

Chapter 4

A Short History of the Federal Court's Anti-Discrimination Jurisdiction

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Introduction

The development of federal anti-discrimination law, and the Federal Court's jurisdiction in relation to it, mirrors this country's struggles on many fronts to accept substantive equality as an operating value in the law. The still piecemeal character of federal anti-discrimination law might be said to suggest that struggle is not over.

However, through the cases decided by the Federal Court, positive contributions have been made towards the recognition of substantive equality.

This chapter gives an account of the introduction of the various federal anti-discrimination statutes, and the corresponding changes to the Court's jurisdiction. I then describe some of the key decided cases. Finally, I share some statistics which reveal trends in this area of the Court's jurisdiction. I note, but do not discuss in detail, the reforms in 2009 whereby the Court has what is effectively a further anti-discrimination jurisdiction under the general protections provisions of the *Fair Work Act 2009* (Cth).

The Establishment of the Federal Court and its Early Years

The Court's beginnings, and its early years, were outlined by the Hon Sir Gerard Brennan AC, KBE, GBS in a paper first presented at the Court's 40th anniversary celebrations in Sydney in February 2017, and then published in the *Australian Law Journal*.¹

In his article, Sir Gerard sets out the explanation given by Sir Nigel Bowen in the *Sydney Law Review* towards the end of the Court's first year of operation where Sir Nigel described the Court's role as 'the primary arbiter in respect of a wide range of matters arising from regulation by the Commonwealth Parliament on an Australia-wide basis of business conduct, the administration of government and the conduct of employer and employee organisations in industrial relations'.² This statement was

1 Sir Gerard Brennan, 'Creation of the Federal Court: A Reflection' (2017) 91 *Australian Law Journal* 461.

2 *Ibid* 467, quoting Sir Nigel Bowen, 'The Federal Court of Australia' (1977) 8 *Sydney Law Review* 285.

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