

Appendices

Appendix A: List of consultations

Non-government organisations

2 Spirits	GLD Australia
Aboriginal and Torres Strait Islander Legal Service	HIV & AIDS Legal Service
Aboriginal and Torres Strait Islander Women's Legal Service North Queensland	Immigrant Women's Support Service
Aged and Disability Advocacy Australia	Independent Education Union Qld & NT Branch
Amparo Advocacy	Independent Schools
Anti-Discrimination Law Experts Group	Indigenous Consumer Assistance Network
Associated Christian Schools	Intersex Human Rights Australia
Australian Christian Higher Education Alliance	Intersex Peer Support Australia
Australian Transgender Support Association	Islamic College of Brisbane
Bangladeshi Community Queensland	Islamic Women's Association of Queensland
Basic Rights Queensland	IWD Brisbane Meanjin
Brisbane Bahá'í Community	Just.Equal
Catholic Education	Kingston East Neighbourhood Group
Caxton Legal Centre	Maternity Choices Australia
Clubs Queensland	Maurice Blackburn
Coalition for Biological Reality - Australia and NZ	Micah Projects
Council on the Ageing	National Association of People with HIV Australia
Fair Go for Queensland Women	Noosa Council
	One in Three Campaign

Pride in Sport

Q Shelter

QSport

Queensland Aboriginal and Islander Health Council

Queensland Advocacy Incorporated

Queensland African Community Council

Queensland Churches Together – Christian Churches

Queensland Churches Together – other faiths

Queensland Collective for Inclusive Education

Queensland Indigenous Family Violence Legal Service

Queensland Network of Alcohol and Other Drug Agencies

Queensland Positive People

Queensland Rugby League

REIQ

Respect Qld

Sikh Nishkam Society of Australia

Tenants Queensland

Townsville Community Law

Trans Health Australia

United National Association of Australia

Women’s Legal Service

Youth Advocacy Centre

Youth Affairs Network Queensland

YWCA Australia

Statutory agencies

Australian Human Rights Commission

Crown Law

Legal Aid Queensland

Office of Industrial Relations

Office of the Public Guardian

Public Services Commission

Queensland Family and Children’s Commission

Queensland Mental Health Commission

Queensland Small Business Commissioner

Victoria Equal Opportunity and Human Rights Commission

Victoria Legal Aid

Appendix B: Attributes in Australian jurisdictions

FOUNDATIONS	QLD	SA	Cth	NSW	VIC	WA	TAS	ACT	NT
Accommodation status								+	
Age	+	+	+	+	+	+	+	+	+
Breastfeeding	+	+	+	+	+	+	+	+	+
Criminal record					+ ³⁶⁶	+ ³⁶⁷	+	+	+
Disability/impairment	+	+	+	+	+	+	+	+	+
Domestic or family violence								+	
Employment activity					+				
Employment status								+	
Family/caring responsibilities/family status	+	+	+	+		+	+	+	
Gender identity/gender history/transgender/record of a person's sex having been altered	+	+	+	+ ³⁶⁸	+	+	+	+ ³⁶⁹	+
Genetic information								+	
Immigration status								+	
Industrial/trade union/ employer association/activity	+				+		+	+	+

³⁶⁶ Victoria includes the attribute of an 'expunged homosexual conviction'.

³⁶⁷ In Western Australia, discrimination on the ground of spent conviction is made unlawful by the *Spent Convictions Act 1988* (WA), and the *Historical Homosexual Convictions Expungement Act 2018* (WA).

³⁶⁸ New South Wales uses the term 'transgender', and 'recognised transgender person', and Northern Territory includes 'transsexuality' under sexuality.

³⁶⁹ In addition to the attribute of gender identity, the ACT includes the protected attribute at of 'record of a person's sex having been altered under the *Births, Deaths and Marriages Registration Act 1997* or another law...'

