HUMAN RIGHTS AND ANTI-DISCRIMINATION BILL 2012

Submission to the Senate Standing Committee on Legal and Constitutional Affairs

AUSTRALIAN INDUSTRY GROUP

December 2012

Summary of Ai Group's position

The Australian Industry Group (**Ai Group**) welcomes the opportunity to express its views to the Senate Standing Committee on Legal and Constitutional Affairs about the exposure draft of the *Human Rights and Anti-Discrimination Bill 2012* (**Bill**).

We are pleased that an exposure draft has been released and referred to the Committee rather than the Bill being introduced into Parliament in its present form. In Ai Group's view, the Bill still needs more work in several key areas before it is introduced into Parliament.

Ai Group supports the concept of consolidating the five federal anti-discrimination laws into one piece of legislation, provided that the terms of the Bill are appropriate. However, we are concerned that the Bill as currently drafted would cause more problems that it resolves. We are particularly concerned about the following aspects of the Bill:

- The Bill 'levels-up' the federal anti-discrimination laws to the highest entitlements in any of the individual laws and imposes the most burdensome obligations on employers and other parties;
- The Bill introduces a shifting burden of proof, which would require the complainant to merely show a prima facie case, with the other party then required to prove that their conduct was justified;
- The Bill defines discrimination in an inappropriate way. The definition incorporates a subjective test, requiring an affected party to merely show that they felt harassed, offended, intimidated or insulted by another person's conduct, regardless of whether the conduct would be considered discriminatory or offensive by a reasonable person;

- The extension of protection against discrimination to “associates” of a person who possesses a protected attribute is not appropriate; and
- The concurrent operation of the Bill with State and Territory anti-discrimination laws and the anti-discrimination provisions of the *Fair Work Act 2009*, would impose an onerous and unreasonable regulatory burden upon employers. The Bill does not do enough to reduce existing overregulation in anti-discrimination law.

The table below outlines Ai Group’s position on key provisions of the Bill which are directly relevant to employers and the employment relationship. The following abbreviations are used in the table:

- Ai Group — The Australian Industry Group
- Bill — *Human Rights and Anti-Discrimination Bill 2012*
- RDA — *Racial Discrimination Act 1975*
- SDA — *Sex Discrimination Act 1984*
- DDA — *Disability Discrimination Act 1992*
- ADA — *Age Discrimination Act 2004*
- AHRCA — *Australian Human Rights Commission Act 1986*
- FW Act — *Fair Work Act 2009*
- Commission — *Australian Human Rights Commission*

Provisions of the Bill	***Ai Group's position***	***Comments***
Part 1-1 – Preliminary		
Section 3 – Objects of this Act	Amendment needed	Ai Group supports the proposed objects of the Bill with the amendment below: *(1) The objects of this Act are as follows:* *(a) to eliminate unlawful discrimination, sexual harassment and racial vilification, consistently with Australia's obligations under the human rights instruments and the ILO instruments (see subsections (2) and (3))*
Part 1-2 – Interpretation		
Section 6 – The dictionary Definition of ***associate***	Amendment needed	The definition of *associate* in the Bill is extremely broad and captures any person with whom a person has a personal, family, caring, business or social relationship. Subsection 19(2) of the Bill extends the *protected attributes* in section 17 to associates of a person with a protected attribute and thereby enabling *associates* to make a complaint and seek a remedy for unlawful conduct. The concept of *associate* is a feature of the RDA and DDA. It is not a feature of the SDA, ADA, or AHRCA. We do not agree that this feature should extend to each of the attributes in section 17 of the Bill as it would cast the net too far for those who are able to make a complaint and seek a remedy for unlawful conduct. For example, as drafted, the Bill would enable work colleagues of a person to make a complaint on their own behalf to the Commission because the employer discriminated against another employee due to his/her industrial history. This would potentially expose an employer to multiple actions for the same course of conduct. The Bill should be amended so that the status quo is maintained, that is, the concept of *associate* should be confined to attributes currently protected by the DDA and RDA.

