NORTHERN TERRITORY OF AUSTRALIA

ANTI-DISCRIMINATION ACT 1992

As in force at 27 July 2026

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 27 July 2026

ANTI-DISCRIMINATION ACT 1992

An Act to promote equality of opportunity in the Territory by protecting persons from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct, to provide remedies for persons discriminated against and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Anti-Discrimination Act 1992*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Objects

The objects of this Act are:

(a) to promote recognition and acceptance within the community of the principle of the right to equality of opportunity of persons regardless of an attribute; and

(b) to prevent and eliminate discrimination, sexual harassment and victimisation to the greatest extent possible; and

(c) to promote the identification and elimination of systemic discrimination.

4 Interpretation

(1) In this Act:

accommodation includes:

(a) business premises; and

(b) a house or flat; and

(c) a hotel or motel; and

(d) a boarding house or hostel; and

(e) a caravan or caravan site; and

(f) a mobile home or mobile home site; and

(g) a camping site; and

(h) a building or construction site.

accommodation status includes being:

(a) a tenant, boarder, lodger or licensee; or

(b) transient or homeless; or

(c) a resident of any of the following:

(i) an aged care facility;

(ii) disability accommodation;

(iii) supported care accommodation.

acting in an official capacity, in relation to a person, means the person is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

advertisement means every form of advertisement or notice, however displayed, and whether or not displayed to the public, and includes an advertisement:

(a) in a newspaper, on the internet or in another publication, whether in printed or electronic form; and

(b) by television, radio or a streaming service; and

(c) by display of notices, signs, labels or goods; and

(d) by distribution of samples, circulars, catalogues, price lists or other material; and

(e) by exhibition of pictures, models or films.

artificial fertilisation procedure means any artificial insemination procedure or in vitro fertilisation procedure.

artificial insemination procedure means a procedure where human sperm are introduced, by a non-coital method, into the reproductive system of a woman but which is not, and is not an integral part of, an in vitro fertilisation procedure.

assistance animal, see section 4A.

attribute means an attribute referred to in section 19.

carer responsibilities means whether or not the person is a parent or has responsibility to care for a family member or near relative or through kinship or otherwise.

child means a person who has not attained the age of 18 years.

club means an incorporated or unincorporated association of not less than 30 members that:

(a) is established for social, literary, cultural, political, sporting, athletic, recreational or community service purposes or any other similar lawful purpose; and

(b) provides and maintains its facilities, wholly or partly, from funds of the association.

Commissioner means the person appointed under section 6 to be the Anti-Discrimination Commissioner and includes a person appointed under section 11 to act as the Commissioner, when so acting.

committee of management, in relation to a club, means the group or body of people, by whatever name called, that manages the affairs of the club.

complainant means the person making a complaint and includes a person joined as a complainant under section 73.

complaint means a complaint made under Part 6.

conciliation means a conciliation under Part 6, Division 3.

disability includes the following:

(a) the total or partial loss of a bodily function;

(b) the presence in the body of:

(i) an organism that has caused or is capable of causing disease; or

(ii) organisms impeding, capable of impeding or that may impede the capacity of the body to combat disease;

(c) total or partial loss of a part of the body;

(d) the malfunction or dysfunction of a part of the body;

(e) the malformation or disfigurement of a part of the body;

(f) a reliance on any of the following:

(i) a support person;

(ii) a disability aid;

(iii) an assistance animal;

(g) psychiatric or psychological disease or disorder, whether permanent or temporary;

(h) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction;

(i) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

disability aid means equipment (including a palliative or therapeutic device) that is generally recognised to alleviate an effect of a disability.

document includes:

(a) paper or other material on which there is writing; and

(b) paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and

(c) an article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device.

domestic violence, see section 5 of the *Domestic and Family Violence Act 2007*.

educational authority means the body or person administering an educational institution.

educational institution includes the following:

(a) a childcare centre, school, college, university or other institution at which any form of training or instruction is provided;

(b) a place at which training or instruction is provided by an employer;

(c) a place that provides educational programs to people in custody;

(d) any other place that provides an education and care service.

employment status includes the following:

(a) being unemployed;

(b) receiving a pension or another social security benefit;

(c) receiving compensation;

(d) being employed on a part-time, casual or temporary basis;

(e) undertaking shift or contract work.

enforceable undertaking means an enforceable undertaking under section 110B.

enforcement order means an enforcement order under section 110C.

gender identity means a person's gender-related identity, which may or may not correspond with the person's designated sex at birth, and includes:

(a) the personal sense of the body (whether this involves medical intervention or not); and

(b) other expressions of gender, such as dress, speech, mannerisms, names and personal references.

HIV/hepatitis status means having:

(a) the Human Immunodeficiency Virus; or

(b) the medical condition known as hepatitis.

homeless means without access to safe and secure housing.

individual complaint means a complaint other than a representative complaint.

insurance includes:

(a) an annuity; and

(b) life assurance; and

(c) accident insurance; and

(d) illness insurance.

in vitro fertilisation procedure means a procedure which:

(a) is consequent on the removal of an egg from the body of a woman, and carried out for one or more of the following purposes:

(i) the fertilisation of the egg, within or outside her body;

(ii) the keeping or use of the egg with intent to derive from it an egg in the process of fertilisation or an embryo;

(iii) the keeping or use of the egg in the process of fertilisation or embryo so derived; or

(b) is directed at the introduction into the body of a woman of:

(i) an egg, whether produced by the woman or by another woman; or

(ii) an egg in the process of fertilisation or an embryo, whether produced by the woman or by another woman and whether or not fertilisation began outside the body into which it is introduced.

irrelevant criminal record, in relation to a person, means:

(a) a spent record within the meaning of the *Criminal Records (Spent Convictions) Act 1992*; or

(ab) a record expunged under the *Expungement of Historical Homosexual Offence Records Act 2018*; or

(ac) a record expunged under Part XI, Division 18, of the Criminal Code; or

(b) a record relating to arrest, interrogation or criminal proceedings where:

(i) no further action was taken in relation to the arrest, interrogation or charge of the person; or

(ii) no charge has been laid; or

(iii) the charge was dismissed; or

(iv) the prosecution was withdrawn; or

(v) the person was discharged, whether or not on conviction; or

(vi) the person was found not guilty; or

(vii) the person's finding of guilt was quashed or set aside; or

(viii) the person was granted a pardon; or

(ix) the circumstances relating to the offence for which the person was found guilty are not directly relevant to the situation in which the discrimination arises.

near relative, in relation to a person, means:

(a) a parent, child, grandparent or sibling of the person; or

(b) the spouse or de facto partner of the person or a person referred to in paragraph (a).

parent includes a step-parent, adoptive parent, foster parent, guardian and a person who provides care, nurturing and support to a child.

pregnancy includes child bearing capacity.

proceeding includes a conciliation or an investigation.

prohibited conduct means:

(a) discrimination, other than discrimination exempted from the application of this Act; or

(b) sexual harassment; or

(c) victimisation; or

(ca) offensive behaviour; or

(d) discriminatory advertising; or

(e) seeking unnecessary information; or

(f) contravention of duty to accommodate a special need; or

(g) aiding a contravention of this Act.

race includes:

(a) the nationality, ethnic or national origin, colour, descent or ancestry of a person; and

(b) that a person is or has been an immigrant.

relationship status means whether or not a person:

(a) is single; or

(b) is married; or

(c) is married but living separately and apart from the person's spouse; or

(d) is married, or has been married, to a particular person; or

(e) is divorced; or

(f) is a surviving spouse or de facto partner; or

(g) is a de facto partner; or

(h) is the de facto partner, or was the de facto partner, of a particular person.

representative complaint means a complaint mentioned in section 60(c).

respondent, in relation to a complaint, means the person or organisation alleged in the complaint to have engaged in prohibited conduct or systemic discrimination and includes a person joined as a respondent under section 73.

services include:

(a) access to or use of any land, place, vehicle or facility that members of the public are, or a section of the public is, permitted to use; and

(b) banking or the supply of loans, finance, credit guarantees, hire purchase schemes or any other type of financial accommodation; and

(c) services connected with the selling or leasing of an interest in land; and

(d) recreation, including entertainment, sports, tourism and the arts; and

(e) the supply of refreshments; and

(f) services connected with transport and travel; and

(g) services of any profession, occupation, trade or business; and

(h) services provided by a government, statutory corporation, a company or other body corporate in which a government has a controlling interest, or a local government council;

but does not include insurance and superannuation.

sex characteristics means a person's physical features and development relating to sex, including the following:

(a) genitalia, gonads and other sexual and reproductive parts of the person's anatomy;

(b) chromosomes, genes and hormones related to sex;

(c) secondary physical features emerging as a result of puberty.

sexual orientation means each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of the same gender identity, a different gender identity or more than one gender identity.

sex work means provision by a person of either of the following services in return for payment or reward:

(a) services that involve the person participating in sexual activity with another person;

(b) services that involve the use or display of the person's body for the sexual arousal or gratification of others.

supervision, in relation to a child, means to oversee or superintend the execution of or performance of work or other tasks by the child.

support person means a person who provides assistance or services to another person because of a disability the other person has.

*Examples for definition **support person***

A carer, an assistant, an interpreter or a reader.

systemic discrimination means behaviour, practices, policies or programs of an organisation or Agency that have the effect of creating or perpetuating disadvantage for a group that shares a protected attribute.

Tribunal means the Civil and Administrative Tribunal.

victimisation, see section 23(2).

work includes work carried out in any capacity and at any place, including as:

(a) an employee; or

(b) a contractor or subcontractor; or

(c) an employee of a contractor or subcontractor; or

(d) an employee of a labour hire company; or

(e) an outworker; or

(f) an apprentice or trainee; or

(g) a student or other person gaining work experience, whether formal or informal; or

(h) a volunteer or on another unpaid basis; or

(i) a statutory appointee; or

(j) part of a vocational training program or other occupational training or retraining program; or

(k) a person of a prescribed class.

(2) For the purposes of this Act, a person may be discriminated against on the ground of race even if the person is, in addition to that race, of one or more other races.

(3) For the purposes of this Act, trade union or employer association activity is to be construed to include membership or non membership of a trade union or employer association and a lack or absence of trade union or employer association activity.

(4) For the purposes of this Act, religious belief or activity is to be construed to include Aboriginal spiritual belief or activity.

(5) For the purposes of this Act, political opinion, affiliation or activity is to be construed to include a lack or absence of political opinion, affiliation or activity.

(5A) For the purposes of this Act, sexual orientation is to be construed to include an absence of profound emotional, affectional and sexual attraction to other individuals.

(6) For the purposes of this Act, refusing or failing to do an act is taken to be the doing of an act and a reference to an act includes a reference to such a refusal or failure.

(7) Unless the contrary intention appears, a reference in this Act to a person includes a reference to an unincorporated association.

(8) A reference in this Act to the provision of a service does not include the carrying out of an artificial fertilisation procedure.

Note for section 4

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

4A Assistance animals

(1) An ***assistance animal*** is an animal trained or accredited to assist, in a public place, a person with a disability in relation to the disability.

(2) In this section:

trained or accredited means trained or accredited by a training organisation or State or Territory body prescribed by regulation.

5 Act to bind Crown

This Act binds the Crown, not only in right of the Territory but, to the extent that the legislative power of the Legislative Assembly permits, in all its other capacities.

5A Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 5A

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Anti-Discrimination Commissioner

6 Commissioner

(1) Subject to this Part, the Administrator may, in writing, appoint a person to be the Anti-Discrimination Commissioner.

