

Serial 64
Anti-Discrimination Amendment Bill 2022
Mr Paech

A Bill for an Act to amend the *Anti-Discrimination Act 1992* and the
Anti-Discrimination Regulations 1994

NORTHERN TERRITORY OF AUSTRALIA

ANTI-DISCRIMINATION AMENDMENT ACT 2022

Act No. [] of 2022

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2022

An Act to amend the *Anti-Discrimination Act 1992* and the *Anti-Discrimination Regulations 1994*

[Assented to [] 2022]
[Introduced [] 2022]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Anti-Discrimination Amendment Act 2022*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before 1 October 2024, it commences on that day.

Part 2 Amendment of Anti-Discrimination Act 1992

3 Act amended

This Part amends the *Anti-Discrimination Act 1992*.

4 Section 3 amended (Objects)

Section 3(b) and (c)

omit, insert

- (b) to prevent and eliminate discrimination, sexual harassment and victimisation to the greatest extent possible; and
- (c) to promote the identification and elimination of systemic discrimination.

5 Section 4 amended (Interpretation)

- (1) Section 4(1), definitions ***educational institution, guide dog, impairment, man, marital status, parenthood, sexuality, woman*** and ***work***

omit

- (2) Section 4(1)

insert

accommodation status includes being:

- (a) a tenant, boarder, lodger or licensee; or
- (b) transient or homeless; or
- (c) a resident of any of the following:
 - (i) an aged care facility;
 - (ii) disability accommodation;
 - (iii) supported care accommodation.

assistance animal, see section 4A.

carer responsibilities means whether or not the person is a parent or has responsibility to care for a family member or near relative or through kinship or otherwise.

disability includes the following:

- (a) the total or partial loss of a bodily function;

- (b) the presence in the body of:
 - (i) an organism that has caused or is capable of causing disease; or
 - (ii) organisms impeding, capable of impeding or that may impede the capacity of the body to combat disease;
- (c) total or partial loss of a part of the body;
- (d) the malfunction or dysfunction of a part of the body;
- (e) the malformation or disfigurement of a part of the body;
- (f) a reliance on any of the following:
 - (i) a support person;
 - (ii) a disability aid;
 - (iii) an assistance animal;
- (g) psychiatric or psychological disease or disorder, whether permanent or temporary;
- (h) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction;
- (i) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

disability aid means equipment (including a palliative or therapeutic device) that is generally recognised to alleviate an effect of a disability.

domestic violence, see section 5 of the *Domestic and Family Violence Act 2007*.

educational institution includes the following:

- (a) a childcare centre, school, college, university or other institution at which any form of training or instruction is provided;
- (b) a place at which training or instruction is provided by an employer;
- (c) a place that provides educational programs to people in custody;

(d) any other place that provides an education and care service.

employment status includes the following:

- (a) being unemployed;
- (b) receiving a pension or another social security benefit;
- (c) receiving compensation;
- (d) being employed on a part-time, casual or temporary basis;
- (e) undertaking shift or contract work.

enforceable undertaking means an enforceable undertaking under section 110B.

enforcement order means an enforcement order under section 110C.

gender identity means a person's gender-related identity, which may or may not correspond with the person's designated sex at birth, and includes:

- (a) the personal sense of the body (whether this involves medical intervention or not); and
- (b) other expressions of gender, such as dress, speech, mannerisms, names and personal references.

homeless means without access to safe and secure housing.

individual complaint means a complaint other than a representative complaint.

infectious disease status means being infected with HIV, hepatitis or another disease prescribed by regulation.

relationship status means whether or not a person:

- (a) is single; or
- (b) is married; or
- (c) is married but living separately and apart from the person's spouse; or
- (d) is married, or has been married, to a particular person; or
- (e) is divorced; or

- (f) is a surviving spouse or de facto partner; or
- (g) is a de facto partner; or
- (h) is the de facto partner, or was the de facto partner, of a particular person.

representative complaint means a complaint mentioned in section 60(c).

sex characteristics means a person's physical features and development relating to sex, including the following:

- (a) genitalia, gonads and other sexual and reproductive parts of the person's anatomy;
- (b) chromosomes, genes and hormones related to sex;
- (c) secondary physical features emerging as a result of puberty.

sexual orientation means each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of the same gender identity, a different gender identity or more than one gender identity.

sexual services means:

- (a) sex work as defined in section 4 of the *Sex Industry Act 2019*; or
- (b) provision by a person of services that involve the use or display of the person's body for the sexual arousal or gratification of others in return for payment or reward.

support person means a person who provides assistance or services to another person because of a disability the other person has.