Provisions of the Bill	***Ai Group's position***	***Comments***
Definition of ***Commonwealth conduct***	Amendment needed	*Commonwealth conduct* should only relate to conduct engaged in by Commonwealth Government and/or Territory Government Departments and agencies. Therefore, paragraphs (b) and (c) of the definition should be deleted.
Definition of ***industrial history***	Not supported	Ai Group does not agree that the attributes for which a complaint may be dealt with by the Courts should be expanded to include those attributes covered by the AHRCA. At the present time, while a complaint can be made to the Commission on the basis of one of these attributes, the Courts are not empowered to make orders. Currently, these attributes are mainly dealt with under State anti-discrimination laws and under the anti-discrimination provisions of the FW Act. However, if the Bill is to cover these attributes, the proposed definition of *industrial history* in the Bill appropriately only includes lawful industrial activity. Employers need to have the ability to address unlawful industrial activity without being exposed to claims under the Bill.
Part 1-3 – Application of this Act		
Section 10 – Act applies throughout Australia	No problems identified	Ai Group has not identified any problems with the proposed geographical application the Bill.
Sections 11, 12 and 13 – Constitutional powers	No problems identified	Ai Group has not identified any problems with these sections of the Bill.
Section 14 – Interaction with State and Territory anti-discrimination laws	Not supported	Ai Group does not support the concurrent application of State and Territory anti-discrimination Acts with the Bill. The proposed concurrent application would increase red tape for employers and exacerbate the problem of forum shopping. The Bill should override State and Territory anti-discrimination laws to the extent of any inconsistency. This approach would reduce the regulatory burden upon employers.

Provisions of the Bill	***Ai Group's position***	***Comments***
Part 2-1 – The protected attributes		
Section 17 – The *protected attributes*	Amendment needed	Ai Group supports the preservation of the attributes protected by the RDA, SDA, DDA, and ADA in the Bill. Ai Group also does not oppose the inclusion of sexual orientation as a protected attribute. However, Ai Group does not agree that attributes for which a complaint may be made to the Commission and then dealt with by the Courts should be expanded to include those attributes covered by the AHRCA. The AHRCA protects attributes such as *industrial history*, *medical history*, *nationality or citizenship*, *political opinion*, and *religion*, and provides complainants with access to a facilitative and consultative process in the Commission. It does not enable complaints to be dealt with by a Court. Nonetheless, parties can pursue actions under State and Territory laws and the anti-discrimination provisions in the FW Act. If the attributes in the AHRCA are given the same status as those attributes protected by the RDA, SDA, DDA, and ADA, this would be very burdensome on employers as they would be forced to comply with another layer of regulation in an area of law which is already over-regulated. It would also exacerbate the problem of forum shopping with complainants choosing the jurisdiction in which their complaint would more likely succeed or where they are more likely to achieve a higher monetary settlement or order. Ai Group proposes that the status quo be maintained in respect of the attributes in the AHRCA. The provisions of the AHRCA, in so far as they deal with these attributes, should be preserved or similar provisions included in the Bill.