(2) Subject to this Part, the Commissioner holds office for such period, not longer than 5 years, as is specified in the notice of appointment but is eligible for re-appointment.

(3) The terms and conditions of the Commissioner's appointment shall be fixed by the Administrator.

7 Leave of absence

The Minister may grant leave of absence to the Commissioner on such terms as the Minister thinks fit.

8 Resignation

The Commissioner may resign, in writing, delivered to the Administrator.

9 Termination of appointment

(1) The Administrator may, in writing, terminate the appointment of a person as the Commissioner if the person:

(a) becomes physically or mentally incapable of satisfactorily performing the duties of the office; or

(b) is guilty of misconduct of a kind that could warrant dismissal under the *Public Sector Employment and Management Act 1993* if the person were an employee within the meaning of that Act; or

(c) is absent, without the Minister's leave and without reasonable excuse, for 14 consecutive days or 28 days in any 12 months.

(2) The Administrator shall, in writing, terminate the appointment of a person as the Commissioner if the person:

(a) is found guilty of an indictable offence (whether in the Territory or elsewhere); or

(b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

(c) engages in paid employment outside the duties of the office without the Minister's approval.

10 Disclosure of interest

The Commissioner shall, as soon as practicable after being appointed and after acquiring them, in writing, notify the Minister of all direct or indirect pecuniary interests that the Commissioner has or acquires in a business, or in a body corporate carrying on a business, whether in Australia or elsewhere.

11 Acting Commissioner

(1) Subject to this Part, the Administrator may, in writing, appoint a person to act as the Commissioner:

(a) during a vacancy in the office; or

(b) during any period, or during all periods, when the Commissioner is absent from duty or from the Territory or is, for any other reason, unable to perform the duties of the office.

(2) A person appointed under subsection (1), while so acting, may exercise all the powers and perform all the functions of the Commissioner.

(3) Subject to subsection (4), the terms and conditions of a person appointed under subsection (1) shall be fixed by the Administrator.

(4) A person appointed under subsection (1) to act as the Commissioner during a vacancy in the office shall not continue to act for a period longer than 12 months.

(5) Where no appointment under subsection (1) is in force or a person so appointed is unable, for any reason, to perform the duties of the office of the Commissioner, the Minister may, in writing, appoint a person to act as the Commissioner for a period of not longer than 3 months.

12 Staff of Commissioner

The Commissioner shall be provided by the Minister with such staff, who shall be employees within the meaning of the *Public Sector Employment and Management Act 1993*, as is necessary for the administration of this Act.

13 Functions of Commissioner

(1) The Commissioner has the following functions:

(a) to assess complaints, conduct conciliations in relation to complaints and refer complaints for hearing by the Tribunal;

(b) to examine Acts and regulations and proposed Acts and regulations of the Territory to determine whether they are, or would be, inconsistent with the purposes of this Act, and to report the results of such examinations to the Minister;

(c) to institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination and the effects of discrimination;

(d) to consult with organisations, departments and local government councils to ascertain means of improving services and conditions affecting groups that are subjected to prohibited conduct;

(e) to research and develop additional grounds of discrimination and to make recommendations for the inclusion of such grounds in this Act;

(f) to examine practices, alleged practices or proposed practices of a person, at the Commissioner's own initiative or when required by the Minister, to determine whether they are, or would be, inconsistent with the purposes of this Act, and, when required by the Minister, to report the results of the examination to the Minister;

(g) to promote in the Territory an understanding and acceptance, and public discussion, of the purposes and principles of equal opportunity;

(h) to promote an understanding and acceptance of, and compliance with, this Act;

(ha) to conduct investigations as to compliance with the duty in Part 2A or under Part 6, Division 4B and to take any required action arising out of those investigations;

(j) to promote the recognition and acceptance of non-discriminatory attitudes, acts and practices;

(k) to promote within the public sector the development of equal opportunity management programs;

(m) to prepare and publish guidelines and codes of practice to assist persons to comply with this Act;

(n) to provide advice and assistance to persons relating to this Act as the Commissioner thinks fit;

(p) to advise the Minister generally on the operation of this Act;

(q) if the Commissioner considers it appropriate to do so, to intervene in a proceeding that involves issues of equality of opportunity or discrimination with the leave of the court hearing the proceeding and subject to any conditions imposed by the court;

(r) such functions as are conferred on the Commissioner by or under this or any other Act;

(s) such other functions as the Minister determines.

(2) The Commissioner shall not regard, for the purposes of subsection (1)(b), an Act or regulation or a proposed Act or regulation of the Territory as being inconsistent with the purposes of this Act by reason of a provision of the Act or regulation or proposed Act or regulation that is included solely for the purpose of promoting equal opportunity for a group of persons who are disadvantaged or have a special need because of any of the attributes referred to in section 19.

(3) The Commissioner shall not regard an act or practice as being inconsistent with the purposes of this Act where the act or practice is done or engaged in solely for the purpose referred to in subsection (2).

14 Powers of Commissioner

Subject to this Act, the Commissioner has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of the Commissioner's functions under this Act.

15 Delegation

The Commissioner may, in writing, delegate any of the Commissioner's powers and functions under this Act to a person.

16 Annual report

(1) The Commissioner shall furnish a report to the Minister not later than 30 September in each year on the operation of this Act for the 12 months to 30 June immediately preceding.

(2) The Minister may, in writing, direct the Commissioner to report on specified matters in a report furnished under subsection (1).

(3) A direction given under subsection (2) shall be included in the report furnished under subsection (1).

(4) The Minister shall cause a copy of each report furnished under subsection (1) to be laid before the Legislative Assembly not later than 6 sitting days of the Assembly after the report has been so furnished.

17 Special report

(1) The Minister may, in writing, at any time direct the Commissioner to provide a report on any aspect of the operation of this Act.

(2) If the Minister so determines, a report under subsection (1) shall be included in a report furnished under section 16.

18 Legislative Assembly members not to be appointed

(1) A member of the Legislative Assembly shall not be appointed as the Commissioner or to act as the Commissioner.

(2) Subject to subsection (3), the appointment of a person as the Commissioner or to act as the Commissioner ceases on the person becoming a member of the Legislative Assembly.

(3) Notwithstanding subsection (2), an appointment of a person referred to in that subsection shall continue in force in respect of a complaint made before the person became a member of the Legislative Assembly and in respect of which the person was performing any functions under this Act until the completion of proceedings under this Act in respect of the complaint.

Part 2A Positive duty to eliminate discrimination, sexual harassment and victimisation

18A Purpose of Part

The purpose of this Part is to provide for the taking of positive action to prevent and eliminate discrimination, sexual harassment and victimisation to the greatest extent possible.

18B Duty to eliminate discrimination, sexual harassment and victimisation

(1) This section applies to a person who is prohibited under Part 3 or 4 from engaging in discrimination, sexual harassment or victimisation.

(2) A person must take reasonable and proportionate measures to eliminate that discrimination, sexual harassment or victimisation to the greatest extent possible.

(3) In determining whether a measure is reasonable and proportionate the following factors must be considered:

(a) the size of the person's business or operations;

(b) the nature and circumstances of the person's business or operations;

(c) the person's resources;

(d) the person's business and operational priorities;

(e) the practicability and the cost of the measure.

18C Investigations

(1) The Commissioner may investigate compliance with the duty imposed by this Part.

(2) The Commissioner may conduct the investigation in any way the Commissioner considers appropriate.

18D Outcome of investigation

(1) After conducting an investigation into compliance with the duty imposed by this Part, the Commissioner may take any action the Commissioner considers appropriate.

(2) Without limiting subsection (1), the Commissioner may do the following:

(a) take no further action;

(b) enter into an enforceable undertaking with a person;

(c) prepare a report and, subject to subsection (4), do either or both of the following in relation to the report:

(i) give it to the Minister;

(ii) publish it.

(3) A report under subsection (2)(c) may include the following:

(a) an opinion of the Commissioner about whether compliance with the duty imposed by this Part has occurred;

(b) recommendations to address compliance.

(4) If a report mentioned in subsection (2)(c) adversely mentions a person, the Commissioner must give the person a reasonable opportunity to respond to the report before giving the report to Minister or publishing the report (as the case may be).

(5) The Minister must table a report given to the Minister under subsection (2)(c)(i) in the Legislative Assembly within 6 sitting days after the Minister receives the report.

(6) A report may be:

(a) referred to in making an individual complaint; or

(b) taken into account by the Tribunal in relation to an individual complaint referred to the Tribunal.

Part 3 Discrimination

Division 1 Prohibited grounds of discrimination

19 Prohibition of discrimination

(1) Subject to subsection (2), a person shall not discriminate against another person on the ground of any of the following attributes:

(a) race;

(ab) language, including signed language;

(b) sex;

(ba) gender identity;

(c) sexual orientation;

(ca) sex characteristics;

(d) age;

(e) relationship status;

(ea) accommodation status;

(eb) employment status;

(ec) employment in sex work or engaging in sex work, including past employment in sex work or engagement in sex work;

(f) pregnancy;

(g) carer responsibilities;

(h) breastfeeding;

(j) disability;

(ja) HIV/hepatitis status;

(jb) subjected to domestic violence;

(k) trade union or employer association activity;

(m) religious belief or activity;

(n) political opinion, affiliation or activity;

(p) irrelevant medical record;

(q) irrelevant criminal record;

(qa) the person's details being published under section 66M of the *Fines and Penalties (Recovery) Act 2001*;

(r) association with a person who has, or is believed to have, an attribute referred to in this section.

(2) It is not unlawful for a person to discriminate against another person on any of the attributes referred to in subsection (1) if an exemption under Part 4 or 5 applies.

20 Discrimination

(1) For the purposes of this Act, discrimination includes:

(a) any distinction, restriction, exclusion or preference made on the basis of an attribute that has the effect of nullifying or impairing equality of opportunity; and

(b) harassment on the basis of an attribute,

in an area of activity referred to in Part 4.

(2) Without limiting the generality of subsection (1), discrimination takes place if a person treats or proposes to treat another person who has or had, or is believed to have or had:

(a) an attribute; or

(b) a characteristic imputed to appertain to an attribute; or

(c) a characteristic imputed to appertain generally to persons with an attribute,

less favourably than a person who has not, or is believed not to have, such an attribute.

(3) For discrimination to take place, it is not necessary that:

(a) the attribute is the sole or dominant ground for the less favourable treatment; or

(b) the person who discriminates regards the treatment as less favourable.

(4) The motive of a person alleged to have discriminated against another person is, for the purposes of this Act, irrelevant.

20A Inciting hatred, serious contempt or severe ridicule because of attribute

(1) A person must not do an act that:

(a) is reasonably likely, in all the circumstances, to incite hatred towards, serious contempt for or severe ridicule of, another person or a group of people; and

(b) is done because of an attribute of the other person or of some or all of the people in the group.

(2) Subsection (1) does not apply to an act done in private.

(3) For subsection (2), an act is taken not to be done in private if it:

(a) causes words, sounds, images or writing to be communicated to the public; or

(b) is done in a public place; or

(c) is done in the sight or hearing of people who are in a public place.

(4) In this section:

public place includes any place to which the public have access as of right or by invitation, whether express or implied and whether or not a charge is made for admission to the place.

20B Exemptions to section 20A

Section 20A does not prevent anything said or done reasonably and in good faith:

(a) in the performance, exhibition or distribution of an artistic work; or

(b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or

(c) in making or publishing:

(i) a fair and accurate report of any event or matter of public interest; or

(ii) a fair comment on any event or matter of public interest, if the comment is an expression of a genuine belief held by the person making the comment.

