular, to make provision for giving effect to the Convention:

BE IT THEREFORE ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:

### **Part I—Preliminary**

#### **1 Short title**

This Act may be cited as the *Racial Discrimination Act 1975*.

#### **2 Commencement**

- (1) Sections 1, 2 and 7 shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on a day to be fixed by Proclamation, being a day not earlier than the day on which the Convention enters into force for Australia.

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### 3 Interpretation

- (1) In this Act, unless the contrary intention appears:

**Aboriginal** means a person who is a descendant of an indigenous inhabitant of Australia but does not include a Torres Strait Islander.

**Commission** means the Australian Human Rights Commission.

**Commissioner** means the Race Discrimination Commissioner appointed under section 29.

**Commonwealth agency** means an agency within the meaning of the *Privacy Act 1988*.

**Convention** means the International Convention on the Elimination of All Forms of Racial Discrimination that was opened for signature on 21 December 1965 and entered into force on 2 January 1969, being the Convention a copy of the English text of which is set out in the Schedule.

**dispose** includes sell, assign, lease, let, sub-lease, sub-let, license or mortgage, and also includes agree to dispose and grant consent to the disposal of.

**employment** includes work under a contract for services, and cognate expressions have corresponding meanings.

**President** means President of the Commission.

**principal executive**, in relation to a Commonwealth agency, has the same meaning as in Part V of the *Privacy Act 1988*.

**registered charity** means an entity that is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act.

**relative**, in relation to a person, means a person who is related to the first-mentioned person by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the first-mentioned person.

**residential accommodation** includes accommodation in a dwelling-house, flat, hotel, motel or boarding-house or on a camping ground.

**services** includes services consisting of the provision of facilities by way of banking or insurance or of facilities for grants, loans, credit or finance.

**Torres Strait Islander** means a person who is a descendant of an indigenous inhabitant of the Torres Strait Islands.

**vehicle** includes a ship, an aircraft and a hovercraft.

- (2) A reference in this Act to an Australian ship or aircraft shall be construed as a reference to a ship or aircraft registered in Australia or belonging to or in the possession of the Commonwealth or a State.
- (3) For the purposes of this Act, refusing or failing to do an act shall be deemed to be the doing of an act and a reference to an act includes a reference to such a refusal or failure.
- (4) A reference in this Act to the doing of an act by a person includes a reference to the doing of an act by a person in association with other persons.

#### **4 Extension to external Territories**

This Act extends to every external Territory.

#### **5 Additional operation of Act**

Without prejudice to its effect apart from this section, this Act also has, by force of this section, the effect it would have if:

- (a) there were added at the end of sections 11 and 13 the words “or by reason that that other person or any relative or associate of that other person is or has been an immigrant”;
- (b) there were added at the end of subsections 12(1) and 15(1) the words “or by reason that that second person or any relative or associate of that second person is or has been an immigrant”;

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- (c) there were inserted in subsection 14(1), before the words “is invalid, the words or by reason that that person is or has been an immigrant”;
- (d) there were added at the end of subsection 14(2) the words “or by reason that that other person is or has been an immigrant”;
- (e) there were added at the end of subsection 15(2) the words “or by reason that the person so seeking employment or any relative or associate of that person is or has been an immigrant”; and
- (f) there were inserted in section 18, after the word “person”, the words “or by reason that a person is or has been an immigrant”.

**6 Act binds the Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

**6A Operation of State and Territory laws**

- (1) This Act is not intended, and shall be deemed never to have been intended, to exclude or limit the operation of a law of a State or Territory that furthers the objects of the Convention and is capable of operating concurrently with this Act.
- (2) Where:
  - (a) a law of a State or Territory that furthers the objects of the Convention deals with a matter dealt with by this Act; and
  - (b) a person has, whether before or after the commencement of this section, made a complaint, instituted a proceeding or taken any other action under that law in respect of an act or omission in respect of which the person would, but for this subsection, have been entitled to make a complaint under the *Australian Human Rights Commission Act 1986* alleging that the act or omission is unlawful under a provision of Part II or IIA of this Act;

the person shall be deemed never to have been, and is not, entitled to make a complaint or institute a proceeding under the *Australian Human Rights Commission Act 1986* alleging that the act or omission is unlawful under a provision of Part II or IIA of this Act and any proceedings pending under this Act at the commencement of this section in respect of such a complaint made before that commencement are, by force of this subsection, terminated.

(3) Where:

(a) a law of a State or Territory that furthers the objects of the Convention deals with a matter dealt with by this Act; and

(b) an act or omission by a person that constitutes an offence against that law also constitutes an offence against this Act;

the person may be prosecuted and convicted either under that law of the State or Territory or under this Act, but nothing in this subsection renders a person liable to be punished more than once in respect of the same act or omission.

## **6B Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **7 Ratification of Convention**

Approval is given to ratification by Australia of the Convention.

## Part II—Prohibition of racial discrimination etc.

### 8 Exceptions

- (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).

#### *Charities*

- (2) This Part does not:
- (a) affect a provision (whether made before or after the commencement of this Part) of the governing rules (within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*) of a registered charity, if the provision:
    - (i) confers benefits for charitable purposes; or
    - (ii) enables such benefits to be conferred;on persons of a particular race, colour or national or ethnic origin; or
  - (b) make unlawful any act done to give effect to such a provision.