Provisions of the Bill	***Ai Group's position***	***Comments***
Part 2-2 – Unlawful discrimination		
Subsections 19(1) and 19(2) – Meaning of discrimination (direct discrimination) Paragraph 20(1)(a) – Proposing to treat a person unfavourably	Amendment needed	Subsections 19(1) and 19(2) of the Bill propose a new test for direct discrimination, i.e. the *unfavourable treatment test*. Ai Group has identified a number of significant problems with the *unfavourable treatment test* in the Bill and it is essential that amendments are made. <u>Subjective test</u> The *unfavourable treatment test*, as it appears in subsections 19(1), 19(2) and 20(1) is a purely subjective test. The absence of any objectivity would mean that a person could complain to the Commission of *unfavourable treatment* on the basis of that person's feelings. This is very significant as a respondent's conduct would be judged by the complainant's reaction to that conduct, whether the reaction be reasonable or not. An element of objectivity is included in the current tests for discrimination in the RDA, SDA, DDA and ADA, and it is important that objectivity or 'reasonableness' is a central element of any test in the Bill. This is particularly important when considered in light of the *justifiable conduct* exception in section 23 of the Bill. The new exception of *justifiable conduct* (described below) is an objective test, i.e. the respondent needs to show that a reasonable person in the circumstances would have considered that the conduct engaged in by the respondent would achieve a legitimate aim (paragraph 23(3)(c)). The result would be that the complainant need only satisfy a very 'low bar' to ground his/her claim (as well as being assisted by the shifting burden of proof), and the respondent is burdened with the task of either: • Disproving that the complainant felt harassed, offended, insulted or intimated (because of the shifting burden of proof); or • Satisfying the much higher bar that the conduct was *justifiable* because a reasonable person in the circumstances would have done the same.

Provisions of the Bill	***Ai Group's position***	***Comments***
		This makes an allegation of discrimination much harder for a respondent to overcome and would likely result in the payment of 'go away money' to complainants whether the claims are meritorious or not. <u>Unfavourable treatment expanded widely beyond discriminating conduct</u> Subsections 19(1), 19(2) and 20(1) characterise discrimination as *unfavourable treatment,* thereby vastly expanding the legal definition of what discrimination is. Discrimination is generally defined as "any distinction, exclusion, restriction, or preference made on a particular basis …"[1]. *Unfavourable treatment* is defined in the Bill as conduct that is harassing, offending, insulting or intimidating. Conduct that is harassing, offending, insulting or intimidating has traditionally been the test for harassment[2] and racial vilification[3]. Sexual harassment and racial vilification is considered by the Bill as standalone unlawful conduct in sections 49 and 51 respective, and the tests for sexual harassment and racial vilification are virtually the same except that they include an objective element of *reasonableness*. This makes the Bill inconsistent in this regard. Paragraph 19(2)(b) includes offending and insulting behaviour as *unfavourable treatment*. Conduct to which someone would take offence or feel insulted is not akin to discriminating conduct. Subsections 19(1), 19(2) and 20(1) of the Bill need to be reconsidered and redrafted to reflect true discriminating conduct.

[1] Encyclopaedic Australian Legal Dictionary, 2011
[2] See section 28A of the SDA however sexual harassment under the SDA is an objective test
[3] See section 18C of the RDA however racial vilification under the SDA includes humiliating conduct and is an objective test

Provisions of the Bill	***Ai Group's position***	***Comments***
Subsection 19(3) – Meaning of discrimination (indirect discrimination)	No problems identified	Subsection 19(3) of the Bill proposes a new test for indirect discrimination. Ai Group has not identified a problem with this test. Unlike the *unfavourable treatment* test it has an objective element (see paragraph 19(3)(b)) and incorporates the essential element of *distinction, exclusion, restriction or preference* by use of the word *disadvantage* (see paragraphs 19(3)(b) and 19(6)(b)).
Subsection 19(4) – Extended meaning of having a protected attribute.	Amendment needed	See our comments above regarding the definition of *associate* in section 6 of the Bill.
Section 21 – Special measures to achieve equity are not discrimination	No problems identified	Ai Group has not identified any problems with section 21 of the Bill.
Section 22 – When discrimination is unlawful	Amendment needed	Section 22 of the Bill lists the areas of public life where discrimination is unlawful. Subsection 22(2) is a non-exhaustive list of *areas of public life*. The list, as it appears, captures those areas of discrimination that are already covered by the RDS, SDA, DDA and ADA and is sufficiently expansive. It is not necessary that it be a non-exhaustive list. This would create significant uncertainty and potential interpretation problems. The phrase *(but are not limited to)* in subsection 22(2) should be deleted. Subsection 22(3) provides that discrimination is unlawful in respect of a select range of protected attributes, if that discrimination is connected with work and work-relates areas. See comments above on section 17 of the Bill.
Section 23 – Exception of justifiable conduct	Amendment needed	Ai Group has not identified any problems with how the exception of *justifiable conduct* is expressed in the Bill, but we are concerned that this exception does not apply to other unlawful conduct in Part 2-3 of the Bill. It is important that subsection 23(1) is amended so to make it clear that the exception applies to all unlawful conduct. For example: *(1) The exception in this section applies in relation to all protected attributes and all conduct that would otherwise be unlawful*