21 Discrimination by refusing to allow assistance animal

(1) For this Act, a person discriminates on the ground of disability against a person if the person treats the person with the disability less favourably because the person has an assistance animal.

(2) Subsection (1) applies notwithstanding that it is the practice of the person to treat less favourably other persons who have animals, or animals of a particular kind.

(3) Nothing in this section limits the operation of section 20 in relation to discrimination on the ground of disability.

(4) This section does not affect the liability of a person with an assistance animal for any damage caused by the assistance animal.

(5) Nothing in this Act makes it unlawful for a person to:

(a) request a person with an assistance animal to produce evidence that the animal is an assistance animal; and

(b) if the person with an assistance animal does not produce evidence that the animal is an assistance animal – discriminate against the person on the ground that the person has the animal.

Division 2 Prohibited conduct

22 Prohibition of sexual harassment

(1) A person must not sexually harass another person.

(2) Sexual harassment takes place if a person:

(a) subjects another person to an unwelcome act of physical intimacy; or

(b) makes an unwelcome demand or request (whether directly or by implication) for sexual favours from the other person; or

(c) makes an unwelcome remark with sexual connotations; or

(d) engages in any other unwelcome conduct of a sexual nature,

and:

(e) that person does so:

(i) with the intention of offending, humiliating or intimidating the other person; or

(ii) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct; or

(f) that other person is, or reasonably believes they are likely to be, subjected to some detriment if they object to the act, demand, request, remark or conduct.

(3) For the purposes of subsection (2)(e)(ii), circumstances that are relevant in determining whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct include:

(a) the race, sex, sexual orientation, gender identity, sex characteristics, age, relationship status or religious belief or activity of the other person; and

(b) any disability that the other person has; and

(c) the relationship between the other person and the person engaging in the conduct; and

(d) any other circumstance of the other person.

23 Prohibition of victimisation

(1) A person shall not victimise another person because the other person:

(a) has made, or intends to make, a complaint; or

(b) has given, or intends to give, evidence or information in connection with proceedings under this Act or

(c) has alleged, or intends to allege, that a person has committed an act which would amount to a contravention of this Act; or

(d) has done anything in relation to a person under or by reference to this Act.

(2) Victimisation takes place if a person subjects or threatens to subject another person or an associate of the other person to any detriment.

(3) Subsection (1)(c) does not apply to or in relation to an allegation that is false and not made in good faith.

24 Duty to accommodate special need

(1) A person must reasonably accommodate a special need that another person has because of an attribute.

(2) For subsection (1):

(a) reasonable accommodation of a special need of another person means making adequate or appropriate provision to accommodate the special need; and

(b) reasonable accommodation of a special need takes place when a person acts in a way that reasonably provides for the special need of another person who has the special need because of an attribute.

(3) Whether a person reasonably provided for the special need of another person depends on all the relevant circumstances of the case including, but not limited to:

(a) the nature of the special need; and

(b) the cost of accommodating the special need and the number of people who would benefit or be disadvantaged; and

(c) the financial circumstances of the person; and

(d) the disruption that accommodating the special need may cause; and

(e) the nature of any benefit or detriment to all persons concerned.

Example for section 24

Providing an accredited interpreter to a person who needs one.

25 Discriminatory advertising

A person shall not publish, cause to be published or authorise the publication of an advertisement which promotes or expresses or could reasonably be understood to promote or express prohibited conduct or an intention to engage in prohibited conduct.

26 Unnecessary information

(1) A person shall not ask another person, whether orally or in writing, to supply information on which unlawful discrimination might be based.

(2) Subsection (1) does not apply to a request that is necessary to comply with, or is specifically authorised by:

(a) a law of the Territory or the Commonwealth; or

(b) an order of a court or tribunal; or

(c) a provision of an order or award of a court or tribunal having power to fix minimum wages and other terms of employment; or

(d) a provision of an industrial agreement; or

(e) an order of the Commissioner.

(3) Subsection (1) does not apply if the person proves, on the balance of probabilities, that the information was reasonably required for a purpose that did not involve discrimination.

27 Prohibition of aiding contravention of Act

(1) A person shall not cause, instruct, induce, incite, assist or promote another person to contravene this Act.

(2) A person who causes, instructs, induces, incites, assists or promotes another person to contravene this Act is jointly and severally liable with the other person for the contravention of this Act.

Part 4 Areas of activities where discrimination prohibited

Division 1 Preliminary

28 Areas of activities

This Act applies to prohibited conduct in the areas of:

(a) education; and

(b) work; and

(c) accommodation; and

(d) goods, services and facilities; and

(e) clubs; and

(f) insurance and superannuation; and

(g) the administration of laws and government programs.

Division 2 Education

29 Discrimination in education

(1) An educational authority shall not discriminate:

(a) by failing or refusing to accept a person's application for admission as a student; or

(b) in refusing or rejecting a person's admission as a student; or

(c) in the way in which a person's application is processed; or

(d) in the arrangements made for, or the criteria used in, deciding who should be offered admission as a student; or

(e) in the terms and conditions on which a person is admitted as a student.

(2) An educational authority shall not discriminate:

(a) in any variation of the terms and conditions of a student's enrolment; or

(b) by failing or refusing to grant, or limiting, access to any benefit arising from the enrolment that is supplied by the authority; or

(c) by excluding a student; or

(d) by treating a student less favourably in any way in connection with the student's training or instruction.

30 Exemptions

(1) An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex may exclude applicants who are not of that sex.

(3) An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students who have a general or specific disability may exclude applicants who do not have that disability.

Division 3 Work

31 Discrimination in work area

(1) A person shall not discriminate:

(a) in deciding who should be offered work; or

(b) in the terms and conditions of work that is offered; or

(c) in failing or refusing to offer work; or

(d) by failing or refusing to grant a person seeking work access to a guidance program, vocational training program or other occupational training or retraining program; or

(e) in developing the scope or range of a program referred to in paragraph (d).

(2) A person shall not discriminate:

(a) in any variation of the terms and conditions of work; or

(b) in failing or refusing to grant, or limiting, access to opportunities for promotion, transfer, training or other benefit to a worker; or

(c) in dismissing a worker; or

(d) by treating a worker less favourably in any way in connection with work.

(3) A person shall not discriminate against a worker on the grounds of the worker's religious belief or activity by refusing the worker permission to carry out a religious activity during working hours being an activity:

(a) of a kind recognized as necessary or desirable by persons of the same religious belief as that of the worker; and

(b) the performance of which during working hours is reasonable having regard to the circumstances of the work; and

(c) that does not subject the employer to any detriment.

32 Discrimination in professional and trade organisations

(1) An organisation of workers, employers or people who carry on an industry, profession, trade or business shall not discriminate:

(a) in failing to accept a person's application for membership of the organisation; or

(b) in the arrangements made for deciding who may join; or

(c) in deciding who may join; or

(d) in the terms on which a person may join.

(2) An organisation of workers, employers, or people who carry on an industry, profession, trade or business shall not discriminate:

(a) in any variation of the terms of membership of the organisation; or

(b) in denying or limiting access to any benefit arising from the membership; or

(c) in depriving a person of membership; or

(d) by treating a person less favourably in any way in connection with the membership.

33 Discrimination by qualifying body

(1) A person who has power to grant, renew or extend a qualification or authorisation that (whether by itself or together with other qualifications or authorisations) is needed for, or facilitates, the

practice of a profession, or the carrying on of a trade or business shall not discriminate:

(a) in granting, renewing or extending a qualification or authorisation or failing to do so; or

(b) in the terms on which a qualification or authorisation is granted, renewed or extended.

(2) A person who has power to grant, renew or extend a qualification or authorisation that (whether by itself or together with other qualifications or authorisations) is needed for or facilitates the practice of a profession or the carrying on of a trade or business shall not discriminate against another person:

(a) in any variation of the terms on which a qualification or authorisation was granted, renewed or extended; or

(b) in revoking or withdrawing a qualification or authorisation or failing to do so; or

(c) by treating the other person less favourably in any way in connection with the grant, renewal or extension of a qualification or authorisation.

34 Discrimination in employment agency area

A person who carries on a business (whether or not for reward or profit) of introducing people seeking work to employers shall not discriminate:

(a) by failing or refusing to supply a service of the business, whether to a person seeking work or an employer seeking a worker; or

(b) in the terms and conditions on which a service is offered or supplied; or

(c) in the way in which a service is supplied; or

(d) by treating a person seeking work or an employer seeking a worker less favourably in any way in connection with a service.

35 Exemptions – work

(1) A person may discriminate against another person in the area of work:

(a) by fixing reasonable terms and conditions if that other person, because of age or disability, has a restricted capacity to do the work; or

(b) if the discrimination is based:

(i) on a genuine occupational qualification which the other person is required to fill; or

(ii) on the other person's inability to adequately perform the inherent requirements of the work even where the special need of the other person has been or were to be accommodated.

(2) A person may discriminate in offering work where the work is to be performed in the person's home.

35A Exemption – employment status

A person may discriminate against a person on the ground of employment status in relation to something mentioned in section 31(1)(a) to (c) if the discrimination is reasonable, justifiable and proportionate in the circumstances.

35B Exemption – work in religious educational institutions

(1) An educational authority that operates or proposes to operate an educational institution in accordance with the doctrine of a particular religion may discriminate against a person in the area of work in the educational institution if the discrimination:

(a) is on the ground of religious belief or activity; and

(b) is in good faith to avoid offending the religious sensitivities of a reasonable person of the particular religion.

(2) For subsection (1), the educational authority may:

(a) give preference to employing persons of the same religion as the religion in accordance with which the educational institution operates or proposes to operate; and

(b) establish requirements in relation to the manner in which a person employed by the educational authority conducts themselves while at the workplace of the educational institution.

(3) Subsections (1) and (2) do not apply in respect of an educational institution unless the educational authority:

(a) produces a written policy for the educational institution that sets out the elements of the doctrine of the religion in accordance with which the educational institution operates:

(i) that may be taken in account in giving preference to the employment of people of that religion in accordance with subsection (2)(a); and

(ii) in establishing any requirements under subsection (2)(b) as to the conduct at the workplace of persons employed by the educational institution; and

(b) makes the written policy available to employees and prospective employees.

(4) In this section:

doctrine, of a religion, includes the tenets, beliefs and teachings of the religion.

36 Exemptions – age

A person may discriminate on the grounds of age by imposing a standard age for commencement of work or a standard retirement age.

37 Exemption – irrelevant criminal record

(1) A person may discriminate against another person on the grounds of irrelevant criminal record in the area of work if:

(a) the work principally involves the care, instruction or supervision of vulnerable persons; and

(b) the discrimination is reasonably necessary to protect the physical, psychological or emotional well-being of those vulnerable persons, having regard to all of the relevant circumstances of the case including the person's actions.

(2) In subsection (1):

vulnerable persons includes children, aged persons and persons with a physical or intellectual disability or mental illness.

Division 4 Accommodation

38 Discrimination in accommodation area

(1) A person shall not discriminate against another person:

(a) by failing or refusing to accept an application for accommodation; or

(b) by failing or refusing to supply accommodation; or

(c) by failing or refusing to renew or extend the supply of accommodation; or

(d) in the way in which an application for accommodation is processed; or

(e) in the terms and conditions on which accommodation is offered, renewed or extended.