### 9 Racial discrimination to be unlawful

- (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.

## **10 Rights to equality before the law**

- (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.

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- (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.

### **11 Access to places and facilities**

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 or she 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 or she 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.

**12 Land, housing and other accommodation**

- (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.

**13 Provision of goods and services**

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

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- (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 or she 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.

### **14 Right to join trade unions**

- (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.

### **15 Employment**

- (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 or her 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.

## **16 Advertisements**

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.

## **17 Unlawful to incite doing of unlawful acts**

It is unlawful for a person:

- (a) to incite the doing of an act that is unlawful by reason of a provision of this Part; or
- (b) to assist or promote whether by financial assistance or otherwise the doing of such an act.

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**18 Acts done for 2 or more reasons**

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.

**18A Vicarious liability**

- (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.

**18AA Victimisation**

- (1) It is unlawful for a person to commit an act of victimisation against another person.
  - Note 1: See also subsection 27(2) (offences relating to administration of this Act).
  - Note 2: See also the definition of **unlawful discrimination** in the *Australian Human Rights Commission Act 1986*.
- (2) For the purposes of subsection (1), a person (the **first person**) commits an act of victimisation against another person if the first person:
  - (a) refuses to employ the other person; or

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- (b) dismisses, or threatens to dismiss, the other person from the other person's employment; or
  - (c) prejudices, or threatens to prejudice, the other person in the other person's employment; or
  - (d) intimidates or coerces, or imposes any pecuniary or other penalty upon, the other person;
- by reason that the other person:
- (e) has made, or proposes to make, a complaint under this Act or the *Australian Human Rights Commission Act 1986*; or
  - (f) has given, or proposes to give, any information or documents to a person exercising or performing any powers or functions under this Act or the *Australian Human Rights Commission Act 1986*; or
  - (g) has attended, or proposes to attend, a conference held under this Act or the *Australian Human Rights Commission Act 1986*.

## **Part IIA—Prohibition of offensive behaviour based on racial hatred**

### **18B Reason for doing an act**

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.

### **18C Offensive behaviour because of race, colour or national or ethnic origin**

- (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 46P of the *Australian Human Rights Commission Act 1986* allows people to make complaints to the Australian Human Rights Commission about unlawful acts. However, an unlawful act is not necessarily a criminal offence. Section 26 says that this Act does not make 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.

### **18D Exemptions**

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.

### **18E Vicarious liability**

- (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

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reasonable steps to prevent the employee or agent from doing the act.

**18F State and Territory laws not affected**

This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

## **Part III—Race Discrimination Commissioner and functions of Commission**

### **Division 1—Preliminary**

#### **19 Race Discrimination Commissioner**

For the purposes of this Act there shall be a Race Discrimination Commissioner.

#### **20 Functions of Commission**

The following functions are hereby conferred on the Commission:

- (b) to promote an understanding and acceptance of, and compliance with, this Act;
- (c) to develop, conduct and foster research and educational programs and other programs for the purpose of:
  - (i) combating racial discrimination and prejudices that lead to racial discrimination;
  - (ii) promoting understanding, tolerance and friendship among racial and ethnic groups; and
  - (iii) propagating the purposes and principles of the Convention;
- (d) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of infringements of Part II or Part IIA;
- (e) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve racial discrimination issues;
- (f) to inquire into, and make determinations on, matters referred to it by the Minister or the Commissioner.

Note: For the provisions about inquiries into complaints of discrimination and conciliation of those complaints: see Part IIB of the *Australian Human Rights Commission Act 1986*.

## Part IV—Offences

### 26 Unlawful acts not offences unless expressly so provided

Except as expressly provided by this Part, nothing in this Act makes it an offence to do an act or agree with another person to do an act that is unlawful by reason of a provision of Part II or Part IIA.

### 27 Offences relating to administration of Act

- (1) A person shall not hinder, obstruct, molest or interfere with a person exercising or performing any of the powers or functions referred to in this Act.

Penalty for an offence against subsection (1): 10 penalty units.

- (1A) For the purposes of an offence against subsection (1), strict liability applies to the physical element of circumstance, that a person is exercising or performing any of the powers or functions referred to in this Act.

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

- (2) A person shall not:
- (a) refuse to employ another person; or
  - (b) dismiss, or threaten to dismiss, another person from the other person's employment; or
  - (c) prejudice, or threaten to prejudice, another person in the other person's employment; or
  - (d) intimidate or coerce, or impose any pecuniary or other penalty upon, another person;
- by reason that the other person:
- (e) has made, or proposes to make, a complaint under this Act or the *Australian Human Rights Commission Act 1986*; or
  - (f) has furnished, or proposes to furnish, any information or documents to a person exercising or performing any powers

or functions under this Act or the *Australian Human Rights Commission Act 1986*; or

- (g) has attended, or proposes to attend, a conference held under this Act or the *Australian Human Rights Commission Act 1986*.

Penalty for an offence against subsection (2):

- (a) in the case of a natural person—25 penalty units or imprisonment for 3 months, or both; or  
(b) in the case of a body corporate—100 penalty units.