Examples for definition support person

A carer, an assistant, an interpreter or a reader.

systemic discrimination means behaviour, practices, policies or programs of an organisation or Agency that have the effect of creating or perpetuating disadvantage for a group that shares a protected attribute.

victimisation, see section 23(2).

work includes work carried out in any capacity and at any place, including as:

- (a) an employee; or
- (b) a contractor or subcontractor; or
- (c) an employee of a contractor or subcontractor; or
- (d) an employee of a labour hire company; or
- (e) an outworker; or
- (f) an apprentice or trainee; or
- (g) a student or other person gaining work experience, whether formal or informal; or
- (h) a volunteer or on another unpaid basis; or
- (i) a statutory appointee; or
- (j) part of a vocational training program or other occupational training or retraining program; or
- (k) a person of a prescribed class.

- (3) Section 4(1), definition **advertisement**, paragraphs (a) and (b)

omit, insert

- (a) in a newspaper, on the internet or in another publication, whether in printed or electronic form; and
- (b) by television, radio or a streaming service; and

- (4) Section 4(1), definition **club**, paragraph (b)

omit

association; and

insert

association.

- (5) Section 4(1), definition **club**, paragraph (c)

omit

- (6) Section 4(1), definition ***near relative***, paragraph (a)
omit
, brother or sister
insert
or sibling
- (7) Section 4(1), definition ***proceeding***, after "conciliation"
insert
, an investigation
- (8) Section 4(1), definition ***prohibited conduct***, after paragraph (c)
insert
(ca) offensive behaviour; or
- (9) Section 4(1), definition ***prohibited conduct***, paragraph (f)
omit
failure
insert
contravention of duty
- (10) Section 4(1), definition ***respondent***, after "the person"
insert
or organisation
- (11) Section 4(1), definition ***respondent***, after "conduct"
insert
or systemic discrimination
- (12) Section 4(3), (4) and (5)
omit
shall

insert

is to

- (13) After section 4(5)

insert

- (5A) For the purposes of this Act, sexual orientation is to be construed to include an absence of profound emotional, affectional and sexual attraction to other individuals.

- (14) Section 4(6)

omit

shall be deemed

insert

is taken

- (15) Section 4, at the end

insert

Note for section 4

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

6 Section 4A inserted

After section 4

insert

4A Assistance animals

- (1) An **assistance animal** is an animal trained or accredited to assist, in a public place, a person with a disability in relation to the disability.

- (2) In this section:

trained or accredited means trained or accredited by a training organisation or State or Territory body prescribed by regulation.

7 Section 6 amended (Commissioner)

Section 6(2)

omit

3

insert

5

8 Section 13 amended (Functions of Commissioner)

After section 13(1)(h)

insert

(ha) to conduct investigations as to compliance with the duty in Part 2A or under Part 6, Division 4B and to take any required action arising out of those investigations;

9 Part 2A inserted

After section 18

insert

Part 2A Positive duty to eliminate discrimination, sexual harassment and victimisation**18A Purpose of Part**

The purpose of this Part is to provide for the taking of positive action to prevent and eliminate discrimination, sexual harassment and victimisation to the greatest extent possible.

18B Duty to eliminate discrimination, sexual harassment and victimisation

- (1) This section applies to a person who is prohibited under Part 3 or 4 from engaging in discrimination, sexual harassment or victimisation.
- (2) A person must take reasonable and proportionate measures to eliminate that discrimination, sexual harassment or victimisation to the greatest extent possible.

(3) In determining whether a measure is reasonable and proportionate the following factors must be considered:

- (a) the size of the person's business or operations;
- (b) the nature and circumstances of the person's business or operations;
- (c) the person's resources;
- (d) the person's business and operational priorities;
- (e) the practicability and the cost of the measure.

18C Investigations

- (1) The Commissioner may investigate compliance with the duty imposed by this Part.
- (2) The Commissioner may conduct the investigation in any way the Commissioner considers appropriate.