(2) A person shall not discriminate against a person to whom accommodation is supplied:

(a) in any variation of the terms and conditions on which the accommodation is supplied; or

(b) in failing or refusing to grant, or limiting, access to any benefit associated with the accommodation; or

(c) in evicting the person from the accommodation; or

(d) by treating the person less favourably in any way in connection with the accommodation.

39 Discrimination by refusing to allow reasonable alterations

A person must not discriminate against a person with a disability by failing or refusing to allow the person to alter accommodation to meet the person's special needs if:

(a) the alteration is at the expense of that person; and

(b) the alteration does not require an alteration to the accommodation of another person; and

(c) the restoration of the accommodation to its previous condition is reasonably practicable; and

(d) the person undertakes at the person's own expense to restore the accommodation to its previous condition before leaving it, and it is reasonably likely that the person will do so.

40 Exemptions

(1) A person may discriminate against a person in deciding who is to reside in accommodation that forms part of, and is intended to continue to form part of, the main home of the person or a near relative of the person.

(2) An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex may provide accommodation wholly or mainly for students of that sex.

(2B) An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students who have a general or specific disability may provide accommodation wholly or mainly for students with that disability.

(3) A person may discriminate against a person with respect to a matter that is otherwise prohibited under this Division if:

(a) the accommodation concerned is:

(i) under the direction or control of a body established for religious purposes; and

(ii) wholly within or directly attached to religious premises; and

(b) the discrimination:

(i) is in accordance with the doctrine of the religion concerned; and

(ii) is necessary to avoid offending the religious sensitivities of people of the religion.

(4) A person may discriminate against a person with respect to a matter that is otherwise prohibited under this Division if:

(a) the accommodation concerned is under the direction or control of a body established for a charitable purpose; and

(b) the discrimination is in accordance with the particular purpose for which the accommodation was established by the body.

(5) Subsection (3) does not apply in respect of any accommodation mentioned in paragraph (a) of that subsection at any time at which a program that is funded by, or conducted on behalf of, the Territory or the Commonwealth is being conducted at that accommodation.

(6) In this section:

religious premises means a church, temple, synagogue, mosque or any other similar place of worship.

Division 5 Goods, services and facilities

41 Discrimination in goods, services and facilities area

A person who supplies or receives goods, services or facilities (whether or not for reward or profit) must not discriminate against another person:

(a) by failing or refusing to supply or receive the goods, services or facilities; or

(b) in the terms and conditions on which the goods, services or facilities are supplied or received; or

(c) in the way in which the goods, services or facilities are supplied or received; or

(d) by treating the other person less favourably in any way in connection with the supply or receipt of the goods, services or facilities.

42 Exemptions – services for members of one sex

Nothing in this Division applies to or in relation to the provision of a service the nature of which is such that it can only be provided to members of one sex.

43 Exemptions – cultural or religious sites

(1) A person may restrict access to land, a building or place of cultural or religious significance by people who are not of a particular sex, age, race or religion if the restriction:

(a) is in accordance with the culture or the doctrine of the religion; and

(b) is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion.

(2) In subsection (1), a place of cultural or religious significance may include a place that is not a sacred site as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

44 Exemptions – age-based benefits

A person may supply benefits and concessions on the basis of age with respect to a matter that is otherwise prohibited under this Division.

45 Exemptions – child to be accompanied by adult

A person may require, as a term of supplying goods, services or facilities to a child, that the child be accompanied by an adult if there is a reasonable risk that a child could cause a disruption or endanger themselves, or others, if not accompanied by an adult.

Division 6 Clubs

46 Discrimination in club membership and club activities

(1) A club, the committee of management of a club or a member of the committee of management shall not discriminate against a person who is not a member of the club:

(a) by failing or refusing to accept the person's application for membership of the club; or

(b) in refusing or rejecting a person's membership of the club; or

(c) in the terms and conditions on which the club is prepared to admit the person to membership of the club.

(2) A club, the committee of management of a club or a member of the committee of management shall not discriminate against a member of the club:

(a) in the terms and conditions of membership that are afforded to the member; or

(b) by failing or refusing to accept the member's application for a particular class or type of membership of the club; or

(c) by failing or refusing to grant the member access, or limiting the member's access, to any benefit provided by the club; or

(d) by depriving the member of membership or varying the terms and conditions of membership of the club; or

(e) by treating the member less favourably in any way in connection with membership of the club.

47 Exemptions

(1) A club, the committee of management of a club or a member of the committee of management may discriminate against applicants for membership of the club who are not members of the group of people with an attribute for whom the club was established if the club operates wholly or mainly:

(a) to preserve a minority culture; or

(b) to prevent or reduce disadvantage suffered by, or meet the special or particular needs of, people of that group.

(2) A club, the committee of management of a club or a member of the committee of management may discriminate against a person on the ground of age in membership of the club if the club provides association wholly or mainly for people of a specific age or age group.

(3) A club, the committee of management of a club or a member of the committee of management may discriminate against a person on the ground of sex:

(b) if the discrimination occurs in relation to the use or enjoyment of a benefit provided by the club where:

(i) it is not practicable for the benefit to be used or enjoyed simultaneously, or to the same extent, by different sexes; and

(ii) either the same or an equivalent benefit is provided for the use of different sexes separately from each other, or different sexes are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.

(4) In determining a matter relating to the application of subsection (3)(b) regard must be had to:

(a) the purposes for which the club is established; and

(b) the membership of the club, including any class or type of membership; and

(c) the nature of the benefits provided by the club; and

(d) the opportunities for the use and enjoyment of those benefits by different sexes; and

(e) any other relevant circumstances.

Division 7 Insurance and superannuation

48 Discrimination in insurance and superannuation

(1) A person shall not discriminate:

(a) by failing or refusing to supply insurance or superannuation; or

(b) in the terms and conditions on which insurance or superannuation is supplied; or

(c) in the way in which insurance or superannuation is supplied.

(2) A person shall not discriminate against another person seeking work with the person in the terms and conditions of work that is offered that relate to insurance or superannuation.

(3) A person shall not discriminate against a worker employed by the person:

(a) in any variation of the terms and conditions of employment of the worker that relate to insurance or superannuation; or

(b) in failing or refusing to grant the worker access, or limiting the worker's access, to any benefit that relates to insurance or superannuation; or

(c) by treating the worker less favourably in any way in connection with insurance or superannuation.

49 Exemptions

(1) A person may discriminate against a person with respect to a matter that is otherwise prohibited under this Division if one or more of the following is applicable:

(a) the discrimination happens because of the application of a standard in force under the *Superannuation Industry (Supervision) Act 1993* (Cth);

(b) the discrimination is permitted under the *Sex Discrimination Act 1984* of the Commonwealth;

(c) the discrimination happens in order to comply with or obtain the benefits of, or to avoid penalties under, any other Act of the Commonwealth;

(d) the discrimination is based on reasonable actuarial or statistical data from a source on which it is reasonable to rely and the discrimination is reasonable having regard to that data and other relevant factors;

(e) if there is no reasonable actuarial or statistical data on which it is reasonable to rely, the discrimination is based on other data on which it is reasonable to rely and the discrimination is reasonable having regard to the data and any other relevant factors;

(f) if there is no reasonable actuarial, statistical or other data on which it is reasonable to rely, the discrimination is reasonable having regard to any other relevant factors.

(2) A person may discriminate in the area of superannuation to the extent that the discrimination is based on an existing superannuation fund condition and relates to a person who became a member of the fund before the commencement of this Act or not more than 12 months after that commencement.

(3) In this section, ***existing superannuation fund condition*** means a superannuation fund condition in existence at the commencement of this Act.

Division 8 Administration of laws and government programs

49A Discrimination in administration of laws and government programs

(1) A person who performs any function or exercises any power under a law of the Territory or for the purposes of a Territory Government program or has any other responsibility for the administration of a law of the Territory or the conduct of a Territory Government program must not discriminate in:

(a) the performance of the function; or

(b) the exercise of the power; or

(c) the carrying out of the responsibility.

(2) In this section:

Territory Government program means a program conducted by or on behalf of the Territory Government.

Part 5 Exemptions

Division 1 General exemptions

50 Legal incapacity

A person may discriminate against another person who is subject to a legal incapacity if that incapacity is relevant to the transaction in which they are involved.

51 Religious bodies

This Act does not apply to or in relation to:

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

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

(ba) the training or education of people seeking appointment as leaders in a religious organisation; or

(c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice; or

(d) an act by a body established for religious purposes if the act is done as part of any religious observance or practice.

52 Charities

(1) A person:

(a) may include in a will, deed or other instrument a discriminatory provision that provides for charitable benefits; and

(b) may do an act that is required to give effect to a provision referred to in paragraph (a).

(2) In this section, ***charitable benefits*** means benefits for purposes that are exclusively charitable according to the law in force in any part of Australia.

53 Acts done in compliance with legislation, etc.

Notwithstanding anything to the contrary in this Act, a person may do an act that is necessary to comply with, or is specifically authorised by:

(a) an Act or regulation of the Territory; or

(b) an Act or regulation of the Commonwealth; or

(c) an order of a court or tribunal; or

(d) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment; or

(e) an industrial agreement in existence at the commencement of this Act; or

(f) an order of the Commissioner under this Act; or

(g) a guideline or code of practice prepared and published by the Commissioner under this Act; or

(h) advice given by the Commissioner under this Act.

54 Pregnancy or childbirth

A person (***person A***) may discriminate against another person (***person B)*** by reason only of the fact that person A grants rights and privileges to a person (***person C***) in connection with person C's pregnancy or childbirth.

55 Public health

A person may discriminate against a person on the ground of disability if the discrimination is reasonably necessary to protect public health.

56 Sport

(1) A person may restrict participation in a competitive sporting activity:

(a) to persons of a particular sex, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity; or

(b) to people who can effectively compete; or

(c) to people of a specified age or age group; or

(d) to people with a general or specific disability.

(2) Subsection (1)(a) does not apply to a sporting activity for children who have not attained 12 years of age.

(3) In this section, ***competitive sporting activity*** does not include:

(a) the coaching of people engaged in a sporting activity; or

(b) the umpiring or refereeing of a sporting activity; or

(c) the administration of a sporting activity; or

(d) a prescribed sporting activity.

57 Special measures

(1) A person may discriminate against a person in a program, plan or arrangement designed to promote equality of opportunity for a group of people who are disadvantaged or have a special need because of an attribute.

(2) Subsection (1) applies only until equality of opportunity has been achieved.

58 Accommodating special need unreasonable

(1) A person may discriminate against another person who has a special need with respect to a matter that is otherwise prohibited under this Act if:

(a) the other person would require special services or facilities; and

(b) it is unreasonable to require the person to supply the special services or facilities.

(2) Whether it is unreasonable to require a person to supply special services or facilities depends on the relevant circumstances of the case including, but not limited to:

(a) the nature of the special services or facilities; and

(b) the cost of providing the special services or facilities and the number of people who would benefit or be disadvantaged; and

(c) the financial circumstances of the person; and

(d) the disruption that providing the special services or facilities may cause; and

(e) the nature of any benefit or detriment to all persons concerned.

Division 2 Granting of exemptions

59 Commissioner may grant exemptions

(1) A person may apply to the Commissioner for an exemption from this Act in respect of discriminatory conduct that would otherwise contravene this Act.

(2) A person to whom an exemption under this section has been granted may, before the expiration of the exemption, apply to the Commissioner for the renewal of the exemption.