### **27F Non-disclosure of private information**

- (1) A person who is, or has at any time been, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorised to perform or exercise any function or power of the Commission or the Commissioner or any function or power on behalf of the Commission or the Commissioner, being a function or power conferred on the Commission or on the Commissioner under this Act, shall not, either directly or indirectly:
- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purpose of this Act or by reason of that person being or having been so authorised; or
- (b) make use of any such information as is mentioned in paragraph (a); or
- (c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (2) A person who is, or has at any time been, the Commissioner, a member of the Commission or a member of the staff assisting the Commission or is, or has at any time been, authorised to perform or exercise any function or power of the Commission or the Commissioner or any function or power on behalf of the Commission or the Commissioner, being a function or power

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conferred on the Commission or on the Commissioner under this Act, shall not be required:

- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorised; or
- (b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorised;

except where it is necessary to do so for the purposes of this Act.

(3) Nothing in this section prohibits a person from:

- (a) making a record of information that is, or is included in a class of information that is, required or permitted by an Act to be recorded, if the record is made for the purposes of or pursuant to that Act; or
- (b) divulging or communicating information, or producing a document, to any person in accordance with an arrangement in force under section 16 of the *Australian Human Rights Commission Act 1986*; or
- (c) divulging or communicating information, or producing a document, that is, or is included in a class of information that is or class of documents that are, required or permitted by an Act to be divulged, communicated or produced, as the case may be, if the information is divulged or communicated, or the document is produced, for the purposes of or pursuant to that Act.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(3A) Subsection (1) does not prevent a person from making a record of, divulging, communicating or making use of information, or producing a document, if the person does so:

- (a) in the performance of a duty under or in connection with this Act; or

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- (b) in the performance or exercise of a function or power conferred on the Commission or on the Commissioner under this Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3A) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Nothing in subsection (2) prevents a person from being required, for the purposes of or pursuant to an Act, to divulge or communicate information, or to produce a document, that is, or is included in a class of information that is or class of documents that are, required or permitted by that Act to be divulged, communicated or produced.

- (5) In this section:

***court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

***produce*** includes permit access to.

## Part VI—Race Discrimination Commissioner

### 29 Appointment of Race Discrimination Commissioner

- (1) The Race Discrimination Commissioner shall be appointed by the Governor-General.
- (2) A person must not be appointed under subsection (1) as the Race Discrimination Commissioner unless the Minister is satisfied that:
  - (a) the person has appropriate qualifications, knowledge or experience; and
  - (b) the selection of the person for the appointment is the result of a process that:
    - (i) was merit-based; and
    - (ii) included public advertising of the position.
- (3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Race Discrimination Commissioner under a previous appointment under subsection (1).

### 30 Terms and conditions of appointment

- (1) Subject to this section, the Commissioner holds office for such period as is specified in the instrument of his or her appointment, but is eligible for re-appointment.
- (2) A person must not be appointed as the Race Discrimination Commissioner under section 29 for a period if the sum of the following exceeds 7 years:
  - (a) that period;
  - (b) any periods of previous appointment of the person as the Race Discrimination Commissioner under that section.
- (3) The Commissioner holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

**31 Remuneration of Commissioner**

- (1) The Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, the Commissioner shall be paid such remuneration as is prescribed.
- (2) The Commissioner shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**32 Leave of absence**

- (1) The Commissioner has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Commissioner leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

**33 Resignation**

The Commissioner may resign from the office of Commissioner by writing signed by the Commissioner and delivered to the Governor-General.

**34 Termination of appointment**

- (1) The Governor-General may terminate the appointment of the Commissioner by reason of misbehaviour or of physical or mental incapacity.
- (2) The Governor-General shall terminate the appointment of the Commissioner if the Commissioner:
  - (a) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any period of 12 months; or
  - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with

Section 35

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creditors or makes an assignment of remuneration for their benefit.

**35 Outside employment**

The Commissioner shall not, except with the approval of the Minister, engage in paid employment outside the duties of the office of Commissioner.

**36 Acting Commissioner**

- (1) The Minister may appoint a person to act in the office of Commissioner during any period, or during all periods, when the Commissioner is absent from duty or from Australia or during a vacancy in that office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (4) Sections 32, 33 and 35 apply in relation to a person appointed to act in the office of Commissioner in like manner as they apply in relation to the Commissioner.

**40 Delegation**

- (1) The Commission may, by writing under its seal, delegate to a member of its staff, or to another person, all or any of the powers conferred on the Commission under this Act.
- (2) The Commissioner may, by writing signed by the Commissioner, delegate to a member of the staff of the Commission approved by the Commission, or to another person approved by the Commission, all or any of the powers exercisable by the Commissioner under this Act.

## **Part VII—Miscellaneous**

### **44 Jurisdiction**

- (1) The several courts of the States are invested with federal jurisdiction, and jurisdiction is conferred on the several courts of the Territories, within the limits of their several jurisdictions, whether those limits are as to locality, subject-matter or otherwise, to hear and determine civil and criminal proceedings instituted in those courts under this Act.
- (2) No proceedings under this Act shall be instituted in a court of a State or Territory before a day to be fixed by Proclamation as the day on which:
  - (a) that court shall commence to exercise its jurisdiction under subsection (1); or
  - (b) a class of courts of that State or Territory in which that court is included shall commence to exercise their jurisdiction under that subsection;but nothing in this subsection prevents a court from exercising jurisdiction in a matter arising under this Act in a proceeding instituted in that court otherwise than under this Act.