Provisions of the Bill	***Ai Group's position***	***Comments***
Section 24 – Exception for inherent requirements of work and Section 25 – Discrimination on ground of disability: meaning of *reasonable adjustment*	Amendment needed	See above for section 23.
Section 26 – Exception for conduct necessary to comply with Commonwealth Acts and instruments subject to disallowance Section 27 – Exception for discrimination in accordance with certain Commonwealth migration and health laws Section 28 – Exception for conduct in accordance with Commonwealth laws on ground of nationality or citizenship Section 29 – Exception for conduct in accordance with laws that treat young people differently because of their vulnerability etc. Section 30 – Exception for conduct in accordance with laws prescribed by regulations Section 31 – Exception for court orders, determinations and industrial instruments Section 39 – Exceptions for insurance, superannuation and credit Section 41 – Exception for accommodation for employees Section 42 – Exception for junior rates	Amendment needed	See above for section 23.

Provisions of the Bill	***Ai Group's position***	***Comments***
Section 45 – Exceptions (other than justifiable conduct) don't apply to discrimination because of associates, assumptions	Not supported	Section 45 excludes all exceptions in the Bill, other than *justifiable conduct*, from applying to discrimination falling within subsection 19(4), i.e. the provision which extends protected attributes to associates and assumptions that a person or associate of a person has a protected attribute. Each of the exceptions in the Bill should apply to discriminatory conduct. It would be unfair to respondents trying to defend complaints to exclude particular exceptions from applying, particularly given the wide ambit of *discrimination* under the Bill and the shifting burden of proof. Section 45 should be deleted from the Bill.
Section 47 – Review of exceptions	No problems identified	Ai Group supports this review and a three year timeframe is appropriate.
Part 2-3 – Other unlawful conduct		
Section 49 – When a person *sexually harasses* another person	No problems identified with section 49	Section 49 of the Bill reflects section 28A of the SDA. Ai Group supports the adoption of the old provision into the Bill. However, as identified above, subsections 19(1) and 19(2) are directly inconsistent with section 49 in so far that they both deal with harassing conduct but the former is a subjective test and the latter is an objective test. Subsections 19(1) and 19(2) need to be reconsidered and redrafted so that the test for *discrimination* is an objective test and reflects true discriminating conduct.
Section 50 – When sexual harassment is unlawful	No problems identified	Ai Group has not identified any problems with section 50 of the Bill.

Provisions of the Bill	***Ai Group's position***	***Comments***
Section 51 – Racial vilification is unlawful	No problems identified with section 51	Section 51 of the Bill reflects section 18C of the RDA. Ai Group supports the adoption of the old provision into the Bill. However, as identified above, subsections 19(1) and 19(2) are directly inconsistent with section 51 in so far that they both deal with vilifying conduct but the former is a subjective test and the latter is an objective test. Subsections 19(1) and 19(2) need to be reconsidered and redrafted so that the test for *discrimination* is an objective test and reflects true discriminating conduct.
Section 52 – Request or requiring information for discriminatory purpose	No problems identified	Ai Group has not identified any problems with section 52 of the Bill.
Section 53 – Publishing etc. material indicating intention to engage in unlawful conduct	No problems identified	Ai Group has not identified any problems with section 53 of the Bill.
Section 54 – Victimisation of person for making a complaint etc.	Amendment needed	Ai Group has not identified any problems with how *victimisation* is described in section 54 of the Bill, by recommends that paragraph(1)(vi) of the Bill be amended in the following manner for the purposes of clarity: *(vi) has made an allegation that a person has engaged in unlawful conduct under this Act*.