18D Outcome of investigation

- (1) After conducting an investigation into compliance with the duty imposed by this Part, the Commissioner may take any action the Commissioner considers appropriate.
- (2) Without limiting subsection (1), the Commissioner may do the following:
 - (a) take no further action;
 - (b) enter into an enforceable undertaking with a person;
 - (c) prepare a report and, subject to subsection (4), do either or both of the following in relation to the report:
 - (i) give it to the Minister;
 - (ii) publish it.
- (3) A report under subsection (2)(c) may include the following:
 - (a) an opinion of the Commissioner about whether compliance with the duty imposed by this Part has occurred;
 - (b) recommendations to address compliance.

-
- (4) If a report mentioned in subsection (2)(c) adversely mentions a person, the Commissioner must give the person a reasonable opportunity to respond to the report before giving the report to Minister or publishing the report (as the case may be).
- (5) The Minister must table a report given to the Minister under subsection (2)(c)(i) in the Legislative Assembly within 6 sitting days after the Minister receives the report.
- (6) A report may be:
- (a) referred to in making an individual complaint; or
 - (b) taken into account by the Tribunal in relation to an individual complaint referred to the Tribunal.

10 Section 19 amended (Prohibition of discrimination)

- (1) After section 19(1)(a)
insert
- (ab) language, including signed language;
- (2) Section 19(1)(c)
omit, insert
- (ba) gender identity;
 - (c) sexual orientation;
 - (ca) sex characteristics;
- (3) Section 19(1)(e)
omit, insert
- (e) relationship status;
 - (ea) accommodation status;
 - (eb) employment status;
 - (ec) employment in sexual services or engaging in sexual services, including past employment in sexual services or engagement in sexual services;

(4) Section 19(1)(g)

omit, insert

(g) carer responsibilities;

(5) Section 19(1)(j)

omit, insert

(j) disability;

(ja) infectious disease status;

(jb) subjected to domestic violence;

11 Section 21 replaced

Section 21

*repeal, insert***20A Offensive behaviour because of attribute**

(1) A person must not do an act that:

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

(b) is done because of an attribute of the other person or of some or all of the people in the group.

(2) Subsection (1) does not apply to an act done in private.

(3) For subsection (2), 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.

(4) 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.

20B Exemptions to section 20A

Section 20A does not prevent 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.

21 Discrimination by refusing to allow assistance animal

- (1) For this Act, a person discriminates on the ground of disability against a person if the person treats the person with the disability less favourably because the person has an assistance animal.
- (2) Subsection (1) applies notwithstanding that it is the practice of the person to treat less favourably other persons who have animals, or animals of a particular kind.
- (3) Nothing in this section limits the operation of section 20 in relation to discrimination on the ground of disability.
- (4) This section does not affect the liability of a person with an assistance animal for any damage caused by the assistance animal.
- (5) Nothing in this Act makes it unlawful for a person to:
 - (a) request a person with an assistance animal to produce evidence that the animal is an assistance animal; and
 - (b) if the person with an assistance animal does not produce evidence that the animal is an assistance animal – discriminate against the person on the ground that the person has the animal.

12 Section 22 amended (Prohibition of sexual harassment)

- (1) Section 22(1)
omit
shall not, in an area of activity referred to in Part 4,
insert
must not
- (2) Section 22(2)(f)
omit
that he or she is
insert
they are
- (3) Section 22(2)(f)
omit
he or she objects
insert
they object
- (4) Section 22(3)(a)
omit, insert
(a) the race, sex, sexual orientation, gender identity, sex characteristics, age, relationship status or religious belief or activity of the other person; and
- (5) Section 22(3)(b)
omit
impairment
insert
disability

13 Section 24 amended (Failure to accommodate special need)

- (1) Section 24, heading

omit

Failure

insert

Duty

- (2) Section 24(1)

omit

shall not fail or refuse to

insert

must reasonably

- (3) Section 24(2)

omit, insert

- (2) For subsection (1):

(a) reasonable accommodation of a special need of another person means making adequate or appropriate provision to accommodate the special need; and

(b) reasonable accommodation of a special need takes place when a person acts in a way that reasonably provides for the special need of another person who has the special need because of an attribute.

- (4) Section 24(3)

omit

has unreasonably failed to provide

insert

reasonably provided

- (5) Section 24, at the end

insert

Example for section 24

Providing an accredited interpreter to a person who needs one.

14 Section 28 amended (Areas of activities)

- (1) Section 28(f)

omit

superannuation.

insert

superannuation; and

- (2) After section 28(f)

insert

(g) the administration of laws and government programs.