### **45 Protection from civil actions**

- (1A) Subsection (1) applies in relation to any of the following persons:
  - (a) the Commission;
  - (b) the Commissioner or another member of the Commission;
  - (c) a person acting under the direction or authority of:
    - (i) the Commission; or
    - (ii) the Commissioner or another member of the Commission;
  - (d) a person acting under a delegation under section 40.
- (1) The person is not liable to an action or other proceeding for damages for or in relation to an act done, or omitted to be done, in good faith in the performance, or purported performance, of any

Section 45A

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function, or in the exercise or purported exercise of any power or authority, conferred on the Commission, the Commissioner or the other member of the Commission.

- (2) If a submission has been made, a document or information has been given, or evidence has been given, to the Commission or the Commissioner, a person is not liable to an action, suit or other proceeding in respect of loss, damage or injury of any kind suffered by another person merely because submission was made, the document or information was furnished or the evidence was given.

**45A Commissioner to furnish information**

The Commissioner shall furnish to the Commission such information relating to the Commissioner's operations under this Act as the Commission from time to time requires.

**47 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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## **Schedule—International Convention on the elimination of all forms of racial discrimination**

Section 3(1)

*The States Parties to this Convention,*

*Considering* that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Considering* that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

*Considering* that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

*Considering* that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

*Considering* that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

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*Racial Discrimination Act 1975*

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Compilation No. 19

Compilation date: 13/12/2022

Registered: 20/12/2022

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*Convinced* that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

*Reaffirming* that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

*Convinced* that the existence of racial barriers is repugnant to the ideals of any human society,

*Alarmed* by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of *apartheid*, segregation or separation,

*Resolved* to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

*Bearing in mind* the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in 1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

*Desiring* to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

*Have agreed* as follows:

## PART I

### Article 1

1. In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or

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impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

2. This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.

3. Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.

4. Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

#### *Article 2*

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

- (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
- (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
- (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
- (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by

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circumstances, racial discrimination by any persons, group or organization;

- (e) Each State Party undertakes to encourage, where appropriate, integrationist multi-racial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

### *Article 3*

States Parties particularly condemn racial segregation and *apartheid* and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

### *Article 4*

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial

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- discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

*Article 5*

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution;
- (c) Political rights, in particular the rights to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
- (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;
  - (iii) The right to nationality;
  - (iv) The right to marriage and choice of spouse;
  - (v) The right to own property alone as well as in association with others;
  - (vi) The right to inherit;
  - (vii) The right to freedom of thought, conscience and religion;
  - (viii) The right to freedom of opinion and expression;
  - (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:

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- (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
  - (f) The right of access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafes, theatres and parks.

*Article 6*

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

*Article 7*

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

**PART II**

*Article 8*

1. There shall be established a Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) consisting of eighteen

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experts of high moral standing and acknowledged impartiality elected by States Parties from amongst their nationals who shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of this Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two-thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. (a) The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

(b) For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

6. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

#### *Article 9*

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative,

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judicial, administrative or other measures which they have adopted and which give effect to the provisions of this Convention:

- (a) within one year after the entry into force of the Convention for the State concerned; and
- (b) thereafter every two years and whenever the Committee so requests. The Committee may request further information from the States Parties.

2. The Committee shall report annually, through the Secretary-General, to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of the reports and information received from the States Parties. Such suggestions and general recommendations shall be reported to the General Assembly together with comments, if any, from States Parties.

#### *Article 10*

- 1. The Committee shall adopt its own rules of procedure.
- 2. The Committee shall elect its officers for a term of two years.
- 3. The secretariat of the Committee shall be provided by the Secretary-General of the United Nations.
- 4. The meetings of the Committee shall normally be held at United Nations Headquarters.

#### *Article 11*

1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee. The Committee shall then transmit the communication to the State Party concerned. Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

2. If the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them, within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State.

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3. The Committee shall deal with a matter referred to it in accordance with paragraph 2 of this article after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

4. In any matter referred to it, the Committee may call upon the States Parties concerned to supply any other relevant information.

5. When any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration.

#### *Article 12*

1. (a) After the Committee has obtained and collated all the information it deems necessary, the Chairman shall appoint an *ad hoc* Conciliation Commission (hereafter referred to as the Commission) comprising five persons who may or may not be members of the Committee. The members of the Commission shall be appointed with the unanimous consent of the parties to the dispute, and its good offices shall be made available to the States concerned with a view to an amicable solution of the matter on the basis of respect for this Convention.

(b) If the States parties to the dispute fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission not agreed upon by the States parties to the dispute shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its own members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States parties to the dispute or of a State not Party to this Convention.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Commission.

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5. The secretariat provided in accordance with article 10, paragraph 3, of this Convention shall also service the Commission whenever a dispute among States Parties brings the Commission into being.

6. The States Parties to the dispute shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

7. The Secretary-General shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States parties to the dispute in accordance with paragraph 6 of this article.

8. The information obtained and collated by the Committee shall be made available to the Commission, and the Commission may call upon the States concerned to supply any other relevant information.

#### *Article 13*

1. When the Commission has fully considered the matter, it shall prepare and submit to the Chairman of the Committee a report embodying its findings on all questions of fact relevant to the issue between the parties and containing such recommendations as it may think proper for the amicable solution of the dispute.