Provisions of the Bill	*Ai Group's position*	*Comments*
Part 2-4 – Extension of liability for unlawful conduct		
Division 2 – Extension of liability for unlawful conduct (sections 56, 57 and 58)	No problems identified	Ai Group has not identified any problems with Part 2-4, Division 2 of the Bill.
Part 2-5 – Equality before the law		
Division 2 – Equality before the law for people of all races (section 60)	No problems identified	Ai Group has not identified any problems with Part 2-5, Division 2 of the Bill.
Part 3-1 – Measures to assist compliance		
Division 2 – Guidelines to assist compliance (sections 62 and 63)	Amendment needed	Ai Group supports the making of guidelines to assist people to avoid engaging in unlawful conduct and we are pleased that subsection 63(1) declares that any such guidelines are not binding or give rise to any right, defence, expectation, duty or obligation. However we do not support the inclusion of subsection 63(2) in the Bill. This subsection waters down the effect of subsection 63(1) and should be deleted. Also, the definition of *Commonwealth conduct* needs to be amended in section 6 (see above).
Section 64 – Commission may review policies or programs for compliance	No problems identified	Ai Group supports section 64 which enables the Commission to review policies and programs for compliance at the request of the employer. However, the definition of *Commonwealth conduct* needs to be amended in section 6 (see above).
Section 65 – Review reports not to be published	No problems identified	Ai Group has not identified any problems with section 65 of the Bill.

Provisions of the Bill	***Ai Group's position***	***Comments***
Section 66 – Effect of review reports	Amendment needed	Ai Group supports subsection 66(1) of the Bill which provides that a review report issued by the Commission is not binding and does not give rise to any right, defence, expectation, duty or obligation. However, we do not support the inclusion of subsection 66(2) in the Bill. This subsection waters down the effect of subsection 66(1) and should be deleted. It would deter employers from applying to the Commission for a review of their policies and programs.
Section 67 – Development etc. of action plans	No problems identified	Ai Group has not identified any problems with section 67 of the Bill.
Section 68 – Action plans may be given to Commission	No problems identified	Ai Group has not identified any problems with section 68 of the Bill.
Section 69 – Effect of action plans	Amendment needed	Ai Group supports subsection 69(1) of the Bill that declares that action plans are not binding and do not give rise to any right, defence, expectation, duty or obligation. However, we do not support the inclusion of subsection 69(2) in the Bill. This subsection waters down the effect of subsection 69(1) and should be deleted. It would operate as a major disincentive to the development of action plans.
Division 5 – Disability standards (sections 70, 71, 72, 73 and 74)	No problems identified	Ai Group has not identified any problems with Part 3-1, Division 5 of the Bill.
Section 75 – Meaning of *compliance code*	No problems identified	Ai Group has not identified any problems with section 75.
Section 76 – Process for making etc. compliance codes	Amendment needed	Compliance codes would have a significant impact upon industry and therefore section 76 should be amended to require consultation with industry representative bodies such as Ai Group before a compliance code is made or amended.
Section 77 – Duration of compliance code	No problems identified	Ai Group has not identified any problems with section 77 of the Bill.