FOUNDATIONS	QLD	SA	Cth	NSW	VIC	WA	TAS	ACT	NT
Intersex/sex characteristics ³⁷⁰	+	+	+				+	+	
Lawful sexual activity	+				+		+		
Marital/relationship status/domestic partnership	+	+	+	+	+	+	+	+	+
Medical record							+		+
Parental status/ parenthood/carer status	+				+ ³⁷¹		+		+
Physical features					+			+	
Political belief/ activity/conviction/affiliation	+				+	+	+	+	+
Pregnancy	+	+	+	+ ³⁷²	+	+	+	+	+
Profession, trade, occupation or calling								+ ³⁷³	
Publication of person's details						+ ³⁷⁴			+ ³⁷⁵
Race	+	+	+ ³⁷⁶	+	+	+	+	+	+
Religion/religious belief/ activity/ affiliation/conviction /religious appearance or dress	+	+ ³⁷⁷			+	+	+	+	+
Sex	+	+	+	+	+	+	+	+	+

³⁷⁰ The definition of gender identity in Queensland includes 'indeterminate sex', which is a term not generally used by people with variations of sex characteristics. The Australian Capital Territory and Victoria include the attribute of 'sex characteristics', and Tasmania includes 'intersex variations of sex characteristics' as an attribute.

³⁷² In New South Wales, pregnancy is said to be a characteristic 'that appertains generally to women' and is included in the definition of what constitutes sex discrimination.

³⁷³ The Australian Capital Territory includes the attribute of 'profession, trade, occupation or calling' as a ground of discrimination, which covers sex workers.

³⁷⁴ Western Australia created a ground of discrimination as 'the ground of the publication of relevant details of the person on the Fines Enforcement Registrar's website.'

³⁷⁵ The Northern Territory creates a prohibited ground of discrimination of 'the person's details being published under the *Fines and Penalties (Recovery) Act 2001*.

³⁷⁶ *Racial Discrimination Act 1975* (Cth) indicates that it includes a 'person or any relative or associate of that other person is or has been an immigrant' but only in limited circumstances.

³⁷⁷ South Australia indicates that 'religious appearance or dress' is a ground of discrimination.

GROUNDS	QLD	SA	Cth	NSW	VIC	WA	TAS	ACT	NT
Gender							+		
Sexuality/sexual orientation / homosexuality	+	+	+	+	+	+	+	+	+
Spouse or partner identity		+ ³⁷⁸							
Association with a person identified on the basis of any of these attributes	+	+ ³⁷⁹	+	+	+	+	+	+	+

³⁷⁸ South Australia includes discrimination on the identity of a spouse or domestic partner.

³⁷⁹ South Australia includes discrimination on the ground of association with a child.

Appendix C: Current attribute definitions in Queensland

family responsibilities, of a person, means the person's responsibilities to care for or support—

- a) a dependant child of the person; or
- b) any other member of the person's immediate family who is in need of care or support.

immediate family, of a person, means—

- (a) the person's spouse or former spouse; or
- (b) a child of the person or the person's spouse or former spouse, including an exnuptial child, stepchild, adopted child, or past or present foster child of the person or the person's spouse or former spouse; or
- (c) a parent, grandparent, grandchild or sibling of the person or the person's spouse or former spouse.

gender identity, in relation to a person, means that the person—

- a) identifies, or has identified, as a member of the opposite sex by living or seeking to live as a member of that sex; or
- b) is of indeterminate sex and seeks to live as a member of a particular sex.

impairment, in relation to a person, means—

- a) the total or partial loss of the person's bodily functions, including the loss of a part of the person's body; or
- b) the malfunction, malformation or disfigurement of a part of the person's body; or
- c) a condition or malfunction that results in the person learning more slowly than a person without the condition or malfunction; or
- d) a condition, illness or disease that impairs a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or
- e) the presence in the body of organisms capable of causing illness or disease; or
- f) reliance on a guide, hearing or assistance dog, wheelchair or other remedial device;

whether or not arising from an illness, disease or injury or from a condition subsisting at birth, and includes an impairment that—

- g) presently exists; or
- h) previously existed but no longer exists.

lawful sexual activity means a person's status as a lawfully employed sex worker, whether or not self-employed.

parent includes—

- a) step-parent; and
- b) adoptive parent; and
- c) foster parent; and
- d) guardian.

