

**SOUTH AUSTRALIA**

**EQUAL OPPORTUNITY ACT, 1984**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 August 1990.*



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# EQUAL OPPORTUNITY ACT, 1984

being

Equal Opportunity Act, 1984, No. 95 of 1984 [Assented to 20 December 1984]<sup>1</sup>

as amended by

Equal Opportunity Act Amendment Act, 1989, No. 68 of 1989 [Assented to 29 October 1989]<sup>2</sup>

Statute Law Revision Act, 1990, No. 23 of 1990 [Assented to 26 April 1990]<sup>3</sup>

Equal Opportunity Act Amendment Act, 1990, No. 25 of 1990 [Assented to 26 April 1990]<sup>4</sup>

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.*

**An Act to promote equality of opportunity between the citizens of this State; to prevent certain kinds of discrimination based on sex, sexuality, marital status, pregnancy, race or physical or intellectual impairment; to facilitate the participation of citizens in the economic and social life of the community; and to deal with other related matters.**

The Parliament of South Australia enacts as follows:

## PART I

### PRELIMINARY

#### Short title

1. This Act may be cited as the *Equal Opportunity Act, 1984*.

#### Commencement

2. (1) Subject to subsection (3), this Act will come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

- (3) Section 42 will come into operation as follows:

- (a) on a day to be fixed by proclamation for the purposes of this paragraph (being a day not less than six months after the date of the proclamation), that section will come into operation in respect of employer subsidized superannuation schemes established after that day;

and

- (b) on a day to be fixed by proclamation for the purposes of this paragraph (being a day not less than two years after the date of the proclamation), that section will come into operation in respect of employer subsidized superannuation schemes established before the day fixed for the purposes of paragraph (a).

<sup>1</sup> Came into operation (except s. 42: see s. 2(3); ss. 12, 89 and 101, Division VI of Part III, Division VI of Part IV and Division VI of Part V) 1 March 1986; Division VI of Part IV, Division VI of Part V and s. 89 came into operation 1 June 1986: *Gaz.* 5 December 1985, p. 1690; ss. 12, 42, 101 and Division VI of Part III had not been brought into operation at the date of this reprint.

<sup>2</sup> Came into operation (except Sched.) 31 March 1990: *Gaz.* 29 March 1990, p. 884; Sched. came into operation 1 August 1990: *Gaz.* 12 July 1990, p. 257.

<sup>3</sup> Came into operation (except Scheds. 4-7) 29 June 1990: *Gaz.* 14 June 1990, p. 1606; Scheds. 4 and 5 came into operation 1 August 1990: *Gaz.* 12 July 1990, p. 257.

<sup>4</sup> Came into operation (except ss. 3-6 and 8) 24 May 1990: *Gaz.* 24 May 1990, p. 1404; ss. 3-6 and 8 had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

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### Interpretation

5. (1) In this Act, unless the contrary intention appears—

“the Commissioner” means the person for the time being holding or acting in the office of Commissioner for Equal Opportunity under this Act:

“detriment” includes humiliation or denigration:

“educational authority” means the person or body administering any school, college, university or other institution at which education or training is provided:

“employee”—

(a) includes the holder of a public or statutory office (not being a judicial or magisterial office);

and

(b) includes an unpaid worker:

“employer”—

(a) in relation to the holder of a public or statutory office—means the Crown;

(b) in relation to an unpaid worker—means an organization for which the unpaid worker performs services:

“employment” includes unpaid work:

“employment agency” means a person who, for fee or reward, introduces persons seeking employment to employers:

“impairment” means intellectual impairment or physical impairment:

“intellectual impairment” means permanent or temporary loss or imperfect development of mental faculties (except where attributable to mental illness) resulting in reduced intellectual capacity:

“introduction agency” means a person who carries on a business of introducing persons who are seeking companionship or social contact:

“marital status” means the status or condition of—

(a) being single;

(b) being married;

(c) being married but living separately and apart from one’s spouse;

(d) being divorced;

(e) being widowed;

or

(f) cohabiting with a person of the opposite sex as a *de facto* husband or wife:

“member” of the Tribunal includes a deputy duly acting in a member’s place:

“near relative” of a person means spouse, parent, child, grandparent, grandchild, brother or sister:

“the panel” means the panel established by the Governor under Part II for the purposes of the constitution of the Tribunal:

“physical impairment” means—

- (a) the total or partial loss of any function of the body;
- (b) the total or partial loss of any part of the body;
- (c) the malfunctioning of any part of the body;
- or
- (d) the malformation or disfigurement of any part of the body,

whether permanent or temporary, but does not include intellectual impairment or mental illness:

“race” of a person means the nationality, country of origin, colour or ancestry of the person or of any other person with whom he or she resides or associates:

“the Registrar” means the person holding or acting in the office of Registrar of the Tribunal under this Act:

“services to which this Act applies” means—

- (a) access to and use of any place that members of the public are permitted to enter;
- (b) services provided by an employment agency;
- (c) banking, the provision of credit, or insurance;
- (d) the provision of a scholarship, prize or award;
- (e) entertainment, recreation or refreshment;
- (f) services provided by an introduction agency;
- (g) the provision of coaching or umpiring in a sport;
- (h) services connected with transportation or travel;
- (i) services of any profession or trade;
- or
- (j) services provided by a Government department, instrumentality or agency or a municipal or district council:

“sexuality” means heterosexuality, homosexuality, bisexuality or transsexuality:

“spouse” includes putative spouse:

“transsexual” means a person of the one sex who assumes characteristics of the other sex:

“transsexuality” means the condition of being a transsexual:

“the Tribunal” means the *Equal Opportunity Tribunal* established under this Act:

“unpaid worker” means a person who performs any work for an employer for no remuneration.

(2) A reference in this Act or in the repealed *Sex Discrimination Act, 1975*, to the provision of a service does not include, and will be taken never to have included, the carrying out of either of the following fertilization procedures:

- (a) artificial insemination;
- or
- (b) the procedure of fertilizing an ovum outside the body and transferring the fertilized ovum into the uterus.

*Note: For definition of divisional penalties see Appendix 2.*



**Interpretative provisions**

6. (1) For the purposes of this Act, the holder of a public or statutory office will, in carrying out official duties, be taken to be acting in the course of employment.

(2) For the purposes of this Act, a person acts on a particular ground referred to in this Act if the person in fact acts on a number of grounds, one of which is the ground so referred to, and that ground is a substantial reason for the act.

(3) For the purposes of this Act, a person ("the discriminator") treats another unfavourably on the basis of a particular attribute or circumstance if the discriminator treats that other person less favourably than in identical or similar circumstances the discriminator treats, or would treat, a person who does not have that attribute or is not affected by that circumstance.

**Crown is bound**

7. This Act binds the Crown.

PART II  
COMMISSIONER AND THE TRIBUNAL  
DIVISION I—THE COMMISSIONER

**The Commissioner**

8. (1) There will be a Commissioner for Equal Opportunity.
- (2) The Commissioner will be appointed for a term of five years and will, at the expiration of a term of appointment, be eligible for reappointment.
- (3) The Commissioner is not a Public Service employee.
- (4) The terms and conditions of the Commissioner's appointment will be fixed by the Governor on the recommendation of the Commissioner for Public Employment.
- (5) A Public Service employee may be appointed to act temporarily as the Commissioner.

**Staff**

9. (1) The Commissioner will have such staff as is necessary for the administration of this Act.
- (2) The Commissioner's staff will consist of Public Service employees.

**Administration of this Act**

10. The Commissioner is responsible to the Minister for the general administration of this Act and, in carrying out that function, is subject to the general control and direction of the Minister.

**Functions of the Commissioner**

11. (1) The Commissioner must foster and encourage amongst members of the public informed and unprejudiced attitudes with a view to eliminating discrimination on the ground of sex, sexuality, marital status, pregnancy, race or impairment.
- (2) The Commissioner may institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination on the ground of sex, sexuality, marital status, pregnancy, race or impairment.
- (3) The Commissioner may make recommendations to the Minister as to reforms, whether of a legislative nature or otherwise, that the Commissioner believes will further the objects of this Act.

***Advice, assistance and research<sup>1</sup>***

12. (1) *The Commissioner may furnish advice upon any matter within the purview of this Act and, if a written request for any such advice is made to the Commissioner, then, subject to subsection (2), the Commissioner must either furnish the advice in writing to the person by whom it was requested or give written notice to that person that the advice will not be furnished.*

- (2) *The Commissioner must—*

- (a) if requested to do so by or on behalf of a person who has an impairment—*

- (i) give information or advice on the benefits, assistance or support that may be available in respect of the person's impairment;*

- (ii) assist the person to gain access to any such benefits, assistance or support;*

*or*

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<sup>1</sup> S. 12 had not been brought into operation at the date of this reprint.

(iii) assist the person, to the extent the Commissioner thinks desirable, to resolve any problem in relation to participation, or attempts to participate, in the economic or social life of the community;

(b) publish advisory documents as to the benefits, assistance and support available to those who have impairments;

(c) institute, promote or assist in research and the collection of data relating to those who have impairments, the problems faced by such persons as a result of their impairments and the ways in which those problems may be resolved,

and may do anything else necessary or expedient to assist persons who have impairments to participate in the economic and social life of the community.

(3) Subsection (2) applies to a person whose impairment, whether in itself or in conjunction with the physical environment or the attitude of others, or the person's own attitude, to the impairment, substantially reduces his or her participation, or capacity to participate, in the economic or social life of the community.

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#### **Annual report by Commissioner**

14. (1) The Commissioner must, not later than 31 December in each year, report to the Minister on—

(a) the operation and administration of this Act;

and

(b) the work undertaken by the Commissioner pursuant to sections 11 and 12,

during the previous financial year.

(2) The Minister must cause a copy of a report furnished under subsection (1) to be laid before each House of Parliament within 14 sitting days of receipt of the report if Parliament is then in session, but if Parliament is not then in session, within 14 days of the commencement of the next session of Parliament.

#### **Power of Commissioner to delegate**

15. (1) The Commissioner may, with the approval of the Minister, delegate powers and functions under this Act to any person from time to time holding or acting in a particular Public Service position.