2. The Chairman of the Committee shall communicate the report of the Commission to each of the States parties to the dispute. These States shall, within three months, inform the Chairman of the Committee whether or not they accept the recommendations contained in the report of the Commission.

3. After the period provided for in paragraph 2 of this article, the Chairman of the Committee shall communicate the report of the Commission and the declarations of the States Parties concerned to the other States Parties to this Convention.

#### *Article 14*

1. A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

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2. Any State Party which makes a declaration as provided for in paragraph 1 of this article may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.

3. A declaration made in accordance with paragraph 1 of this article and the name of any body established or indicated in accordance with paragraph 2 of this article shall be deposited by the State Party concerned with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General, but such a withdrawal shall not affect communications pending before the Committee.

4. A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed.

5. In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee within six months.

6. (a) The Committee shall confidentially bring any communication referred to it to the attention of the State Party alleged to be violating any provision of this Convention, but the identity of the individual or groups of individuals concerned shall not be revealed without his or their express consent. The Committee shall not receive anonymous communications.

(b) Within three months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

7. (a) The Committee shall consider communications in the light of all information made available to it by the State Party concerned and by the petitioner. The Committee shall not consider any communication from a petitioner unless it has ascertained that the petitioner has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged.

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(b) The Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

8. The Committee shall include in its annual report a summary of such communications and, where appropriate, a summary of the explanations and statements of the States Parties concerned and of its own suggestions and recommendations.

9. The Committee shall be competent to exercise the functions provided for in this article only when at least ten States Parties to this Convention are bound by declarations in accordance with paragraph 1 of this article.

*Article 15*

1. Pending the achievement of the objectives of the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in General Assembly resolution 1514 (XV) of 14 December 1960, the provisions of this Convention shall in no way limit the right of petition granted to these peoples by other international instruments or by the United Nations and its specialized agencies.

2. (a) The Committee established under article 8, paragraph 1, of this Convention shall receive copies of the petitions from, and submit expressions of opinion and recommendations on these petitions to, the bodies of the United Nations which deal with matters directly related to the principles and objectives of this Convention in their consideration of petitions from the inhabitants of Trust and Non-Self-Governing Territories and all other territories to which General Assembly resolution 1514 (XV) applies, relating to matters covered by this Convention which are before these bodies.

(b) The Committee shall receive from the competent bodies of the United Nations copies of the reports concerning the legislative, judicial, administrative or other measures directly related to the principles and objectives of this Convention applied by the administering Powers within the territories mentioned in sub-paragraph (a) of this paragraph, and shall express opinions and make recommendations to these bodies.

3. The Committee shall include in its report to the General Assembly a summary of the petitions and reports it has received from United Nations bodies, and the expressions of opinion and recommendations of the Committee relating to the said petitions and reports.

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4. The Committee shall request from the Secretary-General of the United Nations all information relevant to the objectives of this Convention and available to him regarding the Territories mentioned in paragraph 2 (a) of this article.

*Article 16*

The provisions of this Convention concerning the settlement of disputes or complaints shall be applied without prejudice to other procedures for settling disputes or complaints in the field of discrimination laid down in the constituent instruments of, or in conventions adopted by, the United Nations and its specialized agencies, and shall not prevent the States Parties from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

**PART III**

*Article 17*

1. This Convention is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to this Convention.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

*Article 18*

1. This Convention shall be open to accession by any State referred to in article 17, paragraph 1, of the Convention.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

*Article 19*

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twenty-seventh instrument of ratification or instrument of accession.

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2. For each State ratifying this Convention or acceding to it after the deposit of the twenty-seventh instrument of ratification or instrument of accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or instrument of accession.

*Article 20*

1. The Secretary-General of the United Nations shall receive and circulate to all States which are or may become Parties to this Convention reservations made by States at the time of ratification or accession. Any State which objects to the reservation shall, within a period of ninety days from the date of the said communication, notify the Secretary-General that it does not accept it.

2. A reservation incompatible with the object and purpose of this Convention shall not be permitted, nor shall a reservation the effect of which would inhibit the operation of any of the bodies established by this Convention be allowed. A reservation shall be considered incompatible or inhibitive if at least two-thirds of the States Parties to this Convention object to it.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General. Such notification shall take effect on the date on which it is received.

*Article 21*

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

*Article 22*

Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.

*Article 23*

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1. A request for the revision of this Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
  2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

*Article 24*

The Secretary-General of the United Nations shall inform all States referred to in article 17, paragraph 1, of this Convention of the following particulars:

- (a) Signatures, ratifications and accessions under articles 17 and 18;
- (b) the date of entry into force of this Convention under article 19;
- (c) communications and declarations received under articles 14, 20 and 23;
- (d) denunciations under article 21.