parental status means whether or not a person is a parent.

race includes—

- a) colour; and
- b) descent or ancestry; and
- c) ethnicity or ethnic origin; and
- d) nationality or national origin.

relationship status means whether a person is—

- a) single; or
- b) married; or
- c) married to another person, but living separately and apart from the other person; or
- d) divorced; or
- e) widowed; or
- f) a de facto partner; or
- g) a civil partner.

religious activity means engaging in, not engaging in or refusing to engage in a lawful religious activity.

religious belief means holding or not holding a religious belief.

sexuality means heterosexuality, homosexuality or bisexuality.

Appendix D: Key sections which affect human rights

The table on the following pages provides a list of key provisions when human rights are affected [section 58(5)], and the particular rights the Commission has identified in a preliminary rights identification process.

Section	Content	Rights affected under <i>Human Rights Act 2019</i>
Protected attributes (s 7)	Prohibits discrimination on the basis of 16 attributes. <i>Noting a potential for further attributes and change in name or definition of attributes to achieve compatibility.</i>	Right to equality (s 15) Freedom of thought, conscience, religion and belief (s 20) Protection of families and children (s 26) Cultural rights – generally (s 27) Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (s 28)
Work		
Genuine occupational requirements (s 25)	Allows a person to impose genuine occupational requirements for a position.	Right to equality (s 15)
Genuine occupational requirements religious school & bodies (s 25(2) to (8))	If it is a genuine occupational requirement that a person act in a way consistent with the employer's religious belief during the course of or in connection with the work, the employer may discriminate if the person openly acts in a way that is contrary to the employer's religious beliefs.	Right to equality (s 15) Freedom of thought, conscience, religion and belief (s 20)
Residential domestic services (s 26)	Allows discrimination on <u>all grounds except race</u> in relation to domestic workers in a person's home.	Right to equality (s 15) Privacy and reputation, including 'home' (s 25)
Residential childcare services (s 27)	Allows discrimination on <u>all grounds except race</u> in relation to workers caring for children in a person's home.	Right to equality (s 15) Privacy and reputation, including 'home' (s 25) Protection of families and children (s 26)

Work with children (s 28)	<p>(1) Allows discrimination where person convicted of offence of a sexual nature involving a child, or person disqualified from working with children.</p> <p>(2) Allows discrimination on the basis of lawful sexual activity and gender identity in work involving the care or instruction of children.</p>	<p>Right to equality (s 15)</p> <p>Protection of families and children (s 26)</p>
Single sex accommodation (s 30)	Allows discrimination on the basis of <u>sex</u> in the work area where live-in accommodation is supplied that is not equipped with separate sleeping accommodation for people of each sex, and supplying separate sleeping accommodation would impose unjustifiable hardship.	<p>Right to equality (s 15)</p> <p>Privacy and reputation, including 'home' (s 25)</p>
Workers to be married couple (s 31)	Allows discrimination on the basis of <u>relationship status</u> .	<p>Right to equality (s 15)</p> <p>Protection of families and children (s 26)</p>
Retiring age for partners (s 32)	Allows <u>age</u> limit and retiring age for partnerships.	Right to equality (s 15)
Youth wages (s 33)	Workers under the age of 21 may be remunerated according to their <u>age</u> .	<p>Right to equality (s 15)</p> <p>Protection of children (s 26)</p>
Special terms if job capacity is restricted by impairment (s 34)	Allows discrimination on the basis of <u>impairment</u> by imposing special terms where the person has a restricted capacity to do the work, or requires special conditions to do the work.	Right to equality (s 15)
Special services or facilities (s 35)	Allows discrimination on the basis of <u>impairment</u> in work where supplying special services or facilities for the person would impose unjustifiable hardship.	Right to equality (s 15)
Circumstances of impairment (s 36)	Allows discrimination on the basis of <u>impairment</u> in work if the circumstances of the impairment would impose unjustifiable hardship.	Right to equality (s 15)

