

Table of Implementation: Reforms to Federal Discrimination Laws

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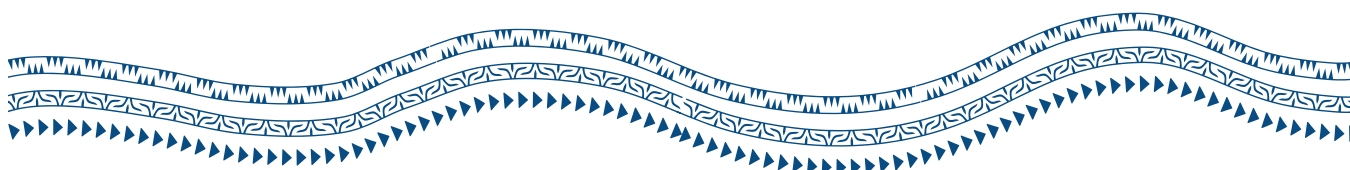
The following table summarises the priority to be given to each of the 38 recommendations made in the Commission's 2021 [Position Paper](#):

- The reforms already implemented in whole or in part (highlighted in green).
- Stage one (highlighted in orange): addressing immediate priorities and fixing longstanding problems in the operation of federal discrimination law (year 1).
- Stage two (highlighted in red): introducing reforms that require more substantive and holistic changes to legislation (years 2–3).

No	Reform	Status
1-4	Positive duty (currently SDA only)	Introduced into the SDA in December 2022 by the <i>Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022</i> (Cth) (Second Respect@Work Act). Review to be conducted in 2026.
5	Secrecy provisions	AGD is currently conducting a Review of Secrecy Provisions . To report to Government by 31 August 2023.
6	Data on trends in complaints	Second stage proposal.
7	Non-disclosure agreements	In December 2022, the Respect@Work Council published Guidelines on the Use of Confidentiality Clauses in the Resolution of Workplace Sexual Harassment Complaints in response to recommendation 38 of the Respect@Work report.
8	Guidelines funding	Second stage proposal.
9-13	Other co-regulatory mechanisms	Second stage proposals.
14	Own motion inquiry into systemic unlawful discrimination	Div 4B of Part II of the AHRC Act (ss 35L–35Q) now gives the Commission the function of inquiring into any matter that may relate to systemic unlawful discrimination.
15	Enforcement powers	Second stage proposal
16	Costs	AGD is currently conducting a Review into an appropriate cost model for Commonwealth anti-discrimination laws in response to recommendation 25 of the Respect@Work report.

No	Reform	Status
17-19	Evidentiary issues	<u>Second stage</u> proposals.
20	Representative actions	New ss 46POA and 46POB were inserted into the AHRC Act in December 2022 by the Second Respect@Work Act. These provisions permit a representative application to be made to a federal court alleging unlawful discrimination.
21	Timeframe for lodging complaints	Section 46PH(1)(b) of the AHRC Act was amended in December 2022 by the Second Respect@Work Act to standardise the discretionary termination ground and provide that any complaint of unlawful discrimination may be terminated if lodged more than 24 months after the alleged conduct occurred.
22-23	Intermediate adjudicative process	<u>Second stage</u> proposal.
24	Volunteers and interns	Volunteers and interns were provided with protection against sexual harassment through changes to the SDA in September 2021 made by the <i>Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021</i> (Cth) (First Respect@Work Act). This was done through applying the protections against sexual harassment to 'workers' and applying the prohibitions to 'persons conducting a business or undertaking' (PCBUs). These changes should also apply to sex discrimination and be rolled out to each of the other discrimination Acts.
25	Family and carer responsibilities	Extend protections against family and carer responsibility discrimination to: • indirect as well as direct discrimination • all areas of public life, not just in the area of work.
26	Religious discrimination protections	This is part of Government's current agenda – for example, see the terms of reference for the current ALRC inquiry.
27-28	Irrelevant criminal record	<u>Second stage</u> proposal.
29	Review of permanent exemptions	<u>Second stage</u> proposal.
30	Comparator test	<u>Second stage</u> proposal.

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31	Reasonable adjustments	Include a 'standalone' requirement to provide reasonable adjustments (unless this would cause unjustifiable hardship), in order to avoid the problem created by <i>Sklavos</i> that a person claiming that reasonable adjustments were not provided must also establish that they were not provided <i>because</i> the person has a disability.
32	Indirect discrimination test	<u>Second stage</u> proposal.
33	Victimisation	The ability to bring civil proceedings alleging victimisation was confirmed through both First Respect@Work Act (in relation to the SDA) and the Second Respect@Work Act (in relation to the other federal discrimination laws).
34	Special measures	Amend the RDA to overcome the decision in <i>Maloney</i> and require that 'special measures' for the purposes of the RDA take into account the understanding given to article 1(4) of ICERD by the CERD Committee.
35	Intersectional discrimination	<u>Second stage</u> proposal.
36	Notification obligations	Amend s 46PF(7)(c) to remove the obligation to notify individuals who are the subject of adverse allegations but who are not named respondents.
37	Paris Principles	Still to implement: - include a definition of 'human rights' in the AHRC Act that includes all of Australia's international human rights obligations - refer to Paris Principles in objects clause of the AHRC Act - regular re-baselining of Commission's funding
38	Further review	Review of reforms after 5 years





AN AUSTRALIAN CONVERSATION ON HUMAN RIGHTS

Further information

Australian Human Rights Commission

GPO Box 5218

SYDNEY NSW 2001

Telephone: (02) 9284 9600

Complaints Infoline: 1300 656 419

General enquiries and publications: 1300 369 711

TTY: 1800 620 241

Fax: (02) 9284 9611

Website: www.humanrights.gov.au

Email: publications@humanrights.gov.au



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