

NORTHERN TERRITORY OF AUSTRALIA

ANTI-DISCRIMINATION ACT

As in force at 16 December 1996

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ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 16 December 1996

ANTI-DISCRIMINATION ACT

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*.

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;
- (b) to eliminate discrimination against persons on the ground of race, sex, sexuality, age, marital status, pregnancy, parenthood, breastfeeding, impairment, trade union or employer association, religious belief or activity, political opinion, affiliation or activity, irrelevant medical record or irrelevant criminal record in the area of work, accommodation or education or in the provision of goods, services and facilities, in the activities of clubs or in insurance and superannuation; and
- (c) to eliminate sexual harassment.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

accommodation includes:

- (a) business premises;
- (b) a house or flat;
- (c) a hotel or motel;
- (d) a boarding house or hostel;
- (e) a caravan or caravan site;
- (f) a mobile home or mobile home site;
- (g) a camping site; and
- (h) a building or construction site.

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 or other publication;
- (b) by television or radio;
- (c) by display of notices, signs, labels or goods;
- (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.

attribute means an attribute referred to in section 19.

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;
- (b) provides and maintains its facilities, wholly or partly, from funds of the association; and
- (c) sells or supplies liquor for consumption on its premises.

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.

de facto partner has the same meaning as in the *De Facto Relationships Act*.

document includes:

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

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

educational institution means a school, college, university or other institution at which any form of training or instruction is provided and includes:

- (a) a training institution within the meaning of the *Training Guarantee (Administration) Act 1990* of the Commonwealth; and
- (b) a place at which training or instruction is provided by an employer.

guide dog means a dog that is trained to provide assistance to a person who has a visual, hearing or mobility impairment.

impairment includes:

- (a) the total or partial loss of a bodily function;
- (b) the presence in the body of an organism which has caused or is capable of causing disease;
- (c) the presence in the body of organisms impeding, capable of impeding or which may impede the capacity of the body to combat disease;
- (d) total or partial loss of a part of the body;
- (e) the malfunction or dysfunction of a part of the body;
- (f) the malformation or disfigurement of a part of the body;
- (g) reliance on a guide dog, wheelchair or other remedial device;
- (h) physical or intellectual disability;
- (j) psychiatric or psychological disease or disorder, whether permanent or temporary; and
- (k) a condition, malfunction or dysfunction which results in a person learning more slowly than another person without that condition, malfunction or dysfunction.

insurance includes:

- (a) an annuity;
- (b) life assurance;
- (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; or
 - (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*; 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;
 - (ii) no charge has been laid;
 - (iii) the charge was dismissed;
 - (iv) the prosecution was withdrawn;
 - (v) the person was discharged, whether or not on conviction;
 - (vi) the person was found not guilty;
 - (vii) the person's finding of guilt was quashed or set aside;
 - (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.

man means a member of the male sex irrespective of age.

marital status means whether a person is:

- (a) single;
- (b) married;
- (c) married but living separately and apart from the person's spouse;
- (d) married, or has been married, to a particular person;
- (e) divorced;
- (f) widowed;
- (g) a de facto partner; or
- (h) the de facto partner, or was the de facto partner, of a particular person.

near relative, in relation to a person, means:

- (a) a parent, child, grandparent, brother or sister 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.

parenthood means whether or not a person is a parent.

pregnancy includes child bearing capacity.

prohibited conduct means:

- (a) discrimination, other than discrimination exempted from the application of this Act;
- (b) sexual harassment;
- (c) victimisation;
- (d) discriminatory advertising;

- (e) seeking unnecessary information;
- (f) failure 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.

respondent, in relation to a complaint, means the person alleged in the complaint to have engaged in prohibited conduct 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;
- (b) banking or the supply of loans, finance, credit guarantees, hire purchase schemes or any other type of financial accommodation;
- (c) services connected with the selling or leasing of an interest in land;
- (d) recreation, including entertainment, sports, tourism and the arts;
- (e) the supply of refreshments;
- (f) services connected with transport and travel;
- (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 council or community government council within the meaning of the *Local Government Act*,

but does not include insurance and superannuation.

sexuality means the sexual characteristics or imputed sexual characteristics of hetero-sexuality, homosexuality, bisexuality or transsexuality.