Education

Single sex, religion, impairment educational institution (s 41)	Allows an educational authority to operate an educational institution wholly or mainly for students of a particular <u>sex</u> , <u>religion</u> , or general or specific <u>impairment</u> .	Right to equality (s 15) Right to education (s 36) Freedom of thought, conscience, religion and belief (s 20) Protection of families and children (s 26)
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Age-based admission scheme (s 43)	Allows an educational authority to select students on the basis of an admission scheme that has a minimum qualifying <u>age</u> .	Right to equality (s 15) Protection of families and children (s 26) Right to education (s 36)
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Special services or facilities required (s 44)	Allows an educational authority to discriminate on the basis of <u>impairment</u> where supplying special services or facilities for the student would impose unjustifiable hardship.	Right to equality (s 15) Protection of families and children (s 26) Right to education (s 36)
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Goods and services

Assisted reproductive technology (s 45A(1))	Allows discrimination on the grounds of relationship status or <u>sexuality</u> .	Right to equality (s 15) Protection of families and children (s 26) Privacy and reputation (s 25) Right to health services (s 37)
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Not-for-profit associations (s 46(2))	Allows discrimination by not-for-profit associations on <u>all grounds</u> .	Right to equality (s 15) Right to health services (s 37) Protection of families and children (s 26)
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Age-based benefits (s 49)	Allows a person to supply benefits and concessions on the basis of <u>age</u> .	Welfare measure (s 15(5))
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Children to be accompanied by an adult (s 50)	Allows a person supplying goods and services to a <u>minor</u> to require the minor to be accompanied by an adult if there is a reasonable risk or disruption or danger to the minor or others.	Right to equality (s 15) Protection of families and children (s 26)
Special services or facilities required (s 51)	Allows a person to discriminate on the basis of <u>impairment</u> in supplying goods or services, where supplying special services or facilities for the person would impose unjustifiable hardship.	Right to equality (s 15)
Superannuation		
Commonwealth exemption (s 59)	Allows discrimination on basis of <u>sex</u> or <u>relationship status</u> if the discrimination is otherwise permitted under Sex Discrimination Act.	Right to equality (s 15)
Existing superannuation fund conditions (s 60)	Allows discrimination on the basis of <u>age</u> or <u>impairment</u> in a superannuation fund condition that was in existence before 9 December 1992.	Right to equality (s 15)
New superannuation fund conditions – actuarial data (s 61)	Allows discrimination on the basis of <u>age</u> or <u>impairment</u> in a superannuation fund condition, if the condition is based on reasonable actuarial or statistical data and condition is reasonable.	Right to equality (s 15)
New superannuation fund conditions – other data (s 62)	Allows discrimination on the basis of <u>age</u> or <u>impairment</u> in a superannuation fund condition, if there is no actuarial or statistical data, but the condition is based on other reasonable data and condition is reasonable.	Right to equality (s 15)
New superannuation fund conditions – no data (s 63)	Allows discrimination on the basis of <u>age</u> or <u>impairment</u> in a superannuation fund condition, if there is no actuarial or statistical or other data and condition is reasonable.	Right to equality (s 15)

Application of Commonwealth occupational superannuation standard (s 64)	Allows discrimination on the basis of <u>age</u> or <u>impairment</u> in superannuation because of application of standard under the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).	Right to equality (s 15)
Compliance with Commonwealth legislation (s 65)	Allows discrimination on the basis of <u>age</u> or <u>impairment</u> in superannuation to comply with a Commonwealth Act or to obtain a benefit or avoid a penalty under such Act.	Right to equality (s 15)
Insurance		
Commonwealth exemption (s 73)	Allows discrimination on basis of <u>sex</u> if the discrimination is otherwise permitted under SDA.	Right to equality (s 15)
Actuarial or statistical data (s 74)	Allows discrimination on the basis of <u>age</u> or <u>impairment</u> , if it is based on reasonable actuarial or statistical data and condition is reasonable.	Right to equality (s 15)
No actuarial or statistical data (s 75)	Allows discrimination on the basis of <u>age</u> or <u>impairment</u> , if there is no actuarial or statistical data, and discrimination is reasonable.	Right to equality (s 15)
Disposition of land		
Disposition by will or gift (s 79)	Allows discrimination by way of a testamentary disposition or gift.	Right to equality (s 15)
Sites of cultural or religious significance (s 80)	Allows discrimination on the basis of <u>sex</u> , <u>age</u> , <u>race</u> , or <u>religion</u> if the interest in land or a building is of cultural or religious significance, and the discrimination is in accordance with the culture or doctrine of the religion, and is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion.	Right to equality (s 15) Freedom of thought conscience, religion and belief (s 20) Cultural rights (s 27) Cultural rights of Aboriginal peoples and Torres Strait Islander peoples (s 28)