Provisions of the Bill	***Ai Group's position***	***Comments***
Section 78 – Effect of compliance codes	No problems identified	Ai Group has not identified any problems with section 78 of the Bill.
Division 7 – Special measure determinations (sections 79, 80, 81 and 82)	No problems identified	Ai Group has not identified any problems with Part 3-1, Division 7 of the Bill.
Division 8 – Temporary exemptions (sections 83, 84, 85 and 86)	No problems identified	Ai Group has not identified any problems with Part 3-1, Division 8 of the Bill.
Part 4-1 – Making a complaint to the Commission		
Section 88 – The conduct that may be the subject of a complaint.	Amendment needed	The definition of *Commonwealth conduct* needs to be amended in section 6 (see above).
Section 89 – Who may make a complaint	Amendment needed	It is not appropriate that an affected party's representative be described as a complainant, not is it appropriate that the rights of a 'complainant proper' be extended to a representative.
Section 90 – Person must not make a complaint if another complaint has already been made	Amendment needed	Ai Group supports subsection 90(1) of the Bill as it prevents double dipping by complainants and affected parties. However subsection 90(2) could undermine the effect of subsection 90(1) as it would permit a claim to be made to the Commission despite subsection 90(1) if there are exceptional circumstances. 'Exceptional circumstances' are not defined in the Bill. Subsection 90(2) should be deleted from the Bill.
Subdivision B – Additional provisions relating to making etc. representative complaints (sections 91, 92, 93 and 94)	No problems identified	Ai Group has not identified any problems with Part 4-1, Division 3, Subdivision B of the Bill.
Subdivision C – Other matters relating to making etc. complaints (sections 95, 96, 97, 98 and 99)	No problems identified	Ai Group has not identified any problems with Part 4-1, Division 3, Subdivision C of the Bill.

Provisions of the Bill	***Ai Group's position***	***Comments***
Part 4-2 – How the Commission deals with complaints		
Section 101 – Duration of Commission's obligations to deal with complaints	No problems identified	Ai Group has not identified any problems with section 101 of the Bill.
Section 102 – Referral of industrial instruments that authorise or require conduct that would otherwise be unlawful discrimination	No problems identified	Ai Group has not identified any problems with section 102 of the Bill.
Division 4, Subdivision A – Investigation and conciliation of complaints, General provisions (sections 105 and 106)	No problems identified	Ai Group has not identified any problems with Part 4-2, Division 4, Subdivision A of the Bill.
Division 4, Subdivision B - Investigation and conciliation of complaints, Additional information relating to investigation (sections 107 and 108)	No problems identified	Ai Group has not identified any problems with Part 4-2, Division 4, Subdivision B of the Bill.
Division 4, Subdivision C - Investigation and conciliation of complaints, Additional provisions relating to conciliation (sections 109, 110 and 111)	Amendment needed	Subsection 109(2) stipulates that the Commission may invite any or all of the complainants and respondents to attend a conference. The Commission should also have the express power to request that affected parties attend a conference. Therefore we recommend that subsection 109(2)(a) be amended in the following manner: *(a) invite any or all of the complainants, affected parties or respondents to attend the conference;*
Division 5—Complaints alleging 1 Commonwealth conduct contrary to human rights that cannot be settled by conciliation (sections 112 to 116)	Amendment needed	The definition of *Commonwealth conduct* needs to be amended in section 6 (see above).

Provisions of the Bill	***Ai Group's position***	***Comments***
Section 117 – Closing a complaint	No problems identified	Ai Group has not identified any problems with section 117 of the Bill.
Part 4-3 – Applying to the Federal Court or the Federal Magistrates Court in relation to unlawful conduct		
Section 119 – When this division applies	No problems identified	Ai Group has not identified any problems with section 119 of the Bill.
Section 120 – Application to court alleging unlawful conduct	Amendment needed	Applications to a court should not be permitted for those attributes covered by the AHRCA as discussed above.
Section 121 – Leave required in some circumstances	No problems identified	Ai Group has not identified any problems with section 121 of the Bill.
Section 122 – Persons who may make an application	No problems identified	Ai Group has not identified any problems with section 122 of the Bill.
Section 123 – Time limits	Amendment needed	Subsection 123(3) should be amended to specify that the time limits may only be extended by the Court in exceptional circumstances.