*Article 25*

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States belonging to any of the categories mentioned in article 17, paragraph 1, of the Convention.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Racial Discrimination Act 1975	52, 1975	11 June 1975	s 1, 2 and 7: 11 June 1975 (s 2(1)) Remainder: 31 Oct 1975 (s 2(2) and gaz 1975, No S221)	
Administrative Changes (Consequential Provisions) Act 1976	91, 1976	20 Sept 1976	s 4: 20 Sept 1976 (s 2(1)) Sch: 22 Dec 1975 (s 2(7))	s 4
Racial Discrimination Amendment Act 1980	18, 1980	23 Apr 1980	10 Dec 1981 (s 2)	—
<b>as amended by</b>				
Racial Discrimination Amendment Act 1981	25, 1981	14 Apr 1981	10 Dec 1981 (s 2)	—
Racial Discrimination Amendment Act 1983	38, 1983	19 June 1983	19 June 1983 (s 2)	—
Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Act 1986	126, 1986	6 Dec 1986	s 11–34 and Sch: 10 Dec 1986 (s 2)	s 31–34
Statute Law (Miscellaneous Provisions) Act 1988	38, 1988	3 June 1988	s 5(1) and Sch 1: 3 June 1988 (s 2(1))	s 5(1)
Law and Justice Legislation Amendment Act 1990	115, 1990	21 Dec 1990	Sch: 21 Dec 1990 (s 2(1))	—
Human Rights and Equal Opportunity Legislation Amendment Act 1992	132, 1992	30 Oct 1992	Sch: 26 Nov 1992 (s 2)	—

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## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Law and Justice Legislation Amendment Act (No. 3) 1992	165, 1992	11 Dec 1992	s 3(2): 11 Dec 1992 (s 2(1)) Sch (Pt 2): 8 Jan 1993 (s 2(7))	s 3(2)
Sex Discrimination and other Legislation Amendment Act 1992	179, 1992	16 Dec 1992	s 4 and Sch: 13 Jan 1993 (s 2(1))	s 4
Law and Justice Legislation Amendment Act 1993	13, 1994	18 Jan 1994	s 18–20: 18 Jan 1994 (s 2(1))	s 18(2)
Human Rights Legislation Amendment Act 1995	59, 1995	28 June 1995	s 4, 5 and Sch (items 5, 6, 28–30): 28 June 1995 (s 2(1))	s 4 and 5
Racial Hatred Act 1995	101, 1995	15 Sept 1995	13 Oct 1995	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 5 (items 133, 134): 25 Oct 1996 (s 2(1))	—
Human Rights Legislation Amendment Act (No. 1) 1999	133, 1999	13 Oct 1999	s 4–20 and Sch 1 (items 63–84): 13 Apr 2000 (s 2(3)) s 21: 13 Oct 1999 (s 2(1)) s 22: 10 Dec 1999 (s 2(2) and gaz 1999, No S598)	s 4–22
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 760): 5 Dec 1999 (s 2(1), (2))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 347, 348, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 43: 24 May 2001 (s 2(1)(a))	s 4(1) and (2)
Age Discrimination (Consequential Provisions) Act 2004	40, 2004	21 Apr 2004	Sch 2 (item 27): never commenced (s 2(1) item 7)	—
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 4 (items 426–435): 4 July 2008 (s 2(1) item 64)	—
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Sch 3 (items 60–70, 167–178) and Sch 4 (items 1–5): 5 Aug 2009 (items 7, 10, 11)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 968, 969) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 7, 12)	Sch 3 (items 10, 11)
Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012	169, 2012	3 Dec 2012	Sch 2 (items 191, 192): 3 Dec 2012 (s 2(1) item 7)	—
Charities (Consequential Amendments and Transitional Provisions) Act 2013	96, 2013	28 June 2013	Sch 1 (item 38): 1 Jan 2014 (s 2(1) item 2)	—
Statute Law Revision Act (No. 2) 2015	145, 2015	12 Nov 2015	Sch 3 (item 33): 10 Dec 2015 (s 2(1) item 7)	—

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## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Australian Human Rights Commission Legislation Amendment (Selection and Appointment) Act 2022	48, 2022	9 Nov 2022	Sch 1 (items 20–22, 26): 10 Nov 2022 (s 2(1) item 1)	Sch 1 (item 26)
Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022	85, 2022	12 Dec 2022	Sch 7 (items 14, 15, 17, 18): 13 Dec 2022 (s 2(1) item 6)	Sch 7 (items 17, 18)

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part I</b>	
s 2.....	am No 91, 1976; No 126, 1986
s 3.....	am No 18, 1980 (as am by No 25, 1981); No 126, 1986; No 38, 1988; No 179, 1992; No 133, 1999; No 73, 2008; No 70, 2009; No 169, 2012
s 4.....	am No 18, 1980
s 6.....	am No 18, 1980 rs No 126, 1986; No 145, 2015
s 6A.....	ad No 38, 1983 am No 126, 1986; No 133, 1999; No 70, 2009
s 6B.....	ad No 24, 2001
<b>Part II</b>	
Part II heading.....	am No 85, 2022
s 8.....	am No 169, 2012; No 96, 2013
s 9.....	am No 115, 1990
s 10.....	am No 18, 1980; No 126, 1986
s 11.....	am No 43, 1996
s 12.....	am No 126, 1986
s 13.....	am No 43, 1996
s 15.....	am No 126, 1986; No 43, 1996
s 16.....	am No 126, 1986
s 18.....	rs No 115, 1990
s 18A.....	ad No 115, 1990
s 18AA.....	ad No 85, 2022
<b>Part IIA</b>	
Part IIA.....	ad No 101, 1995
s 18B.....	ad No 101, 1995
s 18C.....	ad No 101, 1995 am No 133, 1999; No 70, 2009