(2) A delegation under this section is revocable at will and does not derogate from the power of the Commissioner to act personally in any matter.

#### **Immunity from liability**

16. (1) No personal liability attaches to the Commissioner for an act or omission in good faith and in the exercise, or purported exercise, or the discharge, or purported discharge, of official powers or duties.

(2) A liability that would, but for subsection (1), lie against the Commissioner lies against the Crown.

### **DIVISION II—THE EQUAL OPPORTUNITY TRIBUNAL**

#### **The Tribunal**

17. The *Equal Opportunity Tribunal* is established.

**Presiding Officer and Deputy Presiding Officers**

18. (1) There will be—
  - (a) a Presiding Officer of the Tribunal;
  - and
  - (b) not more than two Deputy Presiding Officers of the Tribunal.
- (2) The Presiding Officer and Deputy Presiding Officers will be appointed by the Governor.
- (3) A person is not eligible for appointment as the Presiding Officer unless he or she is—
  - (a) a judge of a court of this State or the Commonwealth;
  - or
  - (b) a magistrate.
- (4) A person is not eligible for appointment as a Deputy Presiding Officer unless he or she is—
  - (a) a judge of a court of this State or the Commonwealth;
  - (b) a magistrate;
  - or
  - (c) a legal practitioner of not less than seven years standing.
- (5) Where a judge or magistrate is appointed as the Presiding Officer, or as a Deputy Presiding Officer, the following provisions apply:
  - (a) the appointment will be for a term of office of three years and, on completion of a term of office, the appointee will be eligible for reappointment;
  - (b) the office will become vacant if—
    - (i) the appointee completes a term of office and is not reappointed;
    - or
    - (ii) the appointee ceases to be a judge or magistrate.
- (6) Where a legal practitioner is appointed as a Deputy Presiding Officer, the following provisions apply:
  - (a) the appointment will be for a term of office of three years and, on completion of a term of office, the appointee will be eligible for reappointment;
  - (b) the appointee may be removed from office by the Governor on the ground of—
    - (i) mental or physical incapacity to carry out official duties satisfactorily;
    - (ii) neglect of duty;
    - or
    - (iii) dishonourable conduct;
  - (c) the office will become vacant if—
    - (i) the appointee completes a term of office and is not reappointed;
    - (ii) the appointee is removed from office;
    - or
    - (iii) the appointee resigns by notice in writing to the Minister.
- (7) Upon the office of the Presiding Officer or a Deputy Presiding Officer becoming vacant, a person must be appointed to that office in accordance with this Act.

**Panel**

19. (1) The Governor may establish a panel comprised of not more than 12 persons nominated by the Minister to be available for selection to sit at hearings of the Tribunal.

(2) In selecting nominees for appointment to the panel, the Minister must ensure that each nominee has expertise that would be of value to the Tribunal in dealing with the various classes of discrimination to which this Act applies and must have regard to—

- (a) the experience;
- (b) the knowledge;
- and
- (c) the sensitivity,

of those who come under consideration.

(3) A member of the panel—

- (a) will be appointed for a term of office of three years;
- and
- (b) on the completion of a term of office, will be eligible for reappointment.

(4) The Governor may remove a member of the panel from office on the ground of—

- (a) mental or physical incapacity to carry out official duties satisfactorily;
- (b) neglect of duty;
- or
- (c) dishonourable conduct.

(5) The office of a member of the panel will become vacant if—

- (a) the member completes a term of office and is not reappointed;
- (b) the member is removed from office;
- or
- (c) the member resigns by notice in writing to the Minister.

(6) The Governor may make appointments from time to time for the purpose of maintaining or increasing the membership of the panel.

**Allowances and expenses**

20. A member of the Tribunal is entitled to receive such allowances and expenses as the Governor may from time to time determine.

**Validity of acts of the Tribunal and immunity of its members**

21. (1) An act or proceeding of the Tribunal is not invalid by reason of a vacancy in its membership or in the membership of the panel, or by reason of a defect in the appointment of a person to the Tribunal or the panel.

(2) No liability attaches to a member of the Tribunal for any act or omission by the member, or by the Tribunal, in good faith and in the exercise of official powers or functions, or in the discharge of official duties.

**Constitution of the Tribunal for the hearing of proceedings**

22. (1) In relation to the hearing of proceedings, the Tribunal will be constituted of the following members:

- (a) the Presiding Officer or a Deputy Presiding Officer of the Tribunal;
- and

(b) two members of the panel selected by the Presiding Officer to sit at the hearing of those proceedings.

(2) In selecting members from the panel for the purpose of hearing proceedings, the Presiding Officer must endeavour to select those members who have expertise that is relevant to the subject matter of the proceedings.

(3) The Tribunal, separately constituted in accordance with this section, may sit simultaneously for the purpose of hearing and determining separate proceedings.

### Conduct of proceedings

23. (1) Where the Tribunal is constituted for the purpose of hearing proceedings—

(a) the Presiding Officer or Deputy Presiding Officer, as the case may be, will preside at the proceedings;

(b) the Presiding Officer or Deputy Presiding Officer will determine any question relating to the admissibility of evidence or any other question of law or procedure;

and

(c) on any other question before the Tribunal, a decision in which any two members concur is a decision of the Tribunal.

(2) The Tribunal must act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and is not bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

(3) Subject to subsection (4), proceedings before the Tribunal must be held in public.

(4) The Tribunal may, of its own motion or on the application of a party to the proceedings, direct that any proceedings or a part of proceedings be held in private.

(5) Subject to this Act, the business of the Tribunal will be conducted in such manner as the Presiding Officer determines.

### Parties to proceedings, etc.

24. (1) The Tribunal must give to any person who is a party to proceedings before the Tribunal—

(a) reasonable notice of the time and place at which it intends to hear those proceedings;  
and

(b) reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

(2) If a person to whom a notice has been given under subsection (1) fails to attend at the time and place specified in the notice, the Tribunal may hear the proceedings in the absence of that person.

(3) Where, in the opinion of the Tribunal, a person ought to be bound by, or have the benefit of, its determination, or is otherwise legitimately interested in proceedings before the Tribunal, it may—

(a) direct that the person be joined as a party to the proceedings;

or

(b) grant the person leave to intervene in the proceedings.

(4) A person appearing in proceedings before the Tribunal—

(a) is entitled to appear personally or by counsel;

or

(b) may, by leave of the Tribunal, be represented by an officer or employee of a registered industrial association or by any other person.

#### **General powers of the Tribunal**

25. (1) In the exercise of its powers and functions under this Act, the Tribunal may—

(a) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the attendance before the Tribunal of any person;

(b) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the production of any books, papers or documents;

(c) inspect any books, papers or documents produced before it, retain them for such reasonable period as it thinks fit and make copies of any of them, or of any of their contents;

(d) require any person to make oath or affirmation to answer truthfully all questions put by the Tribunal relating to any matter being inquired into by the Tribunal (which oath or affirmation may be administered by a member of the Tribunal);

or

(e) require any person appearing before the Tribunal, including the person whose conduct is subject to an inquiry (whether summoned to appear or not), to answer any relevant questions put by any member of the Tribunal, or by any other person appearing before the Tribunal.

(2) Subject to subsection (3), if a person—

(a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse to attend in obedience to the summons;

(b) who has been served with a summons to produce any books, papers or documents fails without reasonable excuse to comply with the summons;

(c) misbehaves before the Tribunal, wilfully insults the Tribunal or a member of the Tribunal, or interrupts the proceedings of the Tribunal;

or

(d) refuses to be sworn or to affirm, or to answer a question, when required to do so by the Tribunal,

the person is guilty of an offence.

Penalty: Division 7 fine.

(3) A person is not obliged to answer a question or to produce a book, paper or document if the answer or the contents of the book, paper or document would tend to incriminate the person of an offence.

(4) In the course of proceedings, the Tribunal may—

(a) receive in evidence the transcript of evidence in proceedings before a court or tribunal and draw such conclusions of fact from that evidence as it considers proper;

or

(b) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court or tribunal that may be relevant to the proceedings.

**Tribunal may award costs in certain circumstances**

26. (1) The Tribunal may make an order for costs in any proceedings in accordance with the scale prescribed for that purpose—

(a) where in the opinion of the Tribunal the proceedings are frivolous or vexatious;

or

(b) where in the opinion of the Tribunal the proceedings have been instituted or prosecuted for the purpose of delay or obstruction.

(2) Where a party to proceedings before the Tribunal applies for an adjournment of the hearing of those proceedings, the Tribunal may grant that application upon such terms as it considers just, and may make an order for costs in accordance with a scale prescribed for the purpose against the applicant for the adjournment in favour of any other party to the proceedings.

(3) Costs awarded by the Tribunal under this section may be recovered by the person in whose favour they were awarded as a debt due from the person against whom the order was made.

**Tribunal may conciliate**

27. (1) If, before or during the hearing of any proceedings under this Act, it appears to the Tribunal, either from the nature of the case or from the attitude of the parties, that there is a reasonable possibility of the matters in dispute between the parties being settled by conciliation, one or more members of the Tribunal may—

(a) interview the parties (either with or without any person who may be representing any of them);

and

(b) endeavour to bring about a settlement of the proceedings on terms that are fair to all parties.

(2) Nothing said or done in the course of an attempt to settle proceedings under this section can subsequently be given in evidence in any proceedings, nor is a member of the Tribunal involved in the attempt disqualified from sitting to continue the hearing of the proceedings.

(3) Where proceedings are settled under this section, the Tribunal may embody the terms of the settlement in an order.

**DIVISION III—THE REGISTRAR**

**Registrar**

28. (1) There will be a Registrar of the Tribunal.

(2) The Registrar is a Public Service employee.

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## PART III

PROHIBITION OF DISCRIMINATION ON THE GROUND OF SEX, SEXUALITY,  
MARITAL STATUS OR PREGNANCY

## DIVISION I—DISCRIMINATION TO WHICH THIS PART APPLIES

## Definition of “discriminate”

29. (1) In this Part—

“discriminate” means—

- (a) discriminate on the ground of sex;
- (b) discriminate on the ground of sexuality;
- (c) discriminate on the ground of marital status;
- (d) discriminate on the ground of pregnancy,

and “discrimination” has a corresponding meaning.