15 Section 30 amended (Exemptions)

- (1) Section 30(2)

omit

- (2) Section 30(3)

omit (all references)

impairment

insert

disability

16 Section 35A inserted

After section 35

insert

35A Exemption – employment status

A person may discriminate against a person on the ground of employment status in relation to something mentioned in section 31(1)(a) to (c) if the discrimination is reasonable, justifiable and proportionate in the circumstances.

17 Section 37A repealed (Exemption – religious educational institutions)

Section 37A

repeal

18 Section 40 amended (Exemptions)

(1) Section 40(2A)

omit

(2) Section 40(2B)

omit (all references)

impairment

insert

disability

(3) Section 40(3)(a)

omit, insert

(a) the accommodation concerned is:

- (i) under the direction or control of a body established for religious purposes; and
- (ii) wholly within or directly attached to religious premises; and

-
- (4) After section 40(4)

insert

- (5) Subsection (3) does not apply in respect of any accommodation mentioned in paragraph (a) of that subsection at any time at which a program that is funded by, or conducted on behalf of, the Territory or the Commonwealth is being conducted at that accommodation.

- (6) In this section:

religious premises means a church, temple, synagogue, mosque or any other similar place of worship.

19 Section 41 replaced

Section 41

repeal, insert

41 Discrimination in goods, services and facilities area

A person who supplies or receives goods, services or facilities (whether or not for reward or profit) must not discriminate against another person:

- (a) by failing or refusing to supply or receive the goods, services or facilities; or
- (b) in the terms and conditions on which the goods, services or facilities are supplied or received; or
- (c) in the way in which the goods, services or facilities are supplied or received; or
- (d) by treating the other person less favourably in any way in connection with the supply or receipt of the goods, services or facilities.

20 Section 43 amended (Exemptions – cultural or religious sites)

- (1) Section 43, before "A"

insert

- (1)

-
- (2) Section 43, at the end

insert

- (2) In subsection (1), a place of cultural or religious significance may include a place that is not a sacred site as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

21 Section 47 amended (Exemptions)

- (1) Section 47(1)

omit

exclude

insert

discriminate against

- (2) Section 47(1)(b), after "by"

insert

, or meet the special or particular needs of,

- (3) Section 47(3)(a)

omit

- (4) Section 47(3)(b)(i)

omit

both men and women

insert

different sexes

- (5) Section 47(3)(b)(ii) and (4)(d)

omit (all references)

men and women

insert

different sexes

(6) Section 47(4)

omit

shall

insert

must

22 Part 4, Division 8 inserted

After section 49

insert

Division 8 Administration of laws and government programs

49A Discrimination in administration of laws and government programs

- (1) A person who performs any function or exercises any power under a law of the Territory or for the purposes of a Territory Government program or has any other responsibility for the administration of a law of the Territory or the conduct of a Territory Government program must not discriminate in:
- (a) the performance of the function; or
 - (b) the exercise of the power; or
 - (c) the carrying out of the responsibility.

- (2) In this section:

Territory Government program means a program conducted by or on behalf of the Territory Government.

23 Section 51 amended (Religious bodies)

After section 51(b)

insert

- (ba) the training or education of people seeking appointment as leaders in a religious organisation; or

24 Section 54 replaced

Section 54

repeal, insert

54 Pregnancy or childbirth

A person (**person A**) may discriminate against another person (**person B**) by reason only of the fact that person A grants rights and privileges to a person (**person C**) in connection with person C's pregnancy or childbirth.

25 Section 56 amended (Sport)**(1) Section 56(1)(a)**

omit

either men or women

insert

persons of a particular sex

(2) Section 56(1)(d)

omit

impairment

insert

disability

26 Section 60 replaced

Section 60

repeal, insert

60 Who may complain

Subject to this Act, the following may make a complaint to the Commissioner:

- (a) a person aggrieved by prohibited conduct;
- (b) a person, authorised in writing by the Commissioner, on behalf of a person referred to in paragraph (a);

-
- (c) an organisation or body (whether or not incorporated), in relation to systemic discrimination.

27 Sections 62A and 62B inserted

After section 62

insert

62A Representative complaints

- (1) A representative complaint must allege systemic discrimination.
- (2) A representative complaint is not required to:
 - (a) name the individual members of the group who are affected by the systemic discrimination; or
 - (b) identify the number of individuals affected by the systemic discrimination.
- (3) The complainant in a representative complaint is not required to obtain the consent of the individuals it alleges are affected by the systemic discrimination.
- (4) Despite sections 66D and 66E, the making of a representative complaint does not preclude an individual who the complaint alleges is affected by the systemic discrimination from making a complaint.
- (5) In this section:

organisation includes an Agency, a body corporate and an unincorporated body.