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

woman means a member of the female sex irrespective of age.

work includes work:

- (a) in a relationship of employment (including full-time, part-time, casual, permanent and temporary employment);
 - (b) under a contract for services;
 - (c) remunerated in whole or in part on a commission basis;
 - (d) under a statutory appointment;
 - (e) by a person with an impairment in a sheltered workshop; and
 - (f) under a guidance program, vocational training program or other occupational training or retraining program.
- (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 shall 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 shall be construed to include Aboriginal spiritual belief or activity.
 - (5) For the purposes of this Act, political opinion, affiliation or activity shall be construed to include a lack or absence of political opinion, affiliation or activity.
 - (6) For the purposes of this Act, refusing or failing to do an act shall be deemed 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.

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.

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 3 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;
 - (b) is guilty of misconduct of a kind that could warrant dismissal under the *Public Sector Employment and Management Act* 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);
 - (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*, as is necessary for the administration of this Act.

13 Functions of Commissioner

- (1) The Commissioner has the following functions:
- (a) to carry out investigations and hearings into complaints and endeavour to effect conciliation;
 - (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 and community government bodies and associations 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;
 - (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

- (1) The Commissioner may, in writing, delegate to a person, including the person from time to time holding, acting in or performing the duties of, an office, designation or position, any of the powers and functions of the Commissioner under this or any other Act, other than Part 6 Division 4 or this power of delegation.

- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Commissioner.
- (3) A delegation under this section does not prevent the exercise of a power or performance of a function by the Commissioner.

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 member s not to be appointed

- (1) A member of the Legislative Assembly shall not be appointed as the Commissioner, to act as the Commissioner or to conduct a hearing under Part 6 Division 4.
- (2) Subject to subsection (3), the appointment of a person as the Commissioner, to act as the Commissioner or to conduct a hearing under Part 6 Division 4 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 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;
- (b) sex;
- (c) sexuality;
- (d) age;
- (e) marital status;
- (f) pregnancy;
- (g) parenthood;
- (h) breastfeeding;
- (j) impairment;
- (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;
- (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;
 - (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.

21 Discrimination by refusing to allow guide dog, &c.

- (1) For the purposes of this Act, a person discriminates on the ground of impairment against a person with a visual, hearing or mobility impairment if the person treats the person with the impairment less favourably because the person has a guide dog.
- (2) Subsection (1) applies notwithstanding that it is the practice of the person to treat less favourably other persons who have dogs.
- (3) Nothing in this section shall limit the operation of section 20 in relation to discrimination on the ground of impairment.
- (4) This section does not affect the liability of a person with a guide dog for any damage caused by the guide dog.

Division 2 Prohibited conduct

22 Prohibition of sexual harassment

- (1) A person shall not, in an area of activity referred to in Part 4, sexually harass another person.
- (2) Sexual harassment takes place if a person:
 - (a) subjects another person to an unwelcome act of physical intimacy;
 - (b) makes an unwelcome demand or request (whether directly or by implication) for sexual favours from the other person;
 - (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 that he or she is likely to be, subjected to some detriment if he or she objects 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 sex, age or race of the other person;
 - (b) any impairment that the other person has;
 - (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;
 - (b) has given, or intends to give, evidence or information in connection with proceedings under this Act;
 - (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 Failure to accommodate special need

- (1) A person shall not fail or refuse to accommodate a special need that another person has because of an attribute.
- (2) For the purposes of subsection (1):
 - (a) a failure or refusal to accommodate a special need of another person includes making inadequate or inappropriate provision to accommodate the special need; and
 - (b) a failure to accommodate a special need takes place when a person acts in a way which unreasonably fails to provide for the special need of another person if that other person has the special need because of an attribute.
- (3) Whether a person has unreasonably failed to provide 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;
 - (b) the cost of accommodating the special need and the number of people who would benefit or be disadvantaged;
 - (c) the financial circumstances of the person;

- (d) the disruption that accommodating the special need may cause; and
- (e) the nature of any benefit or detriment to all persons concerned.