Accommodation

Shared accommodation (s 87)	Allows discrimination on <u>all grounds</u> , for sharing part of main home with no more than 3 people.	Right to equality (s 15) Property rights (s 24) Freedom of movement (s 19) Privacy and reputation (including 'home') (s 25)
Accommodation for workers (s 88)	Employer may provide different standards of accommodation for workers based on number of people in the worker's household, and the class of work performed or nature of position held.	Right to equality (s 15) Privacy and reputation (including 'home') (s 25) Protection of families and children (s 26)
Accommodation for students (s 89)	Education authority that operates an educational institution for students of a particular, <u>sex</u> , <u>religion</u> , or <u>impairment</u> may provide accommodation limited to those students.	Right to equality (s 15) Property rights (s 24) Privacy and reputation (including 'home') (s 25) Protection of families and children (s 26) Right to education – (s 36)
Accommodation with religious purposes (s 90)	Religious body that provides accommodation may discriminate if it is in accordance with the doctrine of the religion concerned and is necessary to avoid offending the religious sensitivities of people of the religion.	Right to equality – (s 15) Freedom of thought conscience, religion and belief (s 20) Property rights (s 24)
Accommodation with charitable purposes (s 91)	A charitable body that provides accommodation may discriminate on the basis of <u>sex</u> , <u>relationship status</u> , or <u>age</u> if the discrimination is in accordance with the particular purposes for which the accommodation was established by the body.	Right to equality (s 15) Welfare measures (s 15(5)) Property rights (s 24) Privacy and reputation (including 'home') (s 25) Protection of families and children (s 26)

Special services or facilities required (s 92)	Allows a person to discriminate on the basis of <u>impairment</u> in accommodation, where supplying special services or facilities for the person would impose unjustifiable hardship.	Right to equality (s 15) Property rights (s 24)
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Club membership and affairs

Minority cultures & disadvantaged people (s 97)	A club that operates to preserve a minority culture or prevent or reduce disadvantage suffered by people of a group, may exclude applicants who are not members of the group.	Right to equality (s 15) Welfare measures (s 15(5)) Freedom of thought conscience, religion and belief (s 20) Cultural rights (s 27) Cultural rights of Aboriginal peoples and Torres Strait Islander peoples (s 28)
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Reasonable sex discrimination (s 98)	Allows a club to discriminate on the basis of <u>sex</u> where it is not practicable for males and females to enjoy the benefit at the same time, and both males and females can access equivalent benefits.	Right to equality (s 15)
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Risk of injury (s 99)	Allows a club to exclude a <u>minor</u> if there is a reasonable risk of injury to a minor or other people.	Right to equality (s 15) Protection of families and children (s 26)
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Special services or facilities (s 100)	Allows a club to discriminate on the basis of <u>impairment</u> if supplying special services or facilities needed by the person would impose unjustifiable hardship on the club.	Right to equality (s 15)
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General exemptions