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## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
s 18D–18F .....	ad No 101, 1995
<b>Part III</b>	
Part III heading .....	rs No 133, 1999
Part III .....	rs No 126, 1986
<b>Division 1</b>	
s 19 .....	rs No 126, 1986
s 19A .....	ad No 179, 1992
	rep No 133, 1999
s 20 .....	am No 18, 1980 (as am by No 25, 1981)
	rs No 126, 1986
	am No 101, 1995; No 133, 1999; No 70, 2009
s 20A .....	ad No 18, 1980
	rep No 126, 1986
s 21 .....	am No 18, 1980
	rs No 126, 1986
	rep No 133, 1999
s 22 .....	am No 18, 1980
	rs No 126, 1986
	am No 179, 1992; No 101, 1995
	rep No 133, 1999
s 23 .....	am No 18, 1980
	rs No 126, 1986
	rep No 133, 1999
Division 2 .....	rep No 133, 1999
s 24 .....	am No 18, 1980
	rs No 126, 1986
	am No 38, 1988; No 165, 1992; No 101, 1995
	rep No 133, 1999
s 24AA, 24AB .....	ad No 165, 1992
	rep No 133, 1999
s 24A–24E .....	ad No 126, 1986

## Endnote 4—Amendment history

Provision affected	How affected
	rep No 133, 1999
Division 3 .....	rep No 133, 1999
s 24F .....	ad No 126, 1986
	rep No 133, 1999
s 25 .....	rs No 126, 1986
	rep No 133, 1999
s 25A–25H .....	ad No 126, 1986
	rep No 133, 1999
s 25J, 25K .....	ad No 126, 1986
	rep No 133, 1999
s 25L, 25M .....	ad No 126, 1986
	rs No 179, 1992
	rep No 133, 1999
s 25MA .....	ad No 179, 1992
	rep No 133, 1999
s 25N .....	ad No 126, 1986
	am No 179, 1992
	rep No 133, 1999
s 25P .....	ad No 126, 1986
	rs No 179, 1992
	rep No 133, 1999
s 25Q–25U .....	ad No 126, 1986
	rep No 133, 1999
s 25V .....	ad No 126, 1986
	am No 179, 1992
	rep No 133, 1999
s 25W, 25X .....	ad No 126, 1986
	am No 101, 1995
	rep No 133, 1999
s 25Y .....	ad No 126, 1986
	am No 179, 1992

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## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	rep No 133, 1999
s 25Z.....	ad No 126, 1986
	am No 38, 1988; No 179, 1992
	rep No 133, 1999
s 25ZA.....	ad No 126, 1986
	am No 165, 1992
	rs No 179, 1992
	rep No 133, 1999
s 25ZAA.....	ad No 179, 1992
	rep No 59, 1995
s 25ZAB.....	ad No 179, 1992
	am No 13, 1994
	rep No 59, 1995
s 25ZAC.....	ad No 179, 1992
	rep No 59, 1995
s 25ZB.....	ad No 126, 1986
	rep No 133, 1999
Division 3A.....	ad No 59, 1995
	rep No 133, 1999
s 25ZC.....	ad No 126, 1986
	am No 179, 1992; No 13, 1994
	rs No 59, 1995
	rep No 133, 1999
s 25ZCA–25ZCF.....	ad No 59, 1995
	rep No 133, 1999
Division 4.....	ad No 179, 1992
	rep No 133, 1999
s 25ZD–25ZI.....	ad No 179, 1992
	rep No 133, 1999
<b>Part IV</b>	
s 26.....	am No 101, 1995

## Endnote 4—Amendment history

Provision affected	How affected
s 27 .....	am No 18, 1980; No 126, 1986; No 133, 1999; No 24, 2001; No 70, 2009
s 27A–27D .....	ad No 126, 1986
	rep No 133, 1999
s 27E.....	ad No 126, 1986
	am No 133, 1999
	rep No 137, 2000
s 27F .....	ad No 126, 1986
	am No 24, 2001; No 70, 2009
Part V .....	rep No 70, 2009
s 28 .....	am No 91, 1976; No 18, 1980; No 126, 1986
	rep No 70, 2009
<b>Part VI</b>	
Part VI heading.....	rs No 70, 2009
Division 1 heading.....	rs No 126, 1986
	rep No 70, 2009
s 29 .....	rs No 126, 1986
	am No 59, 1995; No 70, 2009; No 48, 2022
s 30 .....	rs No 126, 1986
	am No 133, 1999; No 48, 2022
s 31 .....	am No 126, 1986; No 59, 1995
s 32 .....	am No 91, 1976
	rs No 132, 1992
	am No 146, 1999
s 33 .....	am No 126, 1986
s 34 .....	am No 91, 1976; No 126, 1986; No 132, 1992
s 35 .....	am No 91, 1976; No 126, 1986
s 36 .....	am No 91, 1976; No 126, 1986; No 132, 1992; No 13, 1994; No 46, 2011
s 37 .....	rep No 126, 1986
s 38 .....	rep No 18, 1980