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;
 - (b) an order of a court;
 - (c) a provision of an order or award of a court or tribunal having power to fix minimum wages and other terms of employment;
 - (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;
- (b) work;
- (c) accommodation;
- (d) goods, services and facilities;
- (e) clubs; and
- (f) insurance and superannuation.

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;
 - (b) in refusing or rejecting a person's admission as a student;
 - (c) in the way in which a person's application is processed;
 - (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;
 - (b) by failing or refusing to grant, or limiting, access to any benefit arising from the enrolment that is supplied by the authority;
 - (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

An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment, may exclude applicants who:

- (a) are not of the particular sex or religion; or
- (b) do not have a general or specific impairment.

Division 3 Work

31 Discrimination in work area

- (1) A person shall not discriminate:
 - (a) in deciding who should be offered work;
 - (b) in the terms and conditions of work that is offered;
 - (c) in failing or refusing to offer work;
 - (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;
 - (b) in failing or refusing to grant, or limiting, access to opportunities for promotion, transfer, training or other benefit to a worker;
 - (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;
- (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;
 - (b) in the arrangements made for deciding who may join;
 - (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;
 - (b) in denying or limiting access to any benefit arising from the membership;
 - (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;
 - (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;
- (b) in the terms and conditions on which a service is offered or supplied;
- (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 impairment, 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.

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 Exemptions – sexuality

A person may discriminate against another person on the grounds of sexuality in the area of work where:

- (a) the work involves the care, instruction or supervision of children; and
- (b) the discrimination is reasonably necessary to protect the physical, psychological or emotional well-being of children, having regard to all the relevant circumstances of the case including the person's actions.

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;
 - (b) by failing or refusing to supply accommodation;
 - (c) by failing or refusing to renew or extend the supply of accommodation;
 - (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;
 - (b) in failing or refusing to grant, or limiting, access to any benefit associated with the accommodation;
 - (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 shall not discriminate against a person with an impairment 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;
- (b) the alteration does not require an alteration to the accommodation of another person;
- (c) the restoration of the accommodation to its previous condition is reasonably practicable; and
- (d) the person undertakes at his or her 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 or religion, or who have a general or specific impairment, may provide accommodation wholly or mainly for:
 - (a) students of the particular sex or religion; or
 - (b) students who have a general or specific impairment.

- (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 under the direction or control of a body established for religious purposes; 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.

Division 5 Goods, services and facilities

41 Discrimination in goods, services and facilities area

- (1) A person who supplies goods, services or facilities (whether or not for reward or profit) shall not discriminate against another person:
- (a) by failing or refusing to supply the goods, services or facilities;
 - (b) in the terms and conditions on which the goods, services or facilities are supplied;
 - (c) in the way in which the goods, services or facilities are supplied; or
 - (d) by treating the other person less favourably in any way in connection with the supply of the goods, services or facilities.
- (2) Subsection (1) does not apply to a person who supplies goods, services or facilities for or on behalf of an association that:
- (a) is established for social, literary, cultural, political, sporting, athletic, recreational or community service purposes or other similar lawful purposes; and
 - (b) does not carry out its purposes for the purpose of making a profit.

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

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.

44 Exemptions – aged 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 himself or herself, 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;
 - (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;
 - (b) by failing or refusing to accept the member's application for a particular class or type of membership of the club;
 - (c) by failing or refusing to grant the member access, or limiting the member's access, to any benefit provided by the club;
 - (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 exclude 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 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:
- (a) in membership of the club if the club provides association wholly or mainly for people of one sex; or

- (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 both men and women; and
 - (ii) either the same or an equivalent benefit is provided for the use of men and women separately from each other, or men and women 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 shall be had to:
 - (a) the purposes for which the club is established;
 - (b) the membership of the club, including any class or type of membership;
 - (c) the nature of the benefits provided by the club;
 - (d) the opportunities for the use and enjoyment of those benefits by men and women; 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;
 - (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;

- (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 *Occupational Superannuation Standards Act 1987* of the Commonwealth;
 - (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.

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

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, &c.

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;
- (b) an Act or regulation of the Commonwealth;
- (c) an order of a court or tribunal;
- (d) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment;
- (e) an industrial agreement in existence at the commencement of this Act;
- (f) an order of the Commissioner under this Act;
- (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

Nothing in this Act makes it unlawful for a person to discriminate against a man on the ground of sex by reason only of the fact that that person grants to a woman rights or privileges in connection with pregnancy or childbirth.