(3) In considering an application under subsection (1) or (2), the Commissioner may have regard to:

(a) the desirability of certain discriminatory conduct being permitted to redress the effect of past discrimination; and

(b) any other factor that the Commissioner considers relevant.

(4) After considering an application under subsection (1) the Commissioner may grant an exemption from this Act in respect of discriminatory conduct, or may refuse the application.

(5) The Commissioner:

(a) may grant an exemption under subsection (4), subject to such conditions as the Commissioner thinks fit, for a period of not longer than 3 years; and

(b) may revoke an exemption granted under subsection (4) on breach of a condition to which the exemption is subject.

(6) After considering an application under subsection (2) the Commissioner may renew the exemption for a further period not longer than 3 years or may refuse to renew the exemption.

(7) The Commissioner shall cause a notice of the grant, renewal or revocation of an exemption under this section to be published in the *Gazette*.

(8) A notice under subsection (7) of the grant or renewal of an exemption shall specify:

(a) the period for which the exemption is granted or renewed; and

(b) the conditions, if any, to which the exemption is subject.

(9) If the Commissioner refuses to grant or renew an exemption under this section, the Commissioner shall provide to the applicant a written statement of the reasons for the refusal.

Part 6 Resolution of complaints

Division 1 Complaints

60 Who may complain

Subject to this Act, the following may make a complaint to the Commissioner:

(a) a person aggrieved by prohibited conduct;

(b) a person, authorised in writing by the Commissioner, on behalf of a person referred to in paragraph (a);

(c) an organisation or body (whether or not incorporated), in relation to systemic discrimination.

61 Complaints may be dealt with jointly

The Commissioner may deal with 2 or more complaints jointly if they arise out of substantially the same conduct or systemic discrimination.

62 Authorisation to act for complainant or respondent

(1) The Commissioner may authorise a person nominated by a complainant or respondent to act on behalf of the complainant or respondent in any proceedings under this Act in respect of the complaint, and the person may act accordingly.

(2) The Commissioner may authorise a person nominated by a complainant or respondent to accompany the complainant or respondent in any proceedings under this Act in respect of the complaint and the person may assist the complainant or respondent in the proceedings.

(2A) An authorisation under subsection (1) or (2) may be on any conditions the Commissioner considers appropriate.

(3) The Commissioner may withdraw an authorisation under this section if the Commissioner considers it appropriate to do so.

Example for section 62

The Commissioner may authorise a lawyer, guardian, friend or family member to act on behalf of the complainant or respondent or to accompany and assist the complainant or respondent in any proceedings under this Act.

62A Representative complaints

(1) A representative complaint must allege systemic discrimination.

(2) A representative complaint is not required to:

(a) name the individual members of the group who are affected by the systemic discrimination; or

(b) identify the number of individuals affected by the systemic discrimination.

(3) The complainant in a representative complaint is not required to obtain the consent of the individuals it alleges are affected by the systemic discrimination.

(4) Despite sections 66D and 66E, the making of a representative complaint does not preclude an individual who the complaint alleges is affected by the systemic discrimination from making a complaint.

(5) In this section:

organisation includes an Agency, a body corporate and an unincorporated body.

62B Guidelines for representative complaints

(1) The Commissioner may issue guidelines in relation to representative complaints.

(2) Without limiting subsection (1), a guideline may provide for the factors the Commissioner may consider in deciding whether to accept or decline a representative complaint.

63 Complaint may contain more than one allegation

A complaint may contain more than one allegation of prohibited conduct or systemic discrimination.

64 Form of complaint

(1) A complaint must:

(a) be in writing; and

(b) set out in detail the alleged prohibited conduct or systemic discrimination; and

(c) so far as practicable, specify the respondent or each respondent; and

(d) be lodged with, or sent or transmitted to, the Commissioner.

(1A) A representative complaint must establish the credentials of the complainant in representing the group affected by the systemic discrimination.

(2) The Commissioner may permit a complainant to amend a complaint at any time.

(3) The Commissioner may, based on information provided in the complaint or by the complainant, amend the complaint to ensure:

(a) any alleged contravention of this Act is identified in a concise manner; or

(b) efficient resolution of the complaint is facilitated.

65 Time limit for making complaint

(1) Subject to subsections (1A) and (2), a complaint must be made not later than 12 months after the alleged prohibited conduct took place.

(1A) Subject to subsection (2), a representative complaint must be made not later than 24 months after an instance of the systemic discrimination alleged in the complaint occurred.

(2) The Commissioner may accept a complaint after the time referred to in subsection (1) or (1A) has expired if the Commissioner is satisfied it is appropriate to do so.

66 Commissioner to accept or decline complaint

(1) The Commissioner must, after assessing a complaint, decide to accept or decline the complaint:

(a) for a representative complaint – no later than 90 days after receiving it; or

(b) otherwise – no later than 60 days after receiving it.

(2) The Commissioner must notify the complainant of the Commissioner's decision under subsection (1) as soon as practicable after making it.

66B Commissioner may seek response from respondent

(1) In assessing the complaint, the Commissioner may request information in relation to the complaint from a respondent.

(2) The Commissioner may request information from a respondent if:

(a) the Commissioner has notified the complainant that the Commissioner intends to request the information; and

(b) the Commissioner believes the respondent's information may result in a resolution of the complaint or for any other reason the Commissioner considers it appropriate to do so.

66C Respondent to be notified if complaint accepted

If a complaint is accepted under section 66, the Commissioner must, as soon as practicable after accepting the complaint, notify the respondent in writing of the substance of the complaint.

66D Complaint declined

(1) If a complaint is declined under section 66:

(a) the Commissioner must provide the complainant with written reasons as to why the complaint was declined; and

(b) the complaint lapses and the complainant cannot make another complaint in relation to the same conduct.

(2) Despite subsection (1), the Commissioner may give permission for a representative complaint declined under section 66 to be made again, if the Commissioner considers it appropriate to do so.

66E Commissioner may decline complaint if no further action can be taken

The Commissioner may decline a complaint at any time if the Commissioner reasonably believes that no further action can be taken on the complaint.

Examples for section 66E

Circumstances when the Commissioner may form the belief that no further action can be taken include the following:

(a) the complainant has not cooperated with the Commissioner in relation to the complaint;

(b) the respondent has gone into liquidation;

(c) the Commissioner is unable to contact the complainant or the respondent;

(d) the complainant or the respondent has died.

66F Complaint declined – similar complaints prohibited

If the Commissioner declines a complaint under section 66E, the complainant cannot make another complaint in relation to the same conduct, unless the Commissioner gives the complainant permission to do so.

67 Commissioner to decline frivolous, etc., complaint

The Commissioner may decline a complaint at any time if the Commissioner reasonably believes that the complaint is:

(a) frivolous or vexatious; or

(b) trivial; or

(c) misconceived or lacking in substance; or

(d) fails to disclose any prohibited conduct or systemic discrimination.

68 Commissioner may decline or stay complaint dealt with elsewhere

(1) The Commissioner may decline or stay a complaint at any time if, in relation to the prohibited conduct or systemic discrimination alleged in the complaint:

(a) there is a concurrent proceeding, or has been a finding, in a court, tribunal or any other public complaints body; or

(b) the Commissioner reasonably considers the prohibited conduct or systemic discrimination has been adequately dealt with by another entity; or

(c) in the case of an individual complaint that relates to conduct that is the same as an instance of the systemic discrimination alleged by a representative complaint – until the representative complaint is resolved.

(2) A time limit for doing anything under this Act in relation to a complaint does not run while the complaint is stayed under subsection (1).

71 Withdrawal of complaint

(1) A complainant may, at any time, apply to the Commissioner to withdraw the complaint.

(2) The Commissioner may, on receipt of an application under subsection (1), investigate the circumstances of the application and, if satisfied that the application is made voluntarily, the Commissioner shall:

(a) grant the application and notify the respondent that the complaint has been withdrawn; and

(b) with the consent of the complainant and the respondent, record the terms of any agreement reached between the complainant and the respondent.

(3) The withdrawal of a complaint under this section does not prevent the Commissioner investigating the complaint if permitted by Division 4B.

(4) Except with the permission of the Commissioner, a complainant who withdraws a complaint under this section shall not make another complaint in relation to the same conduct.

72 Lapse of complaint if complainant loses interest

(1) If the Commissioner is satisfied that a complainant has lost interest in continuing with a complaint, the Commissioner shall advise the complainant in writing that the complaint will lapse unless the complainant indicates that the complainant wishes to continue with it.

(2) If a complainant, on being advised under subsection (1), does not give an indication within 60 days that the complainant wishes to continue with the complaint, the complaint lapses and the Commissioner shall, as soon as practicable thereafter, notify the

complainant and the respondent that the complaint has lapsed.

(3) Where a complaint lapses under this section, the complainant shall not make another complaint in relation to the same conduct.

73 Commissioner may join person as party

The Commissioner may, by written notice served on a person, join the person as a party to a complaint.

Division 3 Conciliation process

78 Conciliation of complaint

(1) The Commissioner may conduct a conciliation at any time after the complaint is made.

(2) The complainant or respondent may attend conciliation in relation to the complaint at any time after the complaint is made.

79 Conciliation

(1) The Commissioner may direct a person to take part in a conciliation.

(2) A direction under subsection (1) must be in writing and specify the time when and place where the conciliation will be held.

(3) A conciliation under this Division must be held in private.

(4) A person commits an offence if:

(a) the person is given a direction by the Commissioner under subsection (1); and

(b) the person does not comply with the direction.

Maximum penalty: 100 penalty units.

(5) Strict liability applies to subsection (4)(b).

(6) It is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse.

80 Failure to attend conciliation

(1) If, without reasonable excuse, a party to a complaint does not comply with a direction given under section 79, the Commissioner may, where the party is:

(a) the complainant, dismiss the complaint and may direct the complainant to pay to the respondent such costs as the Commissioner thinks fit; or

(b) the respondent, direct the respondent to pay to the complainant such costs as the Commissioner thinks fit.

(2) An amount ordered to be paid as costs under this section may be registered as a judgment debt in a court of competent jurisdiction and may be recovered accordingly.

81 Conclusion of conciliation

(1) If a complaint is resolved by conciliation, the Commissioner may, with the consent of the complainant and the respondent, record the terms of the agreement reached between the complainant and the respondent and, where the Commissioner does so, the Commissioner must:

(a) have the agreement signed by the complainant and the respondent; and

(b) provide a copy of the agreement to the complainant and the respondent; and

(c) notify the complainant and the respondent that proceedings in relation to the complaint have ceased.

(2) If a complaint is not resolved by conciliation, the Commissioner must notify the complainant and the respondent that conciliation proceedings under this Division have ceased.

(2A) If the complaint mentioned in subsection (2) is an individual complaint, the Commissioner must also notify the complainant and the respondent that:

(a) the complainant can request that the complaint be referred to the Tribunal under subsection (3); and

(b) the request is required to be made by the complainant within the time allowed by subsection (4).

(3) If an individual complaint is not resolved by conciliation, the complainant may request the Commissioner to refer the complaint to the Tribunal for hearing.

(4) The request must be made within 21 days after receiving the Commissioner's notification under subsections (2) and (2A).

(5) The complainant may apply to the Commissioner for an extension of the time in subsection (4) or the Commissioner may extend the time on the Commissioner's own initiative.

(6) If the complainant does not request the complaint be referred to the Tribunal within the time allowed by subsection (4) or as extended under subsection (5), the complaint lapses and the complainant cannot make a further complaint in relation to the same conduct.