Welfare measures (s 104)	May do an act to benefit group of people with an attribute for whose welfare the act was designed if the purpose is not inconsistent with the AD Act.	Right to equality (s 15) Welfare measures (s 15(5))
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Equal opportunity measures (s 104)	Allows an act to promote equal opportunity for a group of people with an attribute if the purpose is not inconsistent with the AD Act.	Right to equality (s 15) Welfare measures (s 15(5))
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Compliance with legislation etc. (s 106)	May do an act that is necessary to comply with court order etc. or provision of an Act existing at June 1992.	Right to equality (s 15)
Compulsory retirement age under legislation etc. (s 106A)	Allows discrimination on the basis of <u>age</u> by the imposition of compulsory retirement age for certain professions	Right to equality (s 15)
Citizenship or visa requirements imposed under State government policies (s 106B)	Allows discrimination on the basis of citizenship and visa status <u>race</u> by State government entities in relation to financial or other assistance, services, or support.	Right to equality (s 15)
Accommodation for use as sex work (s 106C)	Accommodation provider may refuse to supply accommodation, evict a person, or otherwise discriminate if the accommodation is to be used in connection with sex work.	Right to equality (s 15) Property rights (s 24) Privacy and reputation (including 'home') (s 25)
Public health (s 107)	May do an act that is reasonably necessary to protect public health.	Right to equality (s 15) Freedom of movement (s 19) Privacy and reputation (s 25) Right to liberty and security of person (s 29)
Workplace health and safety (s 108)	May do an act that is reasonably necessary to protect the health and safety of people at a place of work.	Right to equality (s 15) Right to liberty and security of person (s 29)
Religious bodies (s 109)	The Act does not apply to various activities of religious bodies – ordination etc. in relation to religious observance, as well as all other conduct that is in accordance with the doctrine of religion concerned and necessary to avoid offending religious sensitivities of people of the religion (other than in work or education).	Right to equality (s 15) Freedom of thought conscience, religion and belief (s 20) Right to health services (s 37)
Charities (s 110)	A person may include a discriminatory provision in a document that provides exclusively	Right to equality (s 15) Welfare measures (s 15(5))

	for charitable benefits, and may do an act required to give effect to the provision.	
Sport (s 111)	Allows discrimination in competitive sporting activities for people over the age of 12 years, on the basis of <u>sex</u> , <u>age</u> , <u>impairment</u> & <u>gender identity</u> .	Right to equality (s 15)
Legal incapacity (s 112)	May discriminate where legal incapacity is relevant to the transaction.	Right to equality (s 15) Protection of families and children (s 26)
Tribunal (s 113)	Tribunal may grant an exemption.	Right to equality (s 15) Fair hearing (s 31)
Process		
Making a complaint (s 136)	Complaint to be in writing.	Right to equality (s15) Fair hearing (s 31)
Commissioner must reject certain complaints (s 139)	Complaints that are frivolous, trivial, vexatious, misconceived, or lacking in substance must be rejected.	Right to equality (s15) Fair hearing (s 31)
Discretion to reject certain complaints (s 140)	Commissioner may reject complaints where there are concurrent proceedings elsewhere, or the subject has or could be effectively or conveniently dealt with by another entity.	Right to equality (s15) Fair hearing (s 31)
Commissioner must lapse certain complaints (s 168)	Complaints that are frivolous, trivial, vexatious, misconceived, or lacking in substance must be lapsed.	Right to equality (s 15) Fair hearing (s 31)
Discretion to lapse certain complaints (s 168A)	Complaints where the subject has been or could be effectively or conveniently dealt with by another entity may be lapsed.	Right to equality (s 15) Fair hearing (s 31)
Commissioner may obtain information &	Commissioner may direct a person to provide information or documents.	Privacy and reputation (s 25)

documents (s 156)

Other sections

Requests for information (s 124)	Unlawful to ask for information upon which discrimination might be based.	Right to equality (s15) Freedom of expression (s 21) Privacy and reputation (s 25)
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Discriminatory advertising (s 127)	Offence to publish or display an advertisement that indicates a person intends to contravene the AD Act.	Right to equality (s 15) Freedom of expression (s 21)
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Prisoners – *Corrective Services Act 2006* modifications to Anti-Discrimination Act

Part 12A Discrimination Complaints	Requires prisoner to engage with internal complaints process before lodging complaint with Commission where it is a complaint about prisons, community corrections or other service providers. Modifies the tests for direct and indirect discrimination, and restrictions compensation orders of the tribunal.	Right to equality (s15) Humane treatment when deprived of liberty (s 30)
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