55 Public health

A person may discriminate against a person on the ground of impairment 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 either men or women, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the activity;
 - (b) to people who can effectively compete;
 - (c) to people of a specified age or age group; or

- (d) to people with a general or specific impairment.
- (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;
 - (b) the umpiring or refereeing of a sporting activity;
 - (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;
 - (b) the cost of providing the special services or facilities and the number of people who would benefit or be disadvantaged;
 - (c) the financial circumstances of the person;
 - (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:

- (a) a person aggrieved by prohibited conduct; or
- (b) a person, authorised in writing by the Commissioner, on behalf of a person referred to in paragraph (a),

may make a complaint to the Commissioner.

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.

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

63 Complaint may contain more than one allegation

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

64 Form of complaint

- (1) A complaint shall:
 - (a) be in writing;
 - (b) set out in detail the alleged prohibited conduct;
 - (c) so far as practicable, specify the respondent or each respondent; and
 - (d) be lodged with, or sent by post to, the Commissioner.
- (2) The Commissioner may permit a complainant to amend a complaint at any time.

65 Time limit for making complaint

- (1) Subject to subsection (2), a complaint shall be made not later than 6 months after the alleged prohibited conduct took place.
- (2) The Commissioner may accept a complaint after the time referred to in subsection (1) has expired if the Commissioner is satisfied it is appropriate to do so.

66 Commissioner to accept or reject complaint

The Commissioner shall, not later than 60 days after receiving a complaint, accept or reject the complaint and shall, as soon as practicable thereafter, notify the complainant of the decision.

67 Commissioner to reject frivolous, &c., complaint

The Commissioner shall reject a complaint if the Commissioner reasonably believes that the complaint is:

- (a) frivolous or vexatious;
- (b) trivial;
- (c) misconceived or lacking in substance; or
- (d) fails to disclose any prohibited conduct.

68 Commissioner may reject or stay complaint dealt with elsewhere

- (1) The Commissioner may reject or stay a complaint if there are concurrent proceedings in a court or tribunal in relation to the prohibited conduct alleged in the complaint.

- (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).

69 Rejection of complaint

Where a complaint is rejected under section 66:

- (a) the Commissioner shall provide the complainant with written reasons as to why the complaint was rejected; and
- (b) the complaint lapses and the complainant shall not make a further complaint relating to the conduct that was the subject of the complaint.

70 Respondent to be notified if complaint accepted

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

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 under Division 2.
- (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 2 Investigations

74 Investigation of complaint

- (1) The Commissioner shall carry out an investigation under this Division of alleged prohibited conduct if:
 - (a) requested to do so by the Minister; or
 - (b) the Commissioner accepts a complaint under section 66.
- (2) The Commissioner may carry out an investigation under this Division if, during the course of carrying out the Commissioner's functions, it appears that prohibited conduct has occurred.
- (3) An investigation carried out under subsection (1)(a) or (2) shall, for the purposes of this Act, be deemed to be an investigation of a complaint and this Act shall apply to and in relation to:
 - (a) the investigation;
 - (b) any other proceedings under this Act in relation to the prohibited conduct; and
 - (c) the Commissioner,as if a complaint had been made.

75 Conduct of investigation

- (1) An investigation under this Division shall be conducted in such manner as the Commissioner thinks fit.
- (2) An investigation under this Division shall be carried out with as little formality and technicality, and with as much expedition as the requirements of this Act and a proper consideration of the matters before the Commissioner permit.
- (3) In carrying out an investigation under this Division, the Commissioner:
 - (a) shall make a thorough examination of all matters relevant to the investigation; and
 - (b) where the Commissioner considers it appropriate, ensure that each party to the investigation is given a reasonable opportunity to present his or her case.