82 Conciliation not admissible

Anything said, written or done in the course of a conciliation under this Division is not to be taken into account in any other proceedings under this Act or any other Act in relation to the complaint.

Division 4A Hearing by Tribunal

86 Application

This Division:

(a) applies to an individual complaint; and

(b) does not apply to a representative complaint.

87 Referral of complaint to Tribunal for hearing

(1) The Commissioner must refer a complaint that has been accepted under section 66 to the Tribunal for hearing if the complainant requests the complaint be referred under section 81(3).

(2) As soon as reasonably practicable after referring a complaint under subsection (1), the Commissioner must notify the complainant and the respondent that the complaint has been referred to the Tribunal.

87A Commissioner to provide statement of reasons and other materials to Tribunal and parties

(1) If the Commissioner refers a complaint to the Tribunal under section 87(1), the Commissioner must provide the following materials to the Tribunal and the parties within 60 days after referring the complaint:

(a) a written statement of the Commissioner's reasons for accepting the complaint under section 66;

(b) any information in relation to the complaint that the Commissioner obtained from the complainant or respondent in the course of assessing the complaint;

(c) any order made by the Commissioner under section 100(1) or 101(1) in relation to the complaint.

(2) In addition to the materials mentioned in subsection (1), the Commissioner may provide to the Tribunal and parties any other information or evidentiary material that the Commissioner considers may assist the Tribunal in hearing and determining the complaint under section 88.

(3) To avoid doubt, this section does not prevent the Tribunal from obtaining any other information or evidentiary material in relation to the complaint.

87B Parties to a complaint

(1) If the Commissioner refers a complaint to the Tribunal under section 87(1), the Commissioner must determine the parties to the complaint.

(2) Despite subsection (1) and without limiting section 128 of the *Northern Territory Civil and Administrative Tribunal Act 2014*, the Tribunal may add, substitute or remove a party to a complaint referred to it.

88 Orders after hearing

(1) If, after the hearing of a complaint, the Tribunal finds the prohibited conduct alleged in the complaint is substantiated, the Tribunal may make one or more of the following orders:

(a) an order requiring the respondent not to repeat or continue the prohibited conduct;

(b) an order requiring the respondent to pay to the complainant or another person, within a specified period, an amount, being an amount not more than that prescribed, that the Tribunal considers appropriate as compensation for loss or damage caused by the prohibited conduct;

(c) an order requiring the respondent to do specified things to redress loss or damage suffered by the complainant or any other person because of the prohibited conduct;

(d) an order declaring void all or part of an agreement made in connection with the prohibited conduct, either from the time the agreement was made or subsequently.

(2) In this section, the specified things a respondent may be required to do, include, but are not limited to the following:

(a) employing, reinstating or re-employing a person;

(b) promoting a person;

(c) moving a person to a specified position within a specified time.

(3) In this section, ***damage***, in relation to a person, includes the offence, embarrassment, humiliation, and intimidation suffered by the person.

(4) If, after the hearing of a complaint, the Tribunal finds the prohibited conduct alleged in the complaint is not substantiated the Tribunal shall make an order dismissing the complaint.

89 Apologies and retractions

(1) In addition to an order under section 88, the Tribunal may order a respondent to apologise to a complainant or a complainant to apologise to a respondent and make such retractions as the Tribunal considers appropriate.

(2) For the purposes of subsection (1), the Tribunal may order an apology or retraction to be published or made in such manner as the Tribunal thinks fit.

Division 4B Investigation of representative complaints

89A Commissioner must investigate complaint

(1) The Commissioner must investigate a representative complaint if the Commissioner considers it appropriate to do so.

(2) The Commissioner may conduct the investigation in any way the Commissioner considers appropriate.

89B Report of investigation

(1) After investigating a representative complaint, the Commissioner may make a report on the outcome of the investigation of the complaint.

(2) The report may include:

(a) an opinion of the Commissioner about whether systemic discrimination has occurred or may occur; and

(b) recommendations to address the systemic discrimination.

Examples for subsection (2)(b)

A recommendation that an organisation review a policy or program, implement specific policies or programs to eliminate discrimination, conduct specific anti-discrimination training or make a public announcement to explain actions the organisation proposes to take.

(3) The Commissioner may publish the report.

(4) Before publishing a report, the Commissioner must give any person or organisation adversely mentioned in the report a reasonable opportunity to respond to the report.

(5) The Minister must table a published report in relation to a representative complaint, in which an Agency or another public sector body is a respondent, in the Legislative Assembly within 6 sitting days after publication.

(6) A report may be:

(a) referred to in making an individual complaint; or

(b) taken into account by the Tribunal in relation to an individual complaint referred to the Tribunal.

Division 5 Miscellaneous

90 Conduct of proceedings

In the conduct of proceedings under this Act, the Tribunal:

(a) is not bound by the rules of evidence and the Tribunal may obtain information on any matter as the Tribunal considers appropriate; and

(b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and

(c) may give directions relating to procedure that, in the Tribunal's opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties; and

(d) may draw conclusions of fact from any proceeding before a court or tribunal; and

(e) may adopt any findings or decisions of a court or tribunal that may be relevant to the proceedings; and

(f) may conduct proceedings in the absence of a party who was given reasonable notice to attend but failed to do so without reasonable excuse.

91 Burden and standard of proof

(1) Subject to this section, it is for the complainant to prove, on the balance of probabilities, that the prohibited conduct or systemic discrimination alleged in the complaint is substantiated.

(2) Where a respondent wishes to rely on an exemption, it is for the respondent to raise and prove, on the balance of probabilities, that the exemption applies.

94 Legal practitioner may assist Commissioner

(1) The Commissioner may make arrangements for a legal practitioner to appear at proceedings under this Act to assist the Commissioner.

(2) A legal practitioner assisting the Commissioner under this section is subject to the Commissioner's direction and control.

97 Unincorporated association represented by committee member

(1) If proceedings under this Act involve an unincorporated association:

(a) the president; or

(b) the secretary; or

(c) a member of the committee of management,

of the association at the time the alleged prohibited conduct to which the proceedings relate occurred, and who is specified in the complaint, is the nominal party.

(2) Where a document or notice is required to be served on or given to an unincorporated association under this Act it may be given to or served on the nominal party.

98 Actuarial or statistical data

(1) If a person has done an act of discrimination that would, but for section 49, be unlawful, the Commissioner may by notice in writing

require the person, not later than 21 days after service of the notice, to give the Commissioner the actuarial or statistical data or the source of the data on which the act of discrimination was based.

(2) A person commits an offence if:

(a) the person is served with a notice under subsection (1); and

(b) the person fails to comply with the notice.

Maximum penalty: 100 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

100 Anonymity

(1) If the Commissioner considers that the preservation of anonymity of a person who is, or has been, involved in proceedings under this Act is necessary to protect the work security, privacy or any human right of the person, the Commissioner may make an order prohibiting the disclosure of the person's identity.

(2) In this section, a reference to involvement in proceedings under this Act includes:

(a) making a complaint and continuing with the complaint, whether by investigation, conciliation or hearing; and

(ab) being an individual alleged to be affected by systemic discrimination in a representative complaint; and

(b) being a respondent to a complaint; and

(c) involvement in a prosecution for an offence against this Act; and

(d) supplying information and producing documents to a person who is performing a function under this Act; and

(e) appearing as a witness in proceedings under this Act.

(3) A person commits an offence if:

(a) the person is the subject of an order of the Commissioner under subsection (1); and

(b) the person fails to comply with the order.

Maximum penalty: 200 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

101 Interim orders

(1) Subject to subsection (2), the Commissioner may, at any stage in a proceeding under this Act in relation to a complaint prior to the complaint being referred to the Tribunal, make an interim order pending the completion of the proceedings to preserve:

(a) the status quo between the parties to the complaint; or

(b) the rights of the parties to the complaint; or

(c) the status quo between the parties to the complaint as existing before the prohibited conduct alleged in the complaint took place.

(2) The Commissioner shall not make an order under subsection (1) unless the Commissioner has given the parties to the complaint an opportunity to be heard and has taken into account the submissions, if any, put to the Commissioner by the parties.

(3) A person commits an offence if:

(a) the person is the subject of an order of the Commissioner under subsection (1); and

(b) the person fails to comply with the order.

Maximum penalty: 200 penalty units.

(4) An offence against subsection (3) is an offence of strict liability.

(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant has a reasonable excuse.

102 Duty under Part 2A may be considered in conciliation

In conducting a conciliation of a complaint, the Commissioner may consider whether the duty under Part 2A has been complied with.

105 Vicarious liability

(1) If:

(a) a worker of a person does an act in connection with the person's work that is unlawful under this Act; or

(b) an agent of a person does an act in connection with the person's duties as an agent that is unlawful under this Act,

this Act applies in relation to the person as if the person had also done the act.

(2) Subsection (1) does not apply if the person shows that the person took all reasonable steps to prevent the worker or agent from doing the act referred to in that subsection.

(3) For the purposes of subsection (2) and without limiting the matters that may be taken into account in determining whether the person has taken all reasonable steps, the following matters are to be considered:

(a) the provision of anti-discrimination training by the person;

(b) the development and implementation of an equal employment opportunity management plan by the person;

(c) the publication of an anti-discrimination policy by the person;

(d) the financial circumstances of the person;

(e) the number of workers and agents of the person.

(4) If, after the hearing of a complaint, the Tribunal finds that prohibited conduct alleged in the complaint is substantiated in respect of an act that a person is taken to have done under subsection (1), the Tribunal must, before making an order that an amount be paid to the complainant for loss or damage caused by the prohibited conduct:

(a) consider the extent of steps taken by the person to prevent the prohibited conduct; and

(b) take those steps into consideration in determining the proportion of the amount to be paid to the complainant by the person.

Part 7 Appeals

106 Appeals against decision of Tribunal

(1) The following persons may appeal to the Supreme Court against a decision or order of the Tribunal:

(a) a party aggrieved by the decision or order of the Tribunal; or

(b) the Commissioner.

(2) An appeal may be on a question of law or fact or law and fact and must be made:

(a) within 28 days after the day on which the decision or order was made; or

(b) if the Tribunal did not give written reasons at the time the decision or order was made, and the party making the appeal subsequently requests the Tribunal to do so, not later than 28 days after the day on which the party received the reasons in writing.

107 Powers of Supreme Court

The Supreme Court, on hearing an appeal under this Part, may do one or more of the following:

(a) affirm or vary the decision or order appealed against;

(b) quash the decision or order appealed against and substitute any decision or order that the Tribunal may make under this Act;

(c) remit the matter to the Tribunal for further hearing or consideration, or for rehearing;

(d) make such other orders (including as to costs) as the Court considers appropriate.

Part 8 Miscellaneous

107A Documents or information required to be produced or retained

(1) In conducting an investigation under this Act, the Commissioner may, in writing, order a person to give the Commissioner:

(a) a document or class of documents as specified in the order; or

(b) information in the possession of the person relevant to the proceedings as specified in the order.

(2) If a document or information is given to the Commissioner under subsection (1), the Commissioner:

(a) may take possession of, and copy or take extracts from, the document or information; and

(b) may give copies or extracts from the document or information to the complainant or respondent; and

(c) may retain possession of the document or information for such period as is reasonably necessary; and

(d) may allow a person who, if the document were not in the possession of the Commissioner, would be entitled to inspect it, to inspect the document at all reasonable times.

(3) Without limiting subsections (1) and (2), in conducting an investigation the Commissioner may, in writing, order a person to retain a document or class of document specified in the order for a period, of no longer than 6 months, specified in the order.