Provisions of the Bill	***Ai Group's position***	***Comments***
Section 124 – Burden of proof in proceedings under section 120 etc.	Not supported	Ai Group does not support the shifting burden of proof in section 124 as it would place the respondent in the extremely difficult position of disproving a claim of unlawful discrimination, which is made even more difficult because unlawful discrimination in the Bill is based on a subjective test.[4] The shifting burden of proof would lead to similar problems as are being experienced with the FW Act's general protections. Since the introduction of the general protections, employers have found it increasingly difficult to defend claims of adverse action and in many cases they reluctantly opt to settle claims, even if they are without merit. In the year 2011-2012, 2901 general protections claims were made[5], this is an increase of 18% on the year before.[6] In the year 2009-2010 only 1442 general protection claims were made.[7] Consistent with longstanding principles of justice, applicants should have the burden of proving their claim and this should be reflected in section 124.
Section 125 – Orders that court may make on application under section 120	No problems identified	Ai Group has not identified any problems with section 125 of the Bill.
Section 126 – Interim injunctions etc. by court to which application is made under section 120	No problems identified	Ai Group has not identified any problems with section 126 of the Bill.
Section 127 – Report by Commission to court	No problems identified	Ai Group has not identified any problems with section 127 of the Bill.

[4] See section 19 of the Bill
[5] Including dismissal, unlawful termination, and non-dismissal related general protections claims.
[6] See Fair Work Australia's 2011-2012 Annual Report.
[7] See Fair Work Australia's 2010-2011 Annual Report.

Provisions of the Bill	***Ai Group's position***	***Comments***
Section 128 – Interim injunction etc. to maintain status quo	No problems identified	Ai Group has not identified any problems with section 128 of the Bill.
Section 129 – Right of representation	Amendment needed	Subsection 129(1) should be amended to enable parties to be represented by officers and staff of registered organisations of employers and employees. Subsection 129(2) should be amended to enable officers and staff of registered organisations of employers and employees to charge a fee for representation.
Section 130 – Assistance in proceedings before the court	No problems identified	Ai Group has not identified any problems with section 130 of the Bill.
Section 131 – Court not bound by technicalities	No problems identified	Ai Group has not identified any problems with section 131 of the Bill.
Section 132 – Discharge or variation of order or injunction under this Part	No problems identified	Ai Group has not identified any problems with section 132 of the Bill.
Section 133 – Costs	No problems identified	Ai Group supports section 133. We agree that the default position in respect of costs should be that each party bears its own costs, but the Court should retain a discretionary power to make an order for costs or security for costs if there are circumstances to justify it.
Part 5-1 – Inquiries		
Part 5.1 – Inquiries (sections 135 to 143)	No problems identified	Ai Group has not identified any problems with Part 5.1 of the Bill.
Chapter 6 – Australian Human Rights Commission		
Chapter 6 – Australian Human Rights Commission (sections 144 to 200)	No problems identified	Ai Group has not identified any problems with Chapter 6 of the Bill.

Provisions of the Bill	***Ai Group's position***	***Comments***
Part 7-1 – Miscellaneous		
Section 201 – Failure to comply with notice requiring the provision of information etc.	Amendment needed	An exclusion should be included for a party who has a reasonable excuse for not providing a document.
Section 202 – Failure to comply with notice requiring attendance at conference	Amendment needed	An exclusion should be included for a party who has a reasonable excuse for not attending a conference.
Section 203 – Compensation for acquisition of property	No problems identified	Ai Group has not identified any problems with section 203 of the Bill.
Section 204 – Protection of Commission etc. from civil liability	No problems identified	Ai Group has not identified any problems with section 204 of the Bill.
Section 205 – Protection of persons making complaints etc. from civil liability	No problems identified	Ai Group has not identified any problems with section 205 of the Bill.
Section 206 – No right of action exception as expressly provided	No problems identified	Ai Group has not identified any problems with section 206 of the Bill.
Section 207 – Commission may charge fees for certain matters	No problems identified	Ai Group has not identified any problems with section 207 of the Bill.
Section 208 – Regulations	No problems identified	Ai Group has not identified any problems with section 208 of the Bill.