62B Guidelines for representative complaints

- (1) The Commissioner may issue guidelines in relation to representative complaints.
- (2) Without limiting subsection (1), a guideline may provide for the factors the Commissioner may consider in deciding whether to accept or decline a representative complaint.

28 Section 64 amended (Form of complaint)

- (1) Section 64(1)

omit

shall

insert

must

- (2) Section 64(1)(b), after "conduct"

insert

or systemic discrimination

- (3) Section 64(1)(d)

omit

by post

insert

or transmitted

- (4) After section 64(1)

insert

- (1A) A representative complaint must establish the credentials of the complainant in representing the group affected by the systemic discrimination.

- (5) After section 64(2)

insert

- (3) The Commissioner may, based on information provided in the complaint or by the complainant, amend the complaint to ensure:

(a) any alleged contravention of this Act is identified in a concise manner; or

(b) efficient resolution of the complaint is facilitated.

29 Section 65 amended (Time limit for making complaint)

- (1) Section 65(1)

omit, insert

- (1) Subject to subsections (1A) and (2), a complaint must be made not later than 12 months after the alleged prohibited conduct took place.

-
- (1A) Subject to subsection (2), a representative complaint must be made not later than 24 months after an instance of the systemic discrimination alleged in the complaint occurred.

- (2) Section 65(2), after "subsection (1)"

insert

or (1A)

30 Sections 66 and 66A replaced

Sections 66 and 66A

repeal, insert

66 Commissioner to accept or decline complaint

- (1) The Commissioner must, after assessing a complaint, decide to accept or decline the complaint:
- (a) for a representative complaint – no later than 90 days after receiving it; or
 - (b) otherwise – no later than 60 days after receiving it.
- (2) The Commissioner must notify the complainant of the Commissioner's decision under subsection (1) as soon as practicable after making it.

31 Section 66D amended (Complaint declined)

- (1) Section 66D, before "If"

insert

- (1)

- (2) Section 66D, at the end

insert

- (2) Despite subsection (1), the Commissioner may give permission for a representative complaint declined under section 66 to be made again, if the Commissioner considers it appropriate to do so.

32 Section 66F amended (Complaint declined – similar complaints prohibited)

Section 66F(2)

omit

evaluating the complaint

insert

evaluating a complaint to which Division 4 applies

33 Section 68 amended (Commissioner may decline or stay a complaint dealt with elsewhere)

Section 68(1)

omit, insert

- (1) The Commissioner may decline or stay a complaint at any time if, in relation to the prohibited conduct or systemic discrimination alleged in the complaint:
- (a) there is a concurrent proceeding, or has been a finding, in a court, tribunal or any other public complaints body; or
 - (b) the Commissioner reasonably considers the prohibited conduct or systemic discrimination has been adequately dealt with by another entity; or
 - (c) in the case of an individual complaint that relates to conduct that is the same as an instance of the systemic discrimination alleged by a representative complaint – until the representative complaint is resolved.

34 Section 71 amended (Withdrawal of complaint)

Section 71(3), after "4"

insert

or investigating the complaint if permitted by Division 4B

35 Section 82A inserted

Before section 83, in Part 6, Division 4

insert

82A Application

This Division does not apply to a representative complaint.

36 Section 83 amended (Commissioner must evaluate complaint)

After section 83(2)

insert

- (3) Without limiting subsection (2), the Commissioner may adopt any findings or decisions of a court or tribunal that may be relevant to the complaint.

37 Section 84 amended (Documents or information required to be produced)

- (1) Section 84, heading, at the end

insert

or retained

- (2) After section 84(2)

insert

- (2A) Without limiting subsection (1) or (2), in evaluating a complaint the Commissioner may, in writing, order a person to retain a document or class of document specified in the order for a period, of no longer than 6 months, specified in the order.

- (3) Section 84(3)(a), after "subsection (1)"

insert

or (2A)

- (4) Section 84(4)

omit, insert

- (4) An offence against subsection (3) is an offence of strict liability.

38 Section 85 amended (Witnesses)

After section 85(2)

insert

(2A) An offence against subsection (2) is an offence of strict liability.