(4) A person commits an offence if the person:

(a) is the subject of an order under subsection (1) or (3); and

(b) fails to comply with the order.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(5) An offence against subsection (4) is an offence of strict liability.

(6) It is a defence to a prosecution for an offence against subsection (4) if the defendant has a reasonable excuse.

107B Witnesses

(1) In conducting an investigation under this Act, the Commissioner may order a person:

(a) to take an oath before giving evidence before the Commissioner; and

(b) to answer a question asked by the Commissioner.

(2) A person commits an offence if the person:

(a) is the subject of an order of the Commissioner under subsection (1); and

(b) fails to comply with the order.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(3) An offence against subsection (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant has a reasonable excuse.

108 Confidentiality of information

(1) A person commits an offence if:

(a) the person obtains information in the course of performing functions connected with the administration of this Act; and

(b) the person engages in conduct that results in the disclosure of the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(a).

(3) Subsection (1) does not apply if:

(a) the person discloses the information:

(i) for the administration of this Act; or

(ii) with the consent of the person to whom the information relates; or

(iii) for legal proceedings arising out of the operation of this Act; or

(b) the information is otherwise available to the public.

Note for subsection (3)

In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

109 Discriminatory advertising prohibited

(1) A person commits an offence if:

(a) the person publishes an advertisement; and

(b) the advertisement contains prohibited conduct or an intention to engage in prohibited conduct.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) A prosecution for an offence against subsection (1) must not be commenced or continued if a complaint has been made in respect of the advertisement and:

(a) the complaint has lapsed; or

(b) the complaint has been withdrawn; or

(d) the person alleged to have committed the offence has complied with an agreement or order made in respect of the complaint by the time specified by the agreement or order.

(3) Subsection (1) does not apply if the publication is authorised by the Commissioner.

(4) In this section:

publish includes cause or authorise to be published.

109A Inducement to publish advertisement

(1) A person commits an offence if:

(a) the person makes a statement to another person; and

(b) the person knows the statement is misleading; and

(c) in making the statement, the person intends to induce the other person to publish or display an advertisement; and

(d) the advertisement would contain prohibited conduct or an intention to engage in prohibited conduct.

Maximum penalty: 200 penalty units.

(2) In this section:

misleading, in relation to a statement, means a statement that is misleading in a material particular or because of the omission of a material particular.

110 Obstruction

(1) A person commits an offence if:

(a) the person intentionally obstructs another person; and

(b) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(2) In this section:

obstruct includes hinder and resist.

110A Misleading information

(1) A person commits an offence if:

(a) the person intentionally gives information to another person; and

(b) the information is misleading and the person has knowledge of that circumstance; and

(c) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(2) A person commits an offence if:

(a) the person intentionally gives a document to another person; and

(b) the document contains misleading information and the person has knowledge of that circumstance; and

(c) the other person is acting in an official capacity and the person has knowledge of that circumstance.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant, when giving the information or document:

(a) draws the misleading aspect of the information or document to the person's attention; and

(b) to the extent to which the defendant can reasonably do so – gives the person the information necessary to remedy the misleading aspect of the information or document.

Note for subsection (3)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

110B Commissioner may accept enforceable undertaking

(1) The Commissioner may accept an enforceable undertaking, to take specified action required to comply with this Act, made by:

(a) a respondent to a representative complaint; or

(b) a person in relation to compliance with the duty imposed by Part 2A.

(2) An enforceable undertaking must be in writing and signed by the Commissioner and the person making the undertaking.

110C Enforcement orders

(1) The Commissioner may apply to the Local Court for an enforcement order if the Commissioner considers that the person who gave an enforceable undertaking has contravened it.

(2) The Local Court may make any of the following enforcement orders if the Local Court is satisfied that the person who gave the enforceable undertaking has contravened it:

(a) an order directing the person to comply with the enforceable undertaking;

(b) an order directing the person to do any specified act or thing for the purpose of complying with the enforceable undertaking;

(c) an order revoking the enforceable undertaking;

(d) any other order the Local Court considers appropriate in the circumstances.

112 Commencement of proceedings for offences

A prosecution for an offence against this Act shall be commenced not later than:

(a) 12 months after the offence was committed; or

(b) 6 months after the offence comes to the Commissioner's knowledge,

whichever period ends last, but a prosecution shall not be commenced more than 2 years after the offence is committed.

113 Protection from legal proceedings

(1) No action or proceedings, whether civil or criminal, shall be commenced or continue against a person for or in relation to an act, omission or thing done in good faith by the person in the performance or exercise, or purported performance or exercise, of a function or power under this Act.

(2) No action or proceeding, whether civil or criminal, shall be commenced or continue against a person in respect of any loss or damage suffered by another person by reason only that the person:

(a) lodged a complaint; or

(b) provided information or evidence to the Commissioner or the Tribunal.

114 Self incrimination

It is not a reasonable excuse for the purposes of section 85(2) or 107B(2) for a person to refuse or fail to give evidence or information or to provide a document to the Commissioner that the giving of the evidence or information or the providing of the document might incriminate the person, but the evidence, information or document is not admissible in evidence against the person in any civil or criminal proceeding before a court, other than a proceeding for an offence under section 110.

115 Service of document

A notice or document required to be served on or given to a person under this Act may be served or given:

(a) by delivering it to the person; or

(b) by posting it to the person at the person's place of residence or business; or

(ba) by sending it to the person's email address; or

(c) by leaving it at the person's place of residence or business with a person who is apparently over the age of 16 years and living or working there.

116 Non-application of Act

(1) This Act does not apply to prohibited conduct which took place before the commencement of this Act.

(2) Subsection (1) does not prevent evidence of conduct which took place or practices which were used before the commencement of this Act being taken into account in determining whether a person has been subjected to prohibited conduct.

117 Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of subsection (1), the Regulations may make provision exempting persons, activities or things from the operation of this Act or specified provisions of this Act.

Part 9 Transitional matters for Justice Legislation Amendment Act 2015

118 Definitions

In this Part:

commencement means the day on which Part 2 of the *Justice Legislation Amendment Act 2015* commences.

119 Complaint made before commencement

This Act, as in force before the commencement, continues to apply in relation to a complaint if the complaint was made before the commencement.

120 Offence provisions – before and after commencement

(1) The offence provisions, as amended by the *Justice Legislation Amendment Act 2015*, apply only in relation to offences committed after the commencement.

(2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed on or before the commencement.

(3) For this section, if any of the conduct constituting an offence occurred on or before the commencement, the offence is taken to have been committed on or before the commencement.

(4) Subsection (3) does not apply in relation to an offence under section 108 if the only conduct that occurred before the commencement was the conduct referred to in section 108(1)(a).

(5) In this section:

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

Part 10 Transitional matters for Anti-Discrimination Amendment Act 2022

121 Definitions

In this Part:

amending Act means the *Anti-Discrimination Amendment Act 2022*.

commencement means the commencement of section 3 of the amending Act.

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

122 Complaint made before commencement

This Act, as in force before the commencement, continues to apply in relation to a complaint that was made before the commencement.

123 Application of amendments

(1) The amendments made by the amending Act do not apply to prohibited conduct or systemic discrimination that took place before the commencement.

(2) Subsection (1) does not prevent evidence of conduct that took place or practices that were used before the commencement being taken into account in determining whether prohibited conduct or systemic discrimination occurs after the commencement.

124 Offence provisions – before commencement

(1) The offence provisions, as amended by the amending Act, do not apply to offences committed before the commencement.

(2) For subsection (1), if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

Part 11 Transitional matters for Anti-Discrimination Amendment Act 2025

Division 1 Preliminary matters

125 Definition

In this Part:

amending Act means the *Anti-Discrimination Amendment Act 2025*.

Division 2 Amendments commencing on day after assent

126 Application of amendments to section 20A

(1) Despite the amendment of section 20A by the amending Act:

(a) that section, as in force immediately before the commencement, continues to apply in relation to a complaint made after the commencement about an act done before the commencement; and

(b) the 12-month limitation period in section 65(1) continues to apply in relation to a complaint referred to in paragraph (a).

(2) The Commissioner's power in section 65(2) does not apply to a complaint referred to in subsection (1).

(3) In this section:

commencement means the commencement of section 4 of the amending Act.

127 Application of section 35B

Section 35B does not apply in respect of any person who works for an educational institution at the time section 5 of the amending Act commences.

Division 3 Amendments commencing by Gazette notice

128 Pending complaints made before commencement

(1) This section applies in relation to an individual complaint (a ***pending complaint***) that:

(a) was made under Part 6 before the commencement; and

(b) immediately before the commencement, was the subject of proceedings under this Act which had not yet been finally determined.

(2) The proceedings in respect of the pending complaint must be determined in accordance with Part 6, as in force immediately before the commencement, as if Part 3 of the amending Act had not commenced.

(3) In this section:

commencement means the commencement of Part 3 of the amending Act.

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Anti-Discrimination Act 1992* (Act No. 80, 1992)**
Assent date 18 December 1992
Commenced 1 August 1993 (*Gaz* G30, 28 July 1993, p 2)

***Public Sector Employment and Management (Consequential Amendments) Act 1993* (Act No. 28, 1993)**
Assent date 30 June 1993
Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz* S53, 29 June 1993)

***Anti-Discrimination Amendment Act 1994* (Act No. 68, 1994)**
Assent date 15 December 1994
Commenced 22 November 1994 (s 2)

***Statute Law Revision Act 1995* (Act No. 14, 1995)**
Assent date 23 June 1995
Commenced 23 June 1995

***Sentencing (Consequential Amendments) Act 1996* (Act No. 17, 1996)**
Assent date 19 April 1996
Commenced 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996)

***Anti-Discrimination Amendment Act 1996* (Act No. 45, 1996)**
Assent date 22 October 1996
Commenced 22 October 1996

***Anti-Discrimination Amendment Act (No. 2) 1996* (Act No. 58, 1996)**
Assent date 16 December 1996
Commenced 16 December 1996

***Anti-Discrimination Amendment Act 1999* (Act No. 31, 1999)**
Assent date 18 June 1999

Commenced 18 June 1999

***Anti-Discrimination Amendment Act 2002* (Act No. 7, 2002)**
Assent date 28 March 2002
Commenced 24 April 2002 (*Gaz* G16, 24 April 2002, p 3)

***Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* (Act No. 1, 2004)**
Assent date 7 January 2003
Commenced 17 March 2004 (*Gaz* G11, 17 March 2004, p 8)

***Justice Legislation Amendment Act 2007* (Act No. 5, 2007)**
Assent date 24 April 2007
Commenced s 37 (exc amd of Criminal Code and *Legal Profession Act 2006*): 1 May 2007 (s 2(1), s 2 *Victims of Crime Assistance Act 2006* (Act No. 15, 2006) and *Gaz* G17, 26 April 2007, p 7); rem: 24 April 2007

***Statute Law Revision Act 2009* (Act No. 25, 2009)**
Assent date 1 September 2009
Commenced 16 September 2009 (*Gaz* G37, 16 September 2009, p 3)

***Justice Legislation Amendment (Penalties) Act 2010* (Act No. 12, 2010)**
Assent date 20 May 2010
Commenced 1 July 2010 (*Gaz* G24, 16 June 2010, p 2)

***Statute Law Revision Act 2010* (Act No. 29, 2010)**
Assent date 9 September 2010
Commenced 13 October 2010 (*Gaz* G41, 13 October 2010, p 2)