76 Completion of investigation

- (1) The Commissioner shall, on completing an investigation under this Division in respect of a complaint, determine that the complaint is:
 - (a) dismissed; or
 - (b) if satisfied that there is *prima facie* evidence to substantiate the allegation of prohibited conduct in the complaint:
 - (i) to proceed to conciliation; or
 - (ii) if the Commissioner believes it cannot be resolved by conciliation, to proceed to a hearing.
- (2) The Commissioner shall give notice of a determination under subsection (1) to the complainant and the respondent.
- (3) The Commissioner shall, on completing proceedings under this Act in respect of a matter investigated under section 74(1)(a) or (2), report to the Minister on the matter together with such recommendations, if any, as the Commissioner thinks fit.

77 Report of Commissioner

- (1) The Commissioner may prepare a report relating to the investigation of a complaint under this Division which may be considered at a subsequent hearing of the complaint.

- (2) A report prepared under subsection (1) shall not contain a record of oral statements made by a person in the course of the investigation.
- (3) Where a report prepared under subsection (1) is considered at the hearing of the complaint, a copy of the report shall be provided to the complainant and the respondent.

Division 3 Conciliation Process

78 Conciliation of complaint

If the Commissioner determines under section 76 that a complaint is to proceed to conciliation, the Commissioner shall endeavour to resolve it in that way.

79 Conciliation proceedings

- (1) For the purpose of resolving a complaint by conciliation, the Commissioner may direct a person to take part in such conciliation proceedings under this Division (including a conciliation conference) as the Commissioner thinks will resolve the complaint.
- (2) A direction under subsection (1) shall be in writing and specify the time when and place where the conciliation proceedings will be held.
- (3) Conciliation proceedings under this Division shall be held in private.
- (4) A person to whom a direction is given under subsection (1) shall not contravene or fail to comply with the direction.

Penalty: In the case of a body corporate – \$5,000.

In the case of a natural person – \$1,000.

80 Failure to attend conciliation proceedings

- (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 proceedings

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

82 Conciliation proceedings not admissible

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

Division 4 Hearings

83 Conduct of hearing by Commissioner

Subject to this Act, the Commissioner shall conduct a hearing of a complaint where the Commissioner:

- (a) determines under section 76 that the complaint cannot be resolved by conciliation;
- (b) has attempted to resolve the complaint by conciliation but has not succeeded in so doing; or
- (c) believes that the nature of the complaint is such that it should be dealt with by a hearing.

84 Request for hearing after 6 months

- (1) If the Commissioner has not finished dealing with a complaint at the expiration of 6 months after accepting the complaint under section 66, either the complainant or the respondent may, in writing, request the Commissioner to conduct a hearing of the complaint.

- (2) The Commissioner may defer acting on a request under subsection (1) for up to 28 days, if there is a significant prospect that the complaint can be resolved by conciliation within that period.
- (3) Subject to subsection (2), if a request under subsection (1) is made by the respondent, the Commissioner shall ask the complainant whether the complainant agrees to the conduct of a hearing of the complaint.
- (4) A complainant shall, not later than 28 days after being asked by the Commissioner under subsection (3), agree or refuse to agree to the conduct of the hearing.
- (5) If the complainant refuses to agree to the conduct of a hearing under subsection (4), the complaint lapses and the complainant may not make a further complaint in relation to the prohibited conduct alleged in the complaint.
- (6) The Commissioner may extend the period referred to in subsection (4) if the complainant asks, in writing, for an extension before the period expires.
- (7) Subject to subsection (2), if a request under subsection (1) is made by the complainant, the Commissioner shall conduct a hearing of the complaint.
- (8) The Commissioner shall notify the complainant and the respondent as to whether the complaint has lapsed or will proceed to a hearing.

85 Conduct of hearing other than by Commissioner

- (1) Where the Commissioner has conducted the investigation of a complaint under Division 2 or taken part in the conciliation process of a complaint under Division 3 the Commissioner shall not conduct the hearing of the complaint under this Division and the Minister shall appoint a person to conduct the hearing of the complaint.
- (1A) Where, in the opinion of the Minister it is reasonable to do so, the Minister may appoint a person to conduct the hearing of a complaint instead of the Commissioner.
- (2) A person appointed under this section may, in respect of the hearing of the complaint for which the person is appointed, exercise the powers and perform the functions of the Commissioner and, for the purposes of the hearing, shall be deemed to be the Commissioner.

86 Hearing to be public

The hearing of a complaint shall