39 Section 87B inserted

After section 87A

insert

87B Parties to a complaint

Despite section 86(3) and without limiting section 128 of the *Northern Territory Civil and Administrative Tribunal Act 2014*, the Tribunal may add, substitute or remove a party to a complaint referred to it.

40 Part 6, Division 4B inserted

After section 89

insert

Division 4B Investigation of representative complaints**89A Commissioner must investigate complaint**

- (1) The Commissioner must investigate a representative complaint if the Commissioner considers it appropriate to do so.
- (2) The Commissioner may conduct the investigation in any way the Commissioner considers appropriate.

89B Report of investigation

- (1) After investigating a representative complaint, the Commissioner may make a report on the outcome of the investigation of the complaint.
- (2) The report may include:
 - (a) an opinion of the Commissioner about whether systemic discrimination has occurred or may occur; and

- (b) recommendations to address the systemic discrimination.

Examples for subsection (2)(b)

A recommendation that an organisation review a policy or program, implement specific policies or programs to eliminate discrimination, conduct specific anti-discrimination training or make a public announcement to explain actions the organisation proposes to take.

- (3) The Commissioner may publish the report.
- (4) Before publishing a report, the Commissioner must give any person or organisation adversely mentioned in the report a reasonable opportunity to respond to the report.
- (5) The Minister must table a published report in relation to a representative complaint, in which an Agency or another public sector body is a respondent, in the Legislative Assembly within 6 sitting days after publication.
- (6) A report may be:
- (a) referred to in making an individual complaint; or
 - (b) taken into account by the Tribunal in relation to an individual complaint referred to the Tribunal.

41 Section 100 amended (Anonymity)

After section 100(2)(a)

insert

- (ab) being an individual alleged to be affected by systemic discrimination in a representative complaint; and

42 Section 102 inserted

After section 101

insert

102 Duty under Part 2A may be considered in conciliation or evaluation

In conducting a conciliation or an evaluation of a complaint, the Commissioner may consider whether the duty under Part 2A has been complied with.

43 Sections 107A and 107B inserted

Before section 108, in Part 8

insert

107A Documents or information required to be produced or retained

- (1) In conducting an investigation under this Act, the Commissioner may, in writing, order a person to give the Commissioner:
 - (a) a document or class of documents as specified in the order; or
 - (b) information in the possession of the person relevant to the proceedings as specified in the order.
- (2) If a document or information is given to the Commissioner under subsection (1), the Commissioner:
 - (a) may take possession of, and copy or take extracts from, the document or information; and
 - (b) may give copies or extracts from the document or information to the complainant or respondent; and
 - (c) may retain possession of the document or information for such period as is reasonably necessary; and
 - (d) may allow a person who, if the document were not in the possession of the Commissioner, would be entitled to inspect it, to inspect the document at all reasonable times.
- (3) Without limiting subsections (1) and (2), in conducting an investigation the Commissioner may, in writing, order a person to retain a document or class of document specified in the order for a period, of no longer than 6 months, specified in the order.
- (4) A person commits an offence if the person:
 - (a) is the subject of an order under subsection (1) or (3); and
 - (b) fails to comply with the order.

Maximum penalty: 100 penalty units or imprisonment for 6 months.
- (5) An offence against subsection (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse.

107B Witnesses

- (1) In conducting an investigation under this Act, the Commissioner may order a person:
 - (a) to take an oath before giving evidence before the Commissioner; and
 - (b) to answer a question asked by the Commissioner.
- (2) A person commits an offence if the person:
 - (a) is the subject of an order of the Commissioner under subsection (1); and
 - (b) fails to comply with the order.

Maximum penalty: 100 penalty units or imprisonment for 6 months.
- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

44 Sections 110 and 110A replaced

Sections 110 and 110A

repeal, insert

110 Obstruction

- (1) A person commits an offence if:
 - (a) the person intentionally obstructs another person; and
 - (b) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

- (2) In this section:

obstruct includes hinder and resist.

110A Misleading information

(1) A person commits an offence if:

- (a) the person intentionally gives information to another person; and
- (b) the information is misleading and the person has knowledge of that circumstance; and
- (c) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(2) A person commits an offence if:

- (a) the person intentionally gives a document to another person; and
- (b) the document contains misleading information and the person has knowledge of that circumstance; and
- (c) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant, when giving the information or document:

- (a) draws the misleading aspect of the information or document to the person's attention; and
- (b) to the extent to which the defendant can reasonably do so – gives the person the information necessary to remedy the misleading aspect of the information or document.