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010* (Act No. 40, 2010)**
Assent date 18 November 2010
Commenced 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4)

***Local Government Amendment Act 2014* (Act No. 19, 2014)**
Assent date 2 June 2014
Commenced s 16: 1 July 2014; s 18: 1 December 2014; rem: 2 June 2014, (s 2)

***Justice Legislation Amendment Act 2015* (Act No. 14, 2015)**
Assent date 22 May 2015
Commenced pts 4, 6, 7 and 9: 1 June 2015; rem: 1 July 2015 (*Gaz* S53, 29 May 2015, p 1)

***Fines and Penalties (Recovery) Amendment Act 2015* (Act No. 24, 2015)**
Assent date 18 September 2015
Commenced 6 October 2015 (*Gaz* S100, 6 October 2015)

***Expungement of Historical Homosexual Offence Records Act 2018* (Act No. 8, 2018)**
Assent date 23 May 2018
Commenced 14 November 2018 (*Gaz* G46, 14 November 2018, p 1)

Anti-Discrimination Amendment Act 2022 **(Act No. 26, 2022)**

Assent date	9 December 2022
Commenced	ss 8, 9, 26 to 31, 33 to 35, 40, 42 and 44: 2 January 2024; rem: 3 July 2023 (*Gaz* G11, 25 May 2023, p 1)

Criminal Code Amendment (Age of Criminal Responsibility) Act 2022 **(Act No. 30, 2022)**

Assent date	16 December 2022
Commenced	1 August 2023 (*Gaz* S50, 24 July 2023)

Anti-Discrimination Amendment Act 2025 **(Act No. 27, 2025)**

Assent date	30 October 2025
Commenced	pt 3: 27 July 2026 (s 2(3)); rem: 31 October 2025 (s 2(1))

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 4 *Anti-Discrimination Amendment Act 1994* (Act No. 68, 1994)
s 3 *Anti-Discrimination Amendment Act 1999* (Act No. 31, 1999)

4 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 4, 9, 12 and 19.

5 LIST OF AMENDMENTS

s 3	amd No. 29, 2010, s 7; No. 26, 2022, s 4
s 4	amd No. 68, 1994, s 3; No. 17, 1996, s 6; No. 1, 2004, s 20; No. 25, 2009, s 10; No. 29, 2010, s 7; No. 19, 2014, s26; No. 14, 2015, s 4; No. 8, 2018, s 33; No. 26, 2022, s 5; No. 30, 2022, s 8; No. 27, 2025, s 7
s 4A	ins No. 26, 2022, s 6
s 5A	ins No. 14, 2015, s 5
s 6	amd No. 26, 2022, s 7
s 9	amd No. 28, 1993, s 3; No. 17, 1996, s 6; No. 29, 2010, s 7
s 12	amd No. 28, 1993, s 3
s 13	amd No. 25, 2009, s 10; No. 19, 2014, s26; No. 14, 2015, s 6; No. 26, 2022, s 8; No. 27, 2025, s 13
s 15	sub No. 14, 2015, s 7
s 18	amd No. 14, 2015, s 8
pt 2A hdg	ins No. 26, 2022, s 9
ss 18A – 18D	ins No. 26, 2022, s 9
s 19	amd No. 24, 2015, s 23; No. 26, 2022, s 10
s 20	amd No. 29, 2010, s 7
s 20A	ins No. 26, 2022, s 11 amd No. 27, 2025, s 4
s 20B	ins No. 26, 2022, s 11
s 21	sub No. 26, 2022, s 11
s 22	amd No. 29, 2010, s 7; No. 26, 2022, s 12
s 23	amd No. 29, 2010, s 7
s 24	amd No. 29, 2010, s 7; No. 26, 2022, s 13
s 26	amd No. 29, 2010, s 7; No. 14, 2015, s 9
s 28	amd No. 29, 2010, s 7; No. 26, 2022, s 14
s 29	amd No. 29, 2010, s 7

s 30	sub No. 1, 2004, s 21
	amd No. 26, 2022, s 15
ss 31 – 34	amd No. 29, 2010, s 7
s 35	amd No. 26, 2022, s 47
s 35A	ins No. 26, 2022, s 16
s 35B	ins No. 27, 2025, s 5
s 37	sub No. 1, 2004, s 22
s 37A	ins No. 1, 2004, s 22
	rep No. 26, 2022, s 17
s 38	amd No. 29, 2010, s 7
s 39	amd No. 29, 2010, s 7; No. 26, 2022, s 47
s 40	amd No. 1, 2004, s 23; No. 26, 2022, s 18
s 41	amd No. 5, 2007, s 6; No. 29, 2010, s 7
	sub No. 26, 2022, s 19
s 43	amd No. 26, 2022, s 20
s 45	amd No. 26, 2022, s 47
s 46	amd No. 29, 2010, s 7
s 47	amd No. 29, 2010, s 7; No. 26, 2022, s 21
s 48	amd No. 29, 2010, s 7
s 49	amd No. 26, 2022, s 47
pt 4	
div 8 hdg	ins No. 26, 2022, s 22
ss 49A	ins No. 26, 2022, s 22
s 51	amd No. 1, 2004, s 24; No. 29, 2010, s 7; No. 26, 2022, s 23
s 53	amd No. 29, 2010, s 7; No. 26, 2022, s 47
s 54	sub No. 26, 2022, s 24
s 55	amd No. 26, 2022, s 47
s 56	amd No. 29, 2010, s 7; No. 26, 2022, s 25
s 58	amd No. 29, 2010, s 7
s 60	sub No. 26, 2022, s 26
s 61	amd No. 26, 2022, s 47
s 62	amd No. 14, 2015, s 10
ss 62A – 62B	ins No. 26, 2022, s 27
s 63	amd No. 26, 2022, s 47
s 64	amd No. 29, 2010, s 7; No. 26, 2022, s 28
s 65	amd No. 14, 2015, s 11; No. 26, 2022, s 29
s 66	amd No. 14, 2015, s 12
	sub No. 26, 2022, s 30
s 66A	ins No. 14, 2015, s 13
	rep No. 26, 2022, s 30
ss 66B – 66C	ins No. 14, 2015, s 13
s 66D	ins No. 14, 2015, s 13
	amd No. 26, 2022, s 31
s 66E	ins No. 14, 2015, s 13
	amd No. 26, 2022, s 47
s 66F	ins No. 14, 2015, s 13
	amd No. 26, 2022, s 32; No. 27, 2025, s 13
s 67	amd No. 29, 2010, s 7; No. 14, 2015, s 14; No. 26, 2022, s 47
s 68	amd No. 14, 2015, s 15; No. 26, 2022, s 33
ss 69 – 70	rep No. 14, 2015, s 16
s 71	amd No. 14, 2015, s 17; No. 26, 2022, s 34; No. 27, 2025, s 13
pt 6	
div 2 hdg	rep No. 14, 2015, s 18
s 74	amd No. 29, 2010, s 7
	rep No. 14, 2015, s 18
ss 75 – 77	rep No. 14, 2015, s 18
s 78	sub No. 14, 2015, s 19

s 79	amd No. 12, 2010, s 3 sub No. 14, 2015, s 19
s 80	amd No. 14, 2015, s 20
s 81	amd No. 14, 2015, s 21; No. 26, 2022, s 47; No. 27, 2025, s 8
s 82	amd No. 14, 2015, s 22
pt 6	
div 4 hdg	amd No. 14, 2015, s 23 rep No. 27, 2025, s 9
s 82A	ins No. 26, 2022, s 35 rep No. 27, 2025, s 9
s 83	amd No. 29, 2010, s 7 sub No. 14, 2015, s 24 amd No. 26, 2022, s 36 rep No. 27, 2025, s 9
s 84	sub No. 14, 2015, s 24 amd No. 26, 2022, s 37 rep No. 27, 2025, s 9
s 85	amd No. 45, 1996, s 2; No. 31, 1999, s 2 sub No. 14, 2015, s 24 amd No. 26, 2022, s 38 rep No. 27, 2025, s 9
pt 6	
div 4A hdg	ins No. 14, 2015, s 24
ss 86 – 87	sub No. 14, 2015, s 24; No. 27, 2025, s 10
s 87A	ins No. 14, 2015, s 24 sub No. 27, 2025, s 10
s 87B	ins No. 26, 2022, s 39 amd No. 27, 2025, s 11
s 88	amd No. 14, 2015, s 25
s 89	amd No. 14, 2015, s 26
pt 6	
div 4B hdg	ins No. 26, 2022, s 40
ss 89A – 89B	ins No. 26, 2022, s 40
s 90	amd No. 29, 2010, s 7; No. 14, 2015, s 27
s 91	amd No. 26, 2022, s 47
s 92	amd No. 12, 2010, s 3; No. 40, 2010, s 118 rep No. 14, 2015, s 28
s 93	amd No. 14, 1995, s 12 rep No. 14, 2015, s 28
ss 95 – 96	rep No. 14, 2015, s 28
s 97	amd No. 29, 2010, s 7
s 98	amd No. 12, 2010, s 3; No. 14, 2015, s 29
s 99	amd No. 12, 2010, s 3 rep No. 14, 2015, s 30
s 100	amd No. 12, 2010, s 3; No. 29, 2010, s 7; No. 14, 2015, s 31; No. 26, 2022, s 41
s 101	amd No. 12, 2010, s 3; No. 14, 2015, s 32
s 102	amd No. 29, 2010, s 7 rep No. 14, 2015, s 33 ins No. 26, 2022, s 42 amd No. 27, 2025, s 13
s 103	rep No. 14, 2015, s 33
s 104	amd No. 12, 2010, s 3 rep No. 14, 2015, s 33
s 105	rep No. 58, 1996, s 2 ins No. 7, 2002, s 3 amd No. 14, 2015, s 34; No. 26, 2022, s 47
s 106	sub No. 14, 2015, s 35

s 107	amd No. 29, 2010, s 7; No. 14, 2015, s 36
ss 107A – 107B	ins No. 26, 2022, s 43
s 108	amd No. 12, 2010, s 3; No. 29, 2010, s 7 sub No. 14, 2015, s 37
s 109	amd No. 12, 2010, s 3 sub No. 14, 2015, s 37 amd No. 27, 2025, s 13
s 109A	ins No. 14, 2015, s 37
s 110	amd No. 12, 2010, s 3; No. 29, 2010, s 7 sub No. 14, 2015, s 37; No. 26, 2022, s 44
s 110A	ins No. 14, 2015, s 37 sub No. 26, 2022, s 44
ss 110B – 110C	ins No. 26, 2022, s 44
s 111	amd No. 12, 2010, s 3 rep No. 14, 2015, s 37
s 113	amd No. 14, 2015, s 38
s 114	amd No. 14, 2015, s 39; No. 26, 2022, s 47
s 115	amd No. 29, 2010, s 7; No. 26, 2022, s 45
pt 9 hdg	ins No. 14, 2015, s 40
ss 118 – 120	ins No. 14, 2015, s 40
pt 10 hdg	ins No. 26, 2022, s 46
ss 121 – 124	ins No. 26, 2022, s 46
pt 11 hdg	ins No. 27, 2025, s 6
pt 11 div 1 hdg	ins No. 27, 2025, s 6
s 125	ins No. 27, 2025, s 6
pt 11 div 2 hdg	ins No. 27, 2025, s 6
ss 126 – 127	ins No. 27, 2025, s 6
pt 11 div 3 hdg	ins No. 27, 2025, s 12
s 128	ins No. 27, 2025, s 12