(2) For the purposes of this Act, a person discriminates on the ground of sex—

- (a) if he or she treats another person unfavourably because of the other’s sex;
  - (b) if he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement and—
    - (i) the nature of the requirement is such that a substantially higher proportion of persons of the opposite sex complies, or is able to comply, with the requirement than of those of the other’s sex;
- and
- (ii) the requirement is not reasonable in the circumstances of the case;

or

- (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other’s sex, or on the basis of a presumed characteristic that is generally imputed to persons of that sex.

(3) Subject to subsection (4), for the purposes of this Act, a person discriminates on the ground of sexuality—

- (a) if he or she treats another person unfavourably because of the other’s sexuality, or a presumed sexuality;
  - (b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and—
    - (i) the nature of the requirement is such that a substantially higher proportion of persons of a different sexuality complies, or is able to comply, with the requirement than of those of the other’s sexuality;
- and
- (ii) the requirement is not reasonable in the circumstances of the case;

or

- (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other’s sexuality, or presumed sexuality, or on the basis of a presumed characteristic that is generally imputed to persons of that sexuality.

(4) Where—

- (a) a person discriminates against another on the basis of appearance or dress;
- (b) that appearance or dress is characteristic of, or an expression of, that other person's sexuality;

but

- (c) the discrimination is reasonable in all the circumstances,

the discrimination will not, for the purposes of Division II, be taken to be discrimination on the ground of sexuality.

(5) For the purposes of this Act, a person discriminates on the ground of marital status—

- (a) if he or she treats another person unfavourably because of the other's marital status;
- (b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and—

- (i) the nature of the requirement is such that a substantially higher proportion of persons of a different marital status complies, or is able to comply, with the requirement than of those of the other's marital status;

and

- (ii) the requirement is not reasonable in the circumstances of the case;

or

- (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of that marital status, or on the basis of a presumed characteristic that is generally imputed to persons of that marital status.

(6) For the purposes of this Act, a person discriminates against a pregnant woman—

- (a) if he or she treats the woman unfavourably because of her pregnancy;
- (b) if he or she treats the woman unfavourably because she does not comply, or is not able to comply, with a particular requirement and—

- (i) the nature of the requirement is such that a substantially higher proportion of women who are not pregnant complies, or is able to comply, with the requirement than of those who are pregnant;

and

- (ii) the requirement is not reasonable in the circumstances of the case;

or

- (c) if he or she treats the woman unfavourably on the basis of a characteristic that appertains generally to pregnant women, or on the basis of a presumed characteristic that is generally imputed to pregnant women.

## DIVISION II—DISCRIMINATION IN EMPLOYMENT

### Discrimination against applicants and employees

30. (1) It is unlawful for an employer to discriminate against a person—

- (a) in determining, or in the course of determining, who should be offered employment;

or

- (b) in the terms or conditions on which employment is offered.

- (2) It is unlawful for an employer to discriminate against an employee—
- (a) in the terms or conditions of employment;
  - (b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits connected with employment;
  - (c) by dismissing the employee;
- or
- (d) by subjecting the employee to any other detriment.

#### **Discrimination against agents**

31. (1) This section applies to a principal for whom work is done by agents remunerated by commission.

- (2) It is unlawful for the principal to discriminate against a person—
- (a) in determining, or in the course of determining, who should be engaged as an agent;
- or
- (b) in the terms or conditions on which such an engagement is offered.
- (3) It is unlawful for the principal to discriminate against an agent—
- (a) in the terms or conditions on which the agent is engaged;
  - (b) by denying or limiting access to opportunities for promotion, transfer or training or any other benefits connected with the agent's position;
  - (c) by terminating the engagement;
- or
- (d) by subjecting the agent to any other detriment.

#### **Discrimination against contract workers**

32. (1) This section applies to a principal for whom work is done by contract workers in pursuance of a contract between the principal and the employer of those contract workers.

(2) It is unlawful for a principal to enter into any contract or arrangement with an employer of contract workers under which the employer is to discriminate against a person.

- (3) It is unlawful for the principal to discriminate against a contract worker—
- (a) in the terms or conditions on which the contract worker is allowed to work;
  - (b) by not allowing the contract worker to work;
  - (c) by denying or limiting access to any benefit connected with employment;
- or
- (d) by subjecting the contract worker to any other detriment.

#### **Discrimination within partnerships**

33. (1) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person (otherwise than on the ground of sexuality) in determining, or in the course of determining, who should be offered a position as partner in the firm.

(2) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person on the ground of sexuality in determining, or in the course of determining, who should be offered a position as partner in the firm, unless the firm consists, or is to consist, of less than six members.

(3) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person in the terms or conditions on which that person is offered a position as partner in the firm.

(4) It is unlawful for a firm to discriminate against a partner—

- (a) in the terms or conditions of membership of the firm;
- (b) by denying or limiting access to any benefit arising from membership of the firm;
- (c) by expelling the partner from the firm;
- or
- (d) by subjecting the partner to any other detriment.

### Exemptions

34. (1) This Division does not apply in relation to employment within a private household.

(2) This Division does not apply to discrimination on the ground of sex in relation to employment for which it is a genuine occupational requirement that a person be of a particular sex.

(3) This Division does not apply to discrimination on the ground of a woman's pregnancy if—

- (a) the discrimination is based on the fact that the woman is not, or would not be, able—
  - (i) to perform adequately, and without endangering herself, the unborn child or other persons, the work genuinely and reasonably required of her;
  - or
  - (ii) to respond adequately to situations of emergency that should reasonably be anticipated in connection with her duties;

and

- (b) in the case of discrimination arising out of dismissal from employment, there is no other work that the employer could reasonably be expected to offer the woman.

### DIVISION III—DISCRIMINATION BY OTHER BODIES

#### Discrimination by associations on ground of sex, marital status or pregnancy

35. (1) It is unlawful for an association that has both male and female members to discriminate—

- (a) against an applicant for membership on the ground of sex, marital status or pregnancy—
  - (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association;
  - or
  - (ii) in the terms on which the applicant is, or may be, admitted to membership, or a particular class of membership;
- or
- (b) against a member of the association on the ground of sex, marital status or pregnancy—

- (i) by refusing or failing to provide a particular service or benefit to that member;
- (ii) in the terms on which a particular service or benefit is provided to that member;

or

- (iii) by expelling that member from the association or subjecting him or her to any other detriment.

(2) This section does not apply to discrimination on the ground of sex in relation to the use or enjoyment of a service or benefit provided by an association—

- (a) where it is not practicable for the service or benefit to be used or enjoyed simultaneously by both men and women, but the same, or an equivalent, service or benefit is provided for the use or enjoyment of men and women separately from each other or at different times;

or

- (b) where it is not practicable for the service or benefit to be used or enjoyed to the same extent by both men and women, but both men and women are entitled to a fair and reasonable proportion of the use or enjoyment of the service or benefit.

(3) Without limiting the generality of this section, an association discriminates against a member of a particular class in the association if, upon application by that member to join a different class of membership in the association, the association accords the member a lower order of precedence on the list of applicants for that class of membership than that accorded to an applicant who is not a member of the association.

#### **Discrimination on the ground of sexuality by trade unions or employer bodies**

**35a.** (1) It is unlawful for an association to which this section applies to discriminate—

- (a) against an applicant for membership on the ground of sexuality—

- (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association;

or

- (ii) in the terms on which the applicant is, or may be, admitted to membership or a particular class of membership;

or

- (b) against a member of the association on the ground of sexuality—

- (i) by refusing or failing to provide a particular service or benefit to that member;

- (ii) in the terms on which a particular service or benefit is provided to that member;

or

- (iii) by expelling the member from the association or subjecting him or her to any other detriment.

(2) Without limiting the generality of subsection (1), an association to which this section applies discriminates against a member of a particular class in the association if, on application by the member to join a different class of membership in the association, the association accords the member a lower order of precedence on the list of applicants for that class of membership than that accorded to an applicant who is not a member of the association.

(3) In this section—

“association to which this section applies” means—

- (a) an association registered under Part IX of the *Industrial Conciliation and Arbitration Act, 1972*;
- (b) an organization registered under the *Industrial Relations Act 1988* of the Commonwealth;
- (c) any other association formed to promote the interests of employers or employees.

### **Discrimination by qualifying bodies**

36. It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person—

- (a) by refusing or failing to confer or renew that authorization or qualification;
  - (b) in the terms or conditions on which it confers or renews the authorization or qualification;
- or
- (c) by withdrawing the authorization or qualification, or varying the terms or conditions upon which it is held.

## **DIVISION IV—DISCRIMINATION IN EDUCATION**

### **Discrimination by educational authorities**

37. (1) It is unlawful for an educational authority to discriminate against a person—

- (a) by refusing or failing to accept an application for admission as a student;
- or
- (b) in the terms or conditions on which it offers to admit the person as a student.

(2) It is unlawful for an educational authority to discriminate against a student—

- (a) in the terms or conditions on which it provides the student with training or education;
  - (b) by denying or limiting access to any benefit provided by the authority;
  - (c) by expelling the student;
- or
- (d) by subjecting the student to any other detriment.

(3) This section does not apply to discrimination on the ground of sex in respect of—

- (a) admission to a school, college, university or institution established wholly or mainly for students of the one sex;
  - (b) the admission of a person to a school, college or institution (not being a tertiary level school, college or institution) where the level of education or training sought by the person is provided only for students of the one sex;
- or
- (c) the provision at a school, college, university or institution of boarding facilities for students of the one sex.

DIVISION V—DISCRIMINATION IN RELATION TO LAND, GOODS, SERVICES AND  
ACCOMMODATION

**Discrimination by person disposing of an interest in land**

38. (1) It is unlawful for a person to discriminate against another—

(a) by refusing or failing to dispose of an interest in land to the other person;

or

(b) in the terms or conditions on which an interest in land is offered to the other person.

(2) This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift.