Note for subsection (3)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

110B Commissioner may accept enforceable undertaking

(1) The Commissioner may accept an enforceable undertaking, to take specified action required to comply with this Act, made by:

- (a) a respondent to a representative complaint; or

(b) a person in relation to compliance with the duty imposed by Part 2A.

- (2) An enforceable undertaking must be in writing and signed by the Commissioner and the person making the undertaking.

110C Enforcement orders

- (1) The Commissioner may apply to the Local Court for an enforcement order if the Commissioner considers that the person who gave an enforceable undertaking has contravened it.
- (2) The Local Court may make any of the following enforcement orders if the Local Court is satisfied that the person who gave the enforceable undertaking has contravened it:
- (a) an order directing the person to comply with the enforceable undertaking;
 - (b) an order directing the person to do any specified act or thing for the purpose of complying with the enforceable undertaking;
 - (c) an order revoking the enforceable undertaking;
 - (d) any other order the Local Court considers appropriate in the circumstances.

45 Section 115 amended (Service of document)

After section 115(b)

insert

(ba) by sending it to the person's email address; or

46 Part 10 inserted

After section 120

insert

Part 10 Transitional matters for Anti-Discrimination Amendment Act 2022

121 Definitions

In this Part:

amending Act means the *Anti-Discrimination Amendment Act 2022*.

commencement means the commencement of section 3 of the amending Act.

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

122 Complaint made before commencement

This Act, as in force before the commencement, continues to apply in relation to a complaint that was made before the commencement.

123 Application of amendments

- (1) The amendments made by the amending Act do not apply to prohibited conduct or systemic discrimination that took place before the commencement.
- (2) Subsection (1) does not prevent evidence of conduct that took place or practices that were used before the commencement being taken into account in determining whether prohibited conduct or systemic discrimination occurs after the commencement.

124 Offence provisions – before commencement

- (1) The offence provisions, as amended by the amending Act, do not apply to offences committed before the commencement.
- (2) For subsection (1), if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

47 Act further amended

The Schedule has effect.

Part 3 Amendment of Anti-Discrimination Regulations 1994

48 Regulations amended

This Part amends the *Anti-Discrimination Regulations 1994*.

49 Regulation 1A inserted

After regulation 1

insert

1A Approved training organisations and accreditation bodies for assistance animals

For section 4A(2) of the Act, definition ***trained or accredited***, the following organisations and bodies are prescribed:

- (a) The Royal Society for the Blind of SA Inc ABN 37 680 837 839;
- (b) Guide Dogs Association of SA and NT Inc ABN 91 183 168 093;
- (c) Lions Hearing Dogs Inc ABN 37 976 454 009;
- (d) Assistance Dogs Australia Ltd ABN 90 074 746 160;
- (e) Righteous Pups Australia Inc ABN 80 473 459 921;
- (f) Vision Australia Ltd ABN 67 108 391 831;
- (g) Guide Dogs WA ABN 11 157 291 960;
- (h) Guide Dogs Queensland Ltd ABN 89 009 739 664;
- (i) Guide Dogs NSW/ACT ABN 52 000 399 744;
- (j) Guide Dogs Victoria ABN 68 004 621 461;
- (k) Guide Dogs Tasmania ABN 11 157 291 960;
- (l) Dog and Cat Management Board ABN 48 100 971 189.

Part 4 Repeal of Act**50 Repeal of Act**

This Act is repealed on the day after it commences.

Schedule Act further amended

section 47

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 35(1)(a)	impairment	disability
section 39	shall	must
	an impairment	a disability
section 39(d)	his or her	the person's own
section 45	himself or herself	themselves
section 49(1)(a)	<i>Occupational Superannuation Standards Act 1987 of the Commonwealth</i>	<i>Superannuation Industry (Supervision) Act 1993 (Cth)</i>
section 53, heading	&c.	etc.
section 55	impairment	disability
sections 61 and 63, after "conduct"		or systemic discrimination
section 66E, example, paragraph (a)	<i>complaint.</i>	<i>complaint;</i>
section 67, heading	&c.	etc.
section 67(d), after "conduct"		or systemic discrimination
section 81(3), after "a complaint"		other than a representative complaint
section 91(1), after "conduct"		or systemic discrimination
section 105(1)(a) and (b)	his or her	the person's
section 105(2)	he or she	the person

Provision		Amendment
	<i>omit</i>	<i>insert</i>
section 114, after "85(2)"		or 107B(2)