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## Endnotes

### Endnote 4—Amendment history

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Provision affected	How affected
s 39 .....	rep No 126, 1986
s 40 .....	rs No 18, 1980
	am No 126, 1986; No 132, 1992
Division 2 .....	rep No 70, 2009
s 41 .....	am No 91, 1976; No 126, 1986; No 73, 2008
	rep No 70, 2009
s 42 .....	am No 126, 1986; No 59, 1995
	rep No 70, 2009
s 43 .....	am No 126, 1986; No 73, 2008
	rep No 70, 2009
<b>Part VII</b>	
s 44A .....	ad No 18, 1980
	rep No 126, 1986
s 45 .....	am No 18, 1980
	rep No 126, 1986
	ad No 38, 1988
	am No 133, 1999; No 70, 2009
s 45A .....	ad No 18, 1980
	am No 126, 1986
s 46 .....	am No 91, 1976
	rep No 18, 1980
s 47 .....	am No 126, 1986; No 70, 2009

## Exhibit "JMK-3"

No. of 20

Federal Court of Australia  
District Registry: Victoria  
Division: General

### JAN MAREK KANT

Applicant

AUSTRALIAN HUMAN RIGHTS COMMISSIONER and another  
Respondents

Affidavit of: **Jan Marek Kant**

Address: 3/33 Bewdley Street, Ormond VIC 3204

Occupation: litigant

Date: 06 Sep 2024

This is the exhibit "JMK-3" now produced and shown to Jan Marek Kant at the time of affirming his affidavit.

Clara McMillan  
Registrar  
Magistrates' Court of Victoria

Signature of witness

Our ref: FOI-2024/0805131604

2 September 2024

Mr Jan Marek Kant

**By email:** [jmjarosz01@gmail.com](mailto:jmjarosz01@gmail.com)

Dear Mr Kant,

**Request for documents under the Freedom of Information Act 1982 (Cth)**

1. I refer to your email to the Australian Human Rights Commission (Commission) sent on 3 August 2024 requesting the following:

*Please provide all records of information about a complaint I made to the Australian Human Rights Commission (AHRC). Please include all of the following:*

- 1. The AHRC's records of the complaint and documents I provided in making the complaint.*
  - 2. Any correspondence regarding the complaint or documents I provided on making the complaint, or regarding any response to the complaint (or any response to the documents being provided).*
  - 3. Any other records containing information about the complaint or documents I provided on making the complaint.*
2. In this same email, you provided the following additional information, to assist the Commission in answering your request:

*The following information appeared in my submission via the webform at <https://humanrights.gov.au/complaints/make-complaint> and should assist in identifying the relevant complaint.*

*From "Part 1 of 4 - Your Details (Your complaint)":*

**First name:** Jan

**Last name:** Kant

**Email:** [jmjarosz01@gmail.com](mailto:jmjarosz01@gmail.com)

*From "Part 2 of 4 - Who is the complaint about?"*

**Organisation name:** Australian Human Rights Commission

**2nd Respondent's Organisation name:** Office of National Intelligence

3. I am an officer authorised under s 23(1) of the FOI Act to make decisions in relation to FOI requests.

### ***Searches undertaken***

4. The Commission conducted searches for documents falling within the scope of your request:
  - a. Your request was sent to the Supervisor of the National Information Service (NIS). NIS is the section of the Commission responsible for receiving and managing complaints. It sits within the Commission's Investigation and Conciliation Services Team (ICS)
  - b. The NIS Supervisor searched NIS and ICS's files, and could not locate any complaint forms lodged to the Commission by you against the Australian Human Rights Commission, or the Office of National Intelligence.
  - c. A search of the Commission's Legal Section's files database was undertaken, which also did not identify any records of a complaint form lodged by you against the Australian Human Rights Commission, or the Office of National Intelligence.

### ***Decision***

5. No documents were identified as falling within the scope of your request.
6. I have made the decision to refuse your request pursuant to section 24A(1)(b)(ii) of the FOI Act, as I am satisfied that the documents you have requested do not exist.

### ***Further information***

7. This section does not form part of my reasons for my decision, but is included to provide additional information that may be useful to you.
8. In your FOI request, you referred to a complaint form that you have informed us you lodged to the Commission. We could not identify any such complaint form having been received by the Commission.
  - a. If you think this is incorrect, or have any question regarding to this outcome, then please contact the Commission's NIS by phone on 1300 656 419, or by email to [infoservice@humanrights.gov.au](mailto:infoservice@humanrights.gov.au).
  - b. Should your further enquiries with the Commission's NIS team reveal a relevant complaint form, you are welcome to submit a new FOI that identifies the relevant complaint, or seek review of this

Australian Human Rights Commission  
decision if the relevant complaint identified falls within the scope of  
this request.

9. You are also welcome to lodge any complaint (including that which you refer to in your FOI request) through our [online](#) system. This will be treated as a new complaint.

### ***Avenues of review***

10. If you are dissatisfied with my decision or the searches we conducted to locate information and documents related to your request, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

#### **A. Internal review**

11. Under s 54 of the FOI Act, you may apply for an internal review of my decision by writing to the Commission within 30 days of the date of this letter stating the reasons why you believe the review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

#### **B. Information Commissioner Review**

12. Under s 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: [Information Commissioner Review Application Form](#)

Email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

Post: GPO Box 5288, Sydney NSW 2001

13. You may visit the Office of the Australian Commissioner website for more information about a [review by the Information Commissioner](#).

Yours sincerely,



Anastasia Stomo

**Senior Lawyer, Australian Human Rights Commission**

T: +61 2 7904 2128

E: [anastasia.stomo@humanrights.gov.au](mailto:anastasia.stomo@humanrights.gov.au)