**Discrimination in provision of goods and services**

39. (1) It is unlawful for a person who offers or provides—

(a) goods;

or

(b) services to which this Act applies,

(whether for payment or not) to discriminate against another—

(c) by refusing or failing to supply the goods or perform the services;

or

(d) in the terms or conditions on which or the manner in which the goods are supplied or the services are performed.

(2) Where the nature of a skill varies according to whether it is exercised in relation to men or to women, a person does not contravene this section by exercising the skill in relation to men only, or women only, in accordance with the person's normal practice.

**Discrimination in relation to accommodation**

40. (1) It is unlawful for a person to discriminate against another—

(a) in the terms or conditions on which accommodation is offered;

(b) by refusing an application for accommodation;

or

(c) by deferring such an application or according the applicant a lower order of precedence on any list of applicants for that accommodation.

(2) It is unlawful for a person to discriminate against a person for whom accommodation has been provided—

(a) in the terms or conditions on which accommodation is provided;

(b) by denying or limiting access to any benefit connected with the accommodation;

(c) by evicting the person;

or

(d) by subjecting the person to any other detriment.

(3) This section does not apply to discrimination in relation to the provision of accommodation if—

(a) the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, on the premises;

and

(b) accommodation is provided on the premises for no more than six persons apart from that person and his or her family.

(4) This section does not apply to discrimination on the ground of sex or marital status in relation to the provision of accommodation by an organization that does not seek to secure a pecuniary profit for its members, where the accommodation is provided only for persons of the one sex, or of a particular marital status, as the case may be.

#### *DIVISION VI—DISCRIMINATION IN RELATION TO SUPERANNUATION<sup>1</sup>*

##### **Interpretation**

**41. In this Division—**

*“de facto spouse”, in relation to a member of a superannuation scheme or provident fund, means a person with whom the member is cohabiting as husband or wife de facto, but does not include a putative spouse;*

*“employer subsidized superannuation scheme” means a superannuation scheme or provident fund provided for employees to which the employer makes contributions.*

##### **Employer subsidized superannuation schemes**

**42. (1)** Subject to this Division, it is unlawful for a person who provides an employer subsidized superannuation scheme to discriminate against a person—

(a) by providing a scheme that discriminates or, if the other person were to become a member of the scheme, would discriminate, or require or authorize discrimination, against the other person;

or

(b) in the manner in which the scheme is administered.

**(2)** Subsection (1) is subject to the following qualifications:

(a) it applies only in relation to an employer subsidized superannuation scheme under which a greater number of the members (not including members who are no longer employed by an employer who participates in the scheme) reside in this State than in any other single State or Territory;

and

(b) such other qualifications as may be prescribed.

**(3)** This section does not render unlawful discrimination on the ground of sex in the rates upon which a pension payable to a member under an employer subsidized superannuation scheme may, at the member's option, be converted to a lump sum or a lump sum payable under the scheme may, at the member's option, be converted to a pension, where the discrimination—

(a) is based upon actuarial or statistical data from a source upon which it is reasonable to rely;

and

<sup>1</sup> Division VI of Part III had not been brought into operation at the date of this reprint.



(b) is reasonable having regard to that data.

(4) This section does not render unlawful discrimination on the ground of sex in the benefits payable under an employer subsidized superannuation scheme, where—

(a) the contributions payable by both the employer and the employee are fixed by the terms of the scheme;

and

(b) the benefits that will accrue to the employee are derived from the accumulation of those contributions less any insurance premiums paid under the scheme in respect of the employee,

to the extent only that the discrimination is based upon a lawful difference in those insurance premiums.

#### **Other superannuation schemes and provident funds**

43. It is unlawful for a person who provides a superannuation scheme or provident fund (not being an employer subsidized superannuation scheme) to discriminate against a person—

(a) by providing a scheme or fund that discriminates or, if the other person were to become a member of the scheme or fund, would discriminate, or require or authorize discrimination, against the other person;

or

(b) in the manner in which the scheme or fund is administered,

except where the discrimination—

(c) is based upon actuarial or statistical data from a source on which it is reasonable to rely;

and

(d) is reasonable having regard to that data.

#### **Exemptions from this Division**

44. (1) For the purposes of this Division, a superannuation scheme or provident fund does not discriminate on the ground of marital status by reason only of the fact—

(a) that it provides for the payment of benefits to the surviving spouses of members;

or

(b) that it does not provide benefits for the surviving de facto spouses of members, or provides less favourable benefits for surviving de facto spouses than it does for the surviving spouses of members.

(2) Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this Division has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.

### **DIVISION VII—GENERAL EXEMPTIONS FROM THIS PART**

#### **Charities**

45. This Part does not—

(a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon—

(i) persons of the one sex;

- (ii) persons of a particular sexuality;
- (iii) persons of a particular marital status;
- or
- (iv) pregnant women;

or

(b) render unlawful any act done to give effect to such a provision.

**Act does not apply to granting pregnant women rights and privileges**

46. This Part does not render unlawful the granting to women of rights or privileges in connection with pregnancy or childbirth.

**Measures intended to achieve equality**

47. This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking intended to ensure that persons of the one sex, or of a particular marital status, have equal opportunities with persons of the other sex, or of another marital status, in any of the circumstances to which this Part applies.

**Sport**

48. This Part does not render unlawful the exclusion of persons of the one sex from participation in a competitive sporting activity in which the strength, stamina or physique of the competitor is relevant.

**Insurance, etc.**

49. This Part does not render unlawful discrimination on the ground of sex in the terms on which an annuity, life assurance, accident insurance or any other form of insurance is offered or may be obtained, where the discrimination—

(a) is based upon actuarial or statistical data from a source on which it is reasonable to rely;

and

(b) is reasonable having regard to that data.

**Religious bodies**

50. (1) This Part does not render unlawful discrimination in relation to—

(a) the ordination or appointment of priests, ministers of religion or members of a religious order;

(b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;

or

(c) any other practice of a body established for religious purposes that conforms with the precepts of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

(2) Where an educational or other institution is administered in accordance with the precepts of a particular religion, discrimination on the ground of sexuality that arises in the course of the administration of that institution and is founded on the precepts of that religion is not rendered unlawful by this Part.

## PART IV

## PROHIBITION OF DISCRIMINATION ON THE GROUND OF RACE

## DIVISION I—DISCRIMINATION TO WHICH THIS PART APPLIES

**Criteria for establishing discrimination on the ground of race**

51. For the purposes of this Act, a person discriminates on the ground of race—

- (a) if he or she treats another person unfavourably by reason of the other's race;
- (b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and—
  - (i) the nature of the requirement is such that a substantially higher proportion of persons of a different race complies, or is able to comply, with the requirement than of those of the other's race;
  - and
  - (ii) the requirement is not reasonable in the circumstances of the case;

or

- (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other's race, or on the basis of a presumed characteristic that is generally imputed to persons of that race.

## DIVISION II—DISCRIMINATION IN EMPLOYMENT

**Discrimination against applicants and employees**

52. (1) It is unlawful for an employer to discriminate against a person on the ground of race—

- (a) in determining, or in the course of determining, who should be offered employment;
- or
- (b) in the terms or conditions on which employment is offered.

(2) It is unlawful for an employer to discriminate against an employee on the ground of race—

- (a) in the terms or conditions of employment;
- (b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits connected with employment;
- (c) by dismissing the employee;
- (d) by segregating the employee from persons of other races;
- or
- (e) by subjecting the employee to any other detriment.

**Discrimination against agents**

53. (1) This section applies to a principal for whom work is done by agents remunerated by commission.

(2) It is unlawful for the principal to discriminate against a person on the ground of race—

- (a) in determining, or in the course of determining, who should be engaged as an agent;
- or

(b) in the terms or conditions on which such an engagement is offered.

(3) It is unlawful for the principal to discriminate against an agent on the ground of race—

(a) in the terms or conditions on which the agent is engaged;

(b) by denying or limiting access to opportunities for promotion, transfer or training or any other benefits connected with the agent's position;

(c) by terminating the engagement;

or

(d) by subjecting the agent to any other detriment.

#### **Discrimination against contract workers**

54. (1) This section applies to a principal for whom work is done by contract workers in pursuance of a contract between the principal and the employer of those contract workers.

(2) It is unlawful for a principal to enter into any contract or arrangement with an employer of contract workers under which the employer is to discriminate against a person on the ground of race.

(3) It is unlawful for the principal to discriminate against a contract worker on the ground of race—

(a) in the terms or conditions on which the contract worker is allowed to work;

(b) by not allowing the contract worker to work;

(c) by denying or limiting access to any benefit connected with employment;

or

(d) by subjecting the contract worker to any other detriment.

#### **Discrimination within partnerships**

55. (1) It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of race—

(a) in determining, or in the course of determining, who should be offered a position as partner in the firm;

or

(b) in the terms or conditions on which that person is offered a position as partner in the firm.

(2) It is unlawful for a firm consisting of two or more partners to discriminate against a partner on the ground of race—

(a) in the terms or conditions of membership of the firm;

(b) by denying or limiting access to any benefit arising from membership of the firm;

(c) by expelling the partner from the firm;

or

(d) by subjecting the partner to any other detriment.

**Exemptions from this Division**

56. (1) This Division does not apply in relation to employment within a private household.

(2) This Division does not apply to discrimination on the ground of race in relation to employment for which it is a genuine occupational requirement that a person be of a particular race.

**DIVISION III—DISCRIMINATION BY OTHER BODIES****Discrimination by associations on ground of race**

57. (1) It is unlawful for an association to discriminate—

(a) against an applicant for membership on the ground of race—

(i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association;

or

(ii) in the terms on which the applicant is, or may be, admitted to membership, or to a particular class of membership;

or

(b) against a member of the association on the ground of race—

(i) by refusing or failing to provide a particular service or benefit to that member;

(ii) in the terms on which a particular service or benefit is provided to that member;

or

(iii) by expelling that member from the association or subjecting him or her to any other detriment.

(2) This section does not apply to a club established principally for the purpose of promoting social intercourse between the members of a particular racial or ethnic group.

**Discrimination by qualifying bodies**

58. It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person on the ground of race—

(a) by refusing or failing to confer or renew that authorization or qualification;

(b) in the terms or conditions on which it confers the authorization or qualification;

or

(c) by withdrawing the authorization or qualification, or varying the terms or conditions upon which it is held.

**DIVISION IV—DISCRIMINATION IN EDUCATION****Discrimination by educational authorities**

59. (1) It is unlawful for an educational authority to discriminate against a person on the ground of race—

(a) by refusing or failing to accept an application for admission as a student;

or

(b) in the terms or conditions on which it offers to admit the person as a student.

(2) It is unlawful for an educational authority to discriminate against a student on the ground of race—

(a) in the terms or conditions on which it provides the student with education or training;

(b) by denying or limiting access to any benefit provided by the authority;

(c) by expelling the student;

or

(d) by subjecting the student to any other detriment.

#### DIVISION V—DISCRIMINATION IN RELATION TO LAND, GOODS, SERVICES AND ACCOMMODATION

##### Discrimination by person disposing of an interest in land

60. (1) It is unlawful for a person to discriminate against another on the ground of race—

(a) by refusing or failing to dispose of an interest in land to the other person;

or

(b) in the terms or conditions on which an interest in land is offered to the other person.

(2) This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift.

##### Discrimination in provision of goods and services

61. It is unlawful for a person who offers or provides—

(a) goods;

or

(b) services to which this Act applies,

(whether for payment or not) to discriminate against another on the ground of race—

(c) by refusing or failing to supply the goods or perform the services;

or

(d) in the terms or conditions on which or the manner in which the goods are supplied or the services are performed.

##### Discrimination in relation to accommodation

62. (1) It is unlawful for a person to discriminate against another on the ground of race—

(a) in the terms or conditions on which accommodation is offered;

(b) by refusing an application for accommodation;

or

(c) by deferring such an application or according the applicant a lower order of precedence on any list of applicants for that accommodation.

(2) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of race—

- (a) in the terms or conditions on which accommodation is provided;
- (b) by denying or limiting access to any benefit connected with the accommodation;
- (c) by evicting the person;
- or
- (d) by subjecting the person to any other detriment.

#### DIVISION VI—DISCRIMINATION IN RELATION TO SUPERANNUATION

##### **Superannuation schemes and provident funds**

63. (1) It is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of race—

- (a) by providing a scheme or fund that discriminates or, if the other person were to become a member of the scheme or fund, would discriminate, or require or authorize discrimination, against the other person;
- or
- (b) in the manner in which the scheme or fund is administered.

(2) Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this section has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.

#### DIVISION VII—GENERAL EXEMPTIONS FROM THIS PART

##### **Charities**

64. This Part does not—

- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon persons of a particular race;
- or
- (b) render unlawful any act done to give effect to such a provision.

##### **Act does not apply to projects for benefit of persons of a particular race**

65. This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons of a particular race.

PART V

PROHIBITION OF DISCRIMINATION ON THE GROUND OF IMPAIRMENT

DIVISION I—DISCRIMINATION TO WHICH THIS PART APPLIES

**Criteria for establishing discrimination on the ground of impairment**

66. For the purposes of this Act, a person discriminates on the ground of impairment—

(a) if he or she treats another unfavourably because of the other's impairment, or a past or presumed impairment;

(b) if he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement and—

(i) the nature of the requirement is such that a substantially higher proportion of persons who do not have such an impairment complies, or is able to comply, with the requirement than of those persons who have such an impairment;

and

(ii) the requirement is not reasonable in the circumstances of the case;

(c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons who have such an impairment, or on the basis of a presumed characteristic that is generally imputed to persons who have such an impairment;

(d) if, in circumstances where it is unreasonable to do so—

(i) he or she fails to provide special assistance or equipment required by a person in consequence of the person's impairment;

or

(ii) he or she treats another unfavourably because the other requires special assistance or equipment as a consequence of the other's impairment;

(e) if he or she treats a person who is blind or deaf, or partially blind or deaf, unfavourably because the person possesses, or is accompanied by, a guide dog, or because of any related matter (whether or not it is his or her normal practice to treat unfavourably any person who possesses, or is accompanied by, a dog).

DIVISION II—DISCRIMINATION IN EMPLOYMENT

**Discrimination against applicants and employees**

67. (1) It is unlawful for an employer to discriminate against a person on the ground of impairment—

(a) in determining, or in the course of determining, who should be offered employment;

or

(b) in the terms or conditions on which employment is offered.

(2) It is unlawful for an employer to discriminate against an employee on the ground of impairment—

(a) in the terms or conditions of employment;

(b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits connected with employment;

(c) by dismissing the employee;

or

(d) by subjecting the employee to any other detriment.



**Discrimination against agents**

68. (1) This section applies to a principal for whom work is done by agents remunerated by commission.

(2) It is unlawful for the principal to discriminate against a person on the ground of impairment—

(a) in determining, or in the course of determining, who should be engaged as an agent;  
or

(b) in the terms or conditions on which such an engagement is offered.

(3) It is unlawful for the principal to discriminate against an agent on the ground of impairment—

(a) in the terms or conditions on which the agent is engaged;

(b) by denying or limiting access to opportunities for promotion, transfer or training or any other benefits connected with the agent's position;

(c) by terminating the engagement;

or

(d) by subjecting the agent to any other detriment.

**Discrimination against contract workers**

69. (1) This section applies to a principal for whom work is done by contract workers in pursuance of a contract between the principal and the employer of those contract workers.

(2) It is unlawful for a principal to enter into any contract or arrangement with an employer of contract workers under which the employer is to discriminate against a person on the ground of impairment.

(3) It is unlawful for the principal to discriminate against a contract worker on the ground of impairment—

(a) in the terms or conditions on which the contract worker is allowed to work;

(b) by not allowing the contract worker to work;

(c) by denying or limiting access to any benefit connected with employment;

or

(d) by subjecting the contract worker to any other detriment.

**Discrimination within partnerships**

70. (1) It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of impairment—

(a) in determining, or in the course of determining, who should be offered a position as partner in the firm;

or

(b) in the terms or conditions on which that person is offered a position as partner in the firm.

(2) It is unlawful for a firm consisting of two or more partners to discriminate against a partner on the ground of impairment—

(a) in the terms or conditions of membership of the firm;

- (b) by denying or limiting access to any benefit arising from membership of the firm;
- (c) by expelling the partner from the firm;
- or
- (d) by subjecting the partner to any other detriment.

### Exemptions

71. (1) This Division does not apply in relation to employment within a private household.

(2) This Division does not apply to discrimination on the ground of impairment in relation to employment if the person suffering from the impairment is not, or would not be, able—

- (a) to perform adequately, and without endangering himself or herself or other persons, the work genuinely and reasonably required for the employment or position in question;
- or
- (b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question.

### DIVISION III—DISCRIMINATION BY OTHER BODIES

#### Discrimination by associations on ground of impairment

72. (1) It is unlawful for an association to discriminate—

- (a) against an applicant for membership on the ground of impairment—
  - (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association;
  - or
  - (ii) in the terms on which the applicant is, or may be, admitted to membership, or to a particular class of membership;
- or
- (b) against a member of the association on the ground of impairment—
  - (i) by refusing or failing to provide a particular service or benefit to that member;
  - (ii) in the terms on which a particular service or benefit is provided to that member;
  - or
  - (iii) by expelling that member from the association or subjecting him or her to any other detriment.

#### Discrimination by qualifying bodies

73. (1) It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person on the ground of impairment—

- (a) by refusing or failing to confer or renew that authorization or qualification;
- (b) in the terms or conditions on which it confers the authorization or qualification;

or

(c) by withdrawing the authorization or qualification, or varying the terms or conditions upon which it is held.

(2) This section does not apply to discrimination against a person on the ground of impairment where, in consequence of that impairment, the person is not, or would not be, able to practise the profession, or carry on or engage in the trade or occupation, adequately or safely.

#### DIVISION IV—DISCRIMINATION IN EDUCATION

##### **Discrimination by educational authorities**

74. (1) It is unlawful for an educational authority to discriminate against a person on the ground of impairment—

(a) by refusing or failing to accept an application for admission as a student;

or

(b) in the terms or conditions on which it offers to admit the person as a student.

(2) It is unlawful for an educational authority to discriminate against a student on the ground of impairment—

(a) in the terms or conditions on which it provides the student with education or training;

(b) by denying or limiting access to any benefit provided by the authority;

(c) by expelling the student;

or

(d) by subjecting the student to any other detriment.

(3) This section does not apply to discrimination on the ground of impairment in respect of admission to a school, college or institution established wholly or mainly for students who have a particular impairment.

#### DIVISION V—DISCRIMINATION IN RELATION TO LAND, GOODS, SERVICES AND ACCOMMODATION

##### **Discrimination by person disposing of an interest in land**

75. (1) It is unlawful for a person to discriminate against another on the ground of impairment—

(a) by refusing or failing to dispose of an interest in land to the other person;

or

(b) in the terms or conditions on which an interest in land is offered to the other person.

(2) This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift.

##### **Discrimination in provision of goods and services**

76. (1) It is unlawful for a person who offers or provides—

(a) goods;

or

(b) services to which this Act applies,

(whether for payment or not) to discriminate against another on the ground of impairment—

(c) by refusing or failing to supply the goods or perform the services;

or

(d) in the terms or conditions on which or the manner in which the goods are supplied or the services are performed.

(2) Where the nature of a skill varies according to whether it is exercised in relation to persons who have a particular impairment or to those who do not have such an impairment, a person does not contravene subsection (1) by exercising the skill in relation to only those persons who have a particular impairment, or only those who do not have such an impairment, in accordance with the person's normal practice.

(3) This section does not apply to discrimination against a person on the ground of impairment in relation to the performance of a service where, in consequence of the impairment, that person requires the service to be performed in a special manner and the person performing the service—

(a) cannot reasonably be expected to perform the service in that manner;

or

(b) cannot reasonably be expected to perform the service in that manner except on more onerous terms than would otherwise apply.

#### **Discrimination in relation to accommodation**

77. (1) It is unlawful for a person to discriminate against another on the ground of impairment—

(a) in terms or conditions on which accommodation is offered;

(b) by refusing an application for accommodation;

or

(c) by deferring such an application or according the applicant a lower order of precedence on any list of applicants for that accommodation.

(2) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of impairment—

(a) in the terms or conditions on which accommodation is provided;

(b) by denying or limiting access to any benefit connected with the accommodation;

(c) by evicting the person;

or

(d) by subjecting the person to any detriment.

#### **DIVISION VI—DISCRIMINATION IN RELATION TO SUPERANNUATION**

##### **Superannuation schemes and provident funds**

78. (1) Subject to subsection (2), it is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of impairment—

(a) by providing a scheme or fund that discriminates or, if the other person were to become a member of the scheme or fund, would discriminate, or require or authorize discrimination, against the other person;

or

(b) in the manner in which the scheme or fund is administered,  
except to the extent that—

(c) the discrimination—

(i) is based upon actuarial or statistical data from a source upon which it is reasonable to rely;

and

(ii) is reasonable having regard to the data and any other relevant factors;

or

(d) where no such actuarial or statistical data is available, the discrimination is reasonable having regard to any other relevant factors.

(2) Subsection (1) does not apply in relation to a superannuation scheme or provident fund provided for employees—

(a) to which the employer makes contributions;

and

(b) under which a greater number of the members (not including members who are no longer employed by an employer who participates in the scheme or fund) reside in any one other State or Territory than reside in this State.

(3) Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this section has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.

#### DIVISION VII—GENERAL EXEMPTIONS FROM THIS PART

##### **Exemption in relation to salary, etc.**

79. This Part does not render unlawful discriminatory rates of salary, wages or other remuneration payable to persons who have impairments.

##### **Exemption for charities**

80. This Part does not—

(a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon persons who have a particular impairment;

or

(b) render unlawful any act done to give effect to such a provision.

##### **Exemption in relation to sporting activities**

81. This Part does not render unlawful the exclusion of a person who has an impairment from participation in a sporting activity—

(a) if the activity requires physical or intellectual attributes that the person does not possess;

or

(b) if, in the case of a sporting activity conducted wholly or mainly for persons who have a particular impairment, the person's impairment is not of that kind.

##### **Exemption for projects for benefit of persons with a particular impairment**

82. This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons who have a particular impairment.

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**Physical inaccessibility of premises**

**84.** This Part does not render unlawful discrimination against a person on the ground of physical impairment where the discrimination arises out of the fact—

(a) that premises, or a part of premises, is so constructed as to be inaccessible to that person;

or

(b) that the owner or occupier of premises fails to ensure that every part, or a particular part, of the premises is accessible to that person.

**Exemption in relation to insurance, etc.**

**85.** This Part does not render unlawful discrimination on the ground of impairment in the terms on which an annuity, life assurance, accident insurance or any other form of insurance is offered or may be obtained, where—

(a) the discrimination—

(i) is based upon actuarial or statistical data from a source on which it is reasonable to rely;

and

(ii) is reasonable having regard to that data and any other relevant factors;

or

(b) where no such actuarial or statistical data is available, the discrimination is reasonable having regard to any other relevant factors.

PART VI  
OTHER UNLAWFUL ACTS

**Victimization is unlawful**

86. (1) It is unlawful for a person to commit an act of victimization.

(2) For the purposes of this section, a person commits an act of victimization against another person ("the victim") if he or she treats the victim unfavourably on the ground that the victim has—

- (a) brought proceedings under this Act against any person;
- (b) given evidence or information in any proceedings under this Act;
- (c) made allegations that the victim or some other person has been the subject of an act that contravenes this Act;
- (d) reasonably asserted the victim's right or the right of some other person to lodge a complaint or take any other proceedings under this Act;

or

- (e) otherwise done anything under or by reference to this Act,

or on the ground that he or she knows that the victim intends to do any of those things, or suspects that the victim has done, or intends to do, any of those things.

(3) Unfavourable treatment on the ground that a person—

- (a) has made a false allegation;

or

- (b) has not acted in good faith,

does not constitute an act of victimization.

**Sexual harassment**

87. (1) It is unlawful for an employer (being a natural person) to subject an employee, or a person seeking employment, to sexual harassment.

(2) It is unlawful for an employee to subject a fellow employee, or a person seeking employment with the same employer, to sexual harassment.

(3) It is unlawful for an employee of an educational authority to subject a student, or a person applying to become a student, to sexual harassment.

(4) It is unlawful for a principal to subject a commission agent or contract worker, or a person seeking to become a commission agent or contract worker, to sexual harassment.

(5) It is unlawful for a commission agent or a contract worker to subject a fellow commission agent or contract worker to sexual harassment.

(6) It is unlawful for a person to subject another to sexual harassment in the course of—

- (a) offering or supplying goods to that other person;
- (b) offering or performing services to which this Act applies for that other person;

or

- (c) offering or providing accommodation to that other person.

(7) It is unlawful for an employer to fail to take such steps as may be reasonably practicable to prevent an employee from subjecting a fellow employee, or a person seeking employment, to sexual harassment.

(8) It is unlawful for an educational authority to fail to take such steps as may be reasonably necessary to ensure as far as practicable that none of its employees subjects a student to sexual harassment.

(9) It is unlawful for a person who offers or provides goods or services to which this Act applies to fail to take such steps as may be reasonably necessary to ensure as far as practicable that none of that person's agents or employees subjects a person to whom those goods or services are offered or provided to sexual harassment.

(10) Damages will not be awarded in respect of a failure to take steps to prevent sexual harassment (being a failure that is unlawful by virtue of subsection (7), (8) or (9)), unless it is established that the person guilty of that failure instructed, authorized or connived at the sexual harassment.

(11) For the purposes of this section, a person subjects another person to sexual harassment if he or she does any of the following acts in such a manner or in such circumstances that the other person feels offended, humiliated or intimidated:

- (a) he or she subjects the other to an unsolicited and intentional act of physical intimacy;
- (b) he or she demands or requests (directly or by implication) sexual favours from the other;
- (c) he or she makes, on more than one occasion, a remark with sexual connotations relating to the other,

and it is reasonable in all the circumstances that the other person should feel offended, humiliated or intimidated by that conduct.

#### **Blind or deaf persons not to be separated from their guide dogs**

88. Subject to this Act—

- (a) it is unlawful to impose any condition or requirement that would result in a person who is blind or deaf, or partially blind or deaf, being separated from his or her guide dog;

and

- (b) a person who imposes any such condition or requirement is, in addition to any civil liability that might be incurred under this Act, guilty of an offence.

Penalty: Division 8 fine.

#### **Notification to be given of proposed discrimination based on actuarial or statistical data**

89. Where a person, in offering or providing insurance or a superannuation scheme or provident fund, proposes to discriminate against another person on a ground referred to in this Act on the basis of actuarial or statistical data and this Act provides that such discrimination is not unlawful, it is unlawful for the person—

- (a) to fail to notify the other person of the discrimination and of the fact that he or she may request to be given a summary of the actuarial or statistical data on which it is based;

and

- (b) if such a request is made, to fail to comply with the request.

#### **Aiding unlawful acts**

90. Where a person causes, instructs, induces or aids another to act in contravention of this Act, both are jointly and severally liable to any criminal or civil liability arising under this Act in respect of the contravention.



**Liability of employers and principals**

**91.** (1) Subject to this section, a person is, for the purposes of this Act, vicariously liable for the acts or defaults of agents or employees while acting in the course of their agency or employment.

(2) A person is not vicariously liable for an act of sexual harassment committed by an agent or employee, unless the person instructed, authorized or connived at that act.

(3) In any proceedings brought under this Act against a person in respect of an act alleged to have been committed by an agent or employee acting in the course of the agency or employment, it is a defence to prove that the person exercised all reasonable diligence to ensure that the agent or employee would not act in contravention of this Act.

(4) Where a person would, but for the existence of a defence under subsection (3), be liable under this Act to any criminal or civil liability arising out of the act or default of an agent or employee, the agent or employee is liable to that criminal or civil liability.

PART VII  
GRANT OF EXEMPTIONS

**The Tribunal may grant exemptions**

92. (1) The Tribunal may, upon application under this section, grant exemptions from any of the provisions of this Act in relation to—

- (a) a person, or class of persons;
- (b) an activity, or class of activity;
- or
- (c) any circumstances of a specified nature.

(2) An exemption under this section—

- (a) may be granted unconditionally or upon conditions;
- (b) may be revoked by the Tribunal upon breach of a condition;
- and
- (c) subject to revocation, remains in force for a period, not exceeding three years, determined by the Tribunal, but may be renewed from time to time for a further period, not exceeding three years, determined by the Tribunal.

(3) An application for the grant, renewal or revocation of an exemption may be made to the Tribunal by the Commissioner or any other person.

(4) The following persons are entitled to appear and be heard by the Tribunal upon an application under this section:

- (a) the applicant;
- (b) where the Commissioner is not the applicant—the Commissioner;
- (c) any person in whose favour the exemption in question is sought, or has been granted.

(5) A person referred to in subsection (4) may call or give evidence in support of, or against, the application.

(6) In determining an application under this section, the Tribunal may—

- (a) have regard (where relevant) to the desirability of certain discriminatory actions being permitted for the purpose of redressing the effect of past discrimination;
- and
- (b) have regard to any other factors that the Tribunal considers relevant.

(7) Notice of the grant, renewal or revocation of an exemption under this section must be published in the *Gazette*.

(8) Notice of the grant or renewal of an exemption under this section must state—

- (a) the period for which the exemption has been granted or renewed;
- and
- (b) the conditions (if any) to which the exemption is subject.

PART VIII  
ENFORCEMENT OF THIS ACT

DIVISION I—COMPLAINTS AND INQUIRIES

**The making of complaints**

93. (1) A complaint alleging that a person has acted in contravention of this Act may be made—

- (a) by any person aggrieved by the act;
- (b) by any person aggrieved by the act, on behalf of himself or herself and any other person aggrieved by the act;
- (c) where a person aggrieved by the act has an intellectual impairment—by a person who is, in the opinion of the Commissioner, a suitable representative of the interests of the aggrieved person.

(1a) A person cannot make a complaint pursuant to subsection (1) (b) on behalf of some other person unless that other person has consented in writing to the making of the complaint.

(1b) A person who consents to a complaint being made on his or her behalf is bound by any decision or order made on the complaint.

(1c) A complaint—

- (a) must be in writing and set out the details of the alleged contravention;
- and
- (b) must be lodged with the Commissioner.

(2) A complaint must be lodged—

- (a) when the alleged contravention is constituted of a series of acts—within six months of the last of those acts;
- (b) in any other case—within six months of the date on which the contravention is alleged to have been committed.

(3) Upon a complaint being lodged under this section, the Commissioner must cause a written summary of the particulars of the complaint to be served, personally or by post, upon the respondent named in the complaint.

**Institution of inquiries**

93a. (1) Where it appears to the Tribunal, on application made by the Commissioner with the approval of the Minister, that a person may have acted in contravention of this Act, the Tribunal may refer the matter to the Commissioner for investigation.

(2) The person the subject of an application under this section is a party to the application and the Commissioner must, on lodging the application with the Tribunal, furnish the person with a copy of the application.

**Investigations**

94. (1) On a complaint being lodged or a matter being referred, the Commissioner may conduct an investigation into the alleged contravention.

(2) For the purposes of an investigation, the Commissioner may, by notice in writing given personally or by post to the person who is alleged to have acted in contravention of this Act, require that person to produce to the Commissioner such books, papers or other documents as may be specified in the notice.

(3) Subject to subsection (4), a person to whom a notice is given pursuant to subsection (2) must not refuse or fail to comply with the notice.

Penalty: Division 7 fine.

(4) A person is not obliged to produce any books, papers or documents pursuant to this section if their contents would tend to incriminate the person of an offence.

(5) The Commissioner may retain any books, papers or documents produced pursuant to this section only for so long as is reasonably necessary to peruse their contents and take copies of them.

(6) Nothing in this section empowers the Commissioner to require that a book, paper or document that is required for the day to day operation of a business be produced at any place other than the premises from which the business is operated.

**Manner in which Commissioner may deal with alleged contraventions**

95. (1) Where, in the opinion of the Commissioner, a complaint that has been lodged is frivolous, vexatious, misconceived or lacking in substance, the Commissioner may, by notice in writing addressed to the complainant, decline to recognize the complaint as one upon which action should be taken by the Commissioner.

(2) A decision by the Commissioner not to recognize a complaint as one upon which action should be taken under this section may be made at any time, notwithstanding that to some extent action under this section has already been taken on the complaint.

(3) Where the Commissioner is of the opinion that a matter (not being the subject of a complaint to which subsection (1) applies) may be resolved by conciliation, the Commissioner must make all reasonable endeavours to resolve the matter by conciliation.

(4) The Commissioner may, by notice in writing given personally or by post to the person who is alleged to have contravened this Act, require that person to attend at a time and place specified in the notice for the purpose of conciliation.

(5) A person who refuses or fails to comply with a requirement of the Commissioner under this section is guilty of an offence.

Penalty: Division 7 fine.

(6) A party to proceedings is not entitled to be represented, or assisted, by a legal practitioner in conciliation proceedings under this section except with the authority of the Commissioner.

(7) Evidence of anything said or done in the course of conciliation proceedings under this section is not admissible in any proceedings under this Act or any other Act or law.

(8) Where the Commissioner—

(a) is of the opinion that a matter cannot be resolved by conciliation;

(b) has attempted to resolve the matter by conciliation but has not been successful in that attempt;

or

(c) has declined to recognize a complaint as one upon which action should be taken under this section and the complainant has, within three months of being notified of the Commissioner's decision, by notice in writing, required the Commissioner to refer the complaint to the Tribunal,

the Commissioner must refer the matter to the Tribunal for hearing and determination.

(8a) Where a matter referred to the Commissioner for investigation is to be referred to the Tribunal for hearing and determination, the Commissioner will lodge a complaint with the Tribunal in respect of the matter.

(9) Where a complaint is referred to the Tribunal (except pursuant to subsection (8) (c)), the Commissioner must, on the request of the complainant, assist the complainant, personally or by counsel or other representative, in the presentation of the complainant's case to the Tribunal.

#### **Power of Tribunal to make certain orders**

96. (1) The Tribunal may, on determining that the respondent in proceedings under this Part has acted in contravention of this Act, make any one or more of the following orders:

- (a) an order requiring the respondent to pay compensation (of such amount as the Tribunal thinks fit) to any person for loss or damage arising from the contravention;
- (b) an order requiring the respondent to refrain from any further contravention of the Act;
- (c) an order requiring the respondent or any other party to the proceedings to perform specified acts with a view to redressing loss or damage arising from the contravention.

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(2) The Tribunal may, at any stage of proceedings under this Part—

- (a) make an interim order to prevent prejudice to any person affected by the proceedings;
- (b) make an order dismissing the proceedings.

(3) The damage for which a person may be compensated under subsection (1) includes injury to his or her feelings.

(4) A person who contravenes or fails to comply with an order under this section is guilty of an offence.

Penalty: Division 7 fine.

(5) Any amount that a person is ordered to pay under this section may be recovered from the person as a debt in a court of competent jurisdiction.

### **DIVISION II—APPEALS**

#### **Reasons for decision or order**

97. The Tribunal must, if so required by a party to proceedings under this Part, state in writing its reasons for any decision or order, together with any findings of fact, that it makes in those proceedings.

#### **Appeal**

98. (1) A right of appeal lies to the Supreme Court against—

- (a) a decision by the Tribunal upon an application for the grant, renewal or revocation of an exemption;

or

- (b) a decision or order made by the Tribunal in proceedings under this Part.

(2) An appeal under this section may be made by any party to the proceedings and must be instituted within one month of the making of the decision or order appealed against.

(3) If the reasons of the Tribunal are not given in writing at the time of the making of a decision or order and the appellant then requested the Tribunal to state its reasons in

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writing, the time for instituting the appeal runs from the time when the written statement of those reasons is given to the appellant.

(4) An appeal under this section must be conducted as a review of the decision or order of the Tribunal.

(5) The Supreme Court may, on the hearing of an appeal, exercise one or more of the following powers:

- (a) affirm, vary or quash the decision or order appealed against, or substitute, or make in addition, any decision or order that should have been made in the first instance;
- (b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for rehearing;
- (c) make any order as to costs or any other matter that the justice of the case requires.

## PART IX

## MISCELLANEOUS

**No further sanctions for breach of Act**

99. A contravention of this Act attracts no sanction or consequence (whether criminal or civil) except to the extent expressly provided by this Act.

**Proceedings under the Industrial Conciliation and Arbitration Act**

100. (1) Nothing in this Act prevents a person who has been dismissed from employment from bringing proceedings in respect of that dismissal under section 31 of the *Industrial Conciliation and Arbitration Act, 1972*.

(2) Where a person brings proceedings under section 31 of the *Industrial Conciliation and Arbitration Act, 1972*, in respect of dismissal from employment, and those proceedings are determined, that person cannot institute or prosecute proceedings under this Act in respect of the dismissal.

(3) Subsection (2) does not apply where the proceedings under the *Industrial Conciliation and Arbitration Act, 1972*, are dismissed on a ground that does not relate to the sex, sexuality, marital status, pregnancy, race or impairment of the person.

(4) Where a person brings proceedings under this Act in respect of dismissal from employment, and those proceedings are determined, that person cannot institute or prosecute proceedings under section 31 of the *Industrial Conciliation and Arbitration Act, 1972*, in respect of the dismissal.

(5) Subsection (4) does not apply where the proceedings under this Act are dismissed and the proceedings under the *Industrial Conciliation and Arbitration Act, 1972*, do not relate to the sex, sexuality, marital status, pregnancy, race or impairment of the person.

**General defence where Commissioner gives written advice<sup>1</sup>**

101. (1) Subject to this section, it is a defence in any proceedings under this Act (whether of a civil or criminal nature) for the defendant to prove—

(a) that the act or omission forming the subject matter of the charge, complaint, claim or inquiry was done, or made, in accordance with written advice furnished to the defendant by the Commissioner;

and

(b) that the Commissioner had not, by notice in writing served personally or by post on the defendant, retracted that advice before the date of the act or omission in question.

(2) A person proposing to act, on the advice of the Commissioner, to the detriment of another must, at least seven days before doing so, give notice to the other of the proposed action together with—

(a) a copy of that advice;

and

(b) a statement in the prescribed form of the other's rights under subsection (3),

and, in case of failure to do so, the defence under subsection (1) will not apply.

(3) A person may, within seven days after receiving a notification under subsection (2), apply to the Tribunal for a declaration as to whether the advice of the Commissioner is correct.

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<sup>1</sup> S. 101 had not been brought into operation at the date of this reprint.

(4) *The period limited by subsection (3) for the making of an application for a declaration is not capable of extension under the provisions of any other Act.*

(5) *The Registrar must cause a copy of an application under subsection (3) to be served personally or by post upon the Commissioner and the person to whom the advice was furnished.*

(6) *Where a person to whom advice is furnished by the Commissioner acts upon that advice before an application for a declaration under this section in relation to the advice is determined, the defence provided by subsection (1) is available to that person in any proceedings under this Act in respect of that action, if the Tribunal declares that the advice is correct or if the application is withdrawn or dismissed, but is not available in any such proceedings if the Tribunal declares that the advice is incorrect.*

(7) *Where in any proceedings under this section the Tribunal declares that advice furnished by the Commissioner is incorrect, the advice will, for the purposes of subsection (1), be taken to have been retracted on the date of the commencement of those proceedings.*

#### **Offences against the Commissioner**

102. A person must not molest, wilfully insult, hinder or obstruct the Commissioner, or an officer assisting the Commissioner, in the exercise or discharge by the Commissioner or the officer of official powers or duties.

Penalty: Division 7 fine.

#### **Discriminatory advertisements**

103. (1) A person must not publish or cause to be published an advertisement that indicates an intention to do an act that is unlawful by virtue of this Act.

Penalty: Division 8 fine.

(2) In proceedings for an offence against subsection (1), it is a defence to prove that the defendant believed on reasonable grounds that the publication of the advertisement would not contravene that subsection.

#### **Summary offences**

104. Offences against this Act are summary offences.

#### **Power of Presiding Officer to make rules**

105. The Presiding Officer of the Tribunal may make rules regulating the practice and procedure of the Tribunal.

#### **Regulations**

106. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) prescribe any form for the purposes of this Act;
- (b) exempt, conditionally or unconditionally, specified persons, or persons of a specified class, from any provision of this Act;

or

- (c) prescribe a penalty not exceeding a division 10 fine for breach of, or non-compliance with, any regulation.



## APPENDIX 1

## Legislative History

The Equal Opportunity Act, 1984, repealed the following Acts:

Sex Discrimination Act, 1975  
Handicapped Persons Equal Opportunity Act, 1981  
Racial Discrimination Act, 1976

Long title:	amended by 68, 1989, s. 3
Section 2:	amended by 23, 1990, s. 3(1) (4th Sched.)
Sections 3 and 4:	repealed by 23, 1990, s. 3(1) (4th Sched.)
Section 5(1):	definition of "employee" substituted by 68, 1989, s. 4(a) definition of "employer" substituted by 68, 1989, s. 4(a) definition of "employment" inserted by 68, 1989, s. 4(a) definition of "impairment" inserted by 68, 1989, s. 4(b) definition of "intellectual impairment" inserted by 68, 1989, s. 4(b) definition of "marital status" amended by 68, 1989, Sched. definition of "member" amended by 68, 1989, Sched. definition of "near relative" amended by 68, 1989, Sched. definition of "physical impairment" substituted by 68, 1989, s. 4(c) definition of "race" substituted by 68, 1989, Sched. definition of "services to which this Act applies" amended by 68, 1989, s. 4(d) definition of "voluntary worker" redefined as "unpaid worker" by 68, 1989, s. 4(e)
Section 5(2):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 6(1):	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 6(2):	amended by 68, 1989, Sched.
Section 6(3):	inserted by 68, 1989, s. 5
Section 8(1) and (2):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 8(3) and (4):	substituted by 68, 1989, s. 6
Section 8(5):	inserted by 68, 1989, s. 6
Section 9:	substituted by 68, 1989, s. 7
Section 11(1):	amended by 68, 1989, s. 8; 23, 1990, s. 3(1) (4th Sched.)
Section 11(2):	amended by 68, 1989, s. 8
Section 12(1):	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 12(2):	amended by 68, 1989, s. 9(a)-(c); 23, 1990, s. 3(1) (4th Sched.)
Section 12(3):	substituted by 68, 1989, s. 9(d)
Section 13:	repealed by 68, 1989, s. 10
Section 14(1):	amended by 68, 1989, s. 11; 23, 1990, s. 3(1) (4th Sched.)
Section 14(2):	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 15(1):	amended by 68, 1989, Sched.
Section 16(1):	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 16(2):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 17:	substituted by 23, 1990, s. 3(1) (4th Sched.)
Section 18(1) and (2):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 18(3) and (4):	amended by 68, 1989, Sched.
Section 18(5) and (6):	substituted by 68, 1989, Sched.
Section 18(7):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 19(2):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 19(3) - (5):	substituted by 68, 1989, Sched.
Section 20:	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 21(1):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 21(2):	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 22(1) and (2):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 23(1) - (3) and (5):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 24(1):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 24(2) and (3):	amended by 68, 1989, Sched.
Section 24(4):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 25(1):	amended by 68, 1989, Sched.
Section 25(2):	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 25(3):	substituted by 68, 1989, Sched.
Section 26(3):	amended by 68, 1989, Sched.
Section 27(2):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 28(1):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 28(2):	substituted by 68, 1989, s. 12
Section 28(3):	repealed by 68, 1989, s. 12
Section 29:	substituted by 68, 1989, Sched.
Section 30:	amended by 68, 1989, Sched.
Section 31(2) and (3):	amended by 68, 1989, Sched.
Section 32(3):	amended by 68, 1989, Sched.
Section 33(4):	amended by 68, 1989, Sched.
Section 34(3):	substituted by 68, 1989, s. 13
Section 35(1):	amended by 68, 1989, s. 14, Sched.
Section 35(3):	amended by 68, 1989, Sched.
Section 35a:	inserted by 68, 1989, s. 15
Section 37(1) and (2):	amended by 68, 1989, Sched.
Section 39(1):	amended by 68, 1989, s. 16, Sched.
Section 39(2):	amended by 68, 1989, Sched.
Section 40(1) - (3):	amended by 68, 1989, Sched.
Section 41:	definition of "de facto spouse" amended by 68, 1989, Sched.
Section 42(1) and (3):	amended by 68, 1989, Sched.
Section 43:	amended by 68, 1989, Sched.
Section 51:	substituted by 68, 1989, Sched.

Section 52:	amended by 68, 1989, Sched.
Section 53(2) and (3):	amended by 68, 1989, Sched.
Section 54(2) and (3):	amended by 68, 1989, Sched.
Section 55:	amended by 68, 1989, Sched.
Section 57(1):	amended by 68, 1989, s. 17, Sched.
Section 58:	amended by 68, 1989, Sched.
Section 59:	amended by 68, 1989, Sched.
Section 60(1):	amended by 68, 1989, Sched.
Section 61:	amended by 68, 1989, s. 18, Sched.
Section 62:	amended by 68, 1989, Sched.
Section 63(1):	amended by 68, 1989, Sched.
Heading preceding section 66:	amended by 68, 1989, s. 19
Section 66:	substituted by 68, 1989, s. 20
Section 67:	amended by 68, 1989, s. 21, Sched.
Section 68(2) and (3):	amended by 68, 1989, s. 21, Sched.
Section 69(2):	amended by 68, 1989, s. 21
Section 69(3):	amended by 68, 1989, s. 21, Sched.
Section 70(1):	amended by 68, 1989, s. 21
Section 70(2):	amended by 68, 1989, s. 21, Sched.
Section 71(2):	amended by 68, 1989, s. 22, Sched.
Section 72(1):	amended by 68, 1989, s. 23, Sched.
Section 73(1):	amended by 68, 1989, s. 24
Section 73(2):	amended by 68, 1989, s. 24, Sched.
Section 74(1):	amended by 68, 1989, s. 25(a), Sched.
Section 74(2):	amended by 68, 1989, s. 25(b), Sched.
Section 74(3):	amended by 68, 1989, s. 25(c)
Section 75(1):	amended by 68, 1989, s. 26
Section 76(1):	amended by 68, 1989, s. 27(a), (b), Sched.
Section 76(2):	amended by 68, 1989, s. 27(c), Sched.
Section 76(3):	substituted by 68, 1989, Sched.
Section 77:	amended by 68, 1989, s. 28, Sched.
Section 78(1):	amended by 68, 1989, s. 29, Sched.
Section 79:	amended by 68, 1989, s. 30
Section 80:	amended by 68, 1989, s. 31
Section 81:	substituted by 68, 1989, s. 32
Section 82:	amended by 68, 1989, s. 33
Section 83:	repealed by 68, 1989, s. 34
Section 84:	amended by 68, 1989, Sched.
Section 85:	amended by 68, 1989, s. 35
Section 86:	substituted by 68, 1989, Sched.
Section 87(1) and (2):	substituted by 68, 1989, s. 36(a)
Section 87(4):	amended by 68, 1989, Sched.
Section 87(7):	substituted by 68, 1989, s. 36(b)
Section 87(9):	amended by 68, 1989, Sched.
Section 87(10):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 87(11):	substituted by 68, 1989, Sched.
Section 88:	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 89:	amended by 68, 1989, Sched.
Section 90:	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 91(1) and (2):	amended by 68, 1989, Sched.
Section 91(3):	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 91(4):	amended by 68, 1989, Sched.
Section 92(2), (4) and (7):	amended by 23, 1990, s. 3(1) (4th Sched.)
Heading preceding section 93:	amended by 68, 1989, s. 37
Section 93(1):	substituted by 68, 1989, s. 38
Section 93(1a):	inserted by 68, 1989, s. 38
Section 93(1ab):	inserted by 68, 1989, s. 38; redesignated as s. 93(1b) by 23, 1990, s. 3(1) (4th Sched.)
Section 93(1c):	inserted by 68, 1989, s. 38
Section 93(3):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 93a:	inserted by 68, 1989, s. 39
Section 94(1):	substituted by 68, 1989, s. 40
Section 94(3):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 94(4) and (5):	amended by 68, 1989, Sched.
Section 95(1):	amended by 68, 1989, Sched.
Section 95(3):	amended by 68, 1989, s. 41(a), Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 95(4):	amended by 68, 1989, Sched.
Section 95(5) and (7):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 95(8):	amended by 68, 1989, s. 41(b)-(d), Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 95(8a):	inserted by 68, 1989, s. 41(e)
Section 95(9):	substituted by 68, 1989, Sched.
Section 96(1):	substituted by 68, 1989, s. 42(a)
Section 96(1)(d):	repealed by 25, 1990, s. 7(a)
Section 96(2):	substituted by 25, 1990, s. 7(b)
Section 96(3):	amended by 68, 1989, s. 42(b), Sched.
Section 96(4):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 96(5):	amended by 68, 1989, Sched.
Section 97:	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 98(1), (3) and (4):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 99:	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 100(1):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 100(2):	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 100(3):	amended by 68, 1989, s. 43
Section 100(4):	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 100(5):	amended by 68, 1989, s. 43

Section 101(1):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 101(2):	substituted by 68, 1989, Sched.
Section 101(5):	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 101(6) and (7):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 102:	amended by 68, 1989, Sched.; 23, 1990, s. 3(1) (4th Sched.)
Section 103(1):	amended by 23, 1990, s. 3(1) (4th Sched.)
Section 103(2):	substituted by 68, 1989, Sched.
Section 104:	substituted by 23, 1990, s. 3(1) (4th Sched.)
Section 106(2):	amended by 23, 1990, s. 3(1) (4th Sched.)

## APPENDIX 2

### Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

*Note: This appendix is provided for convenience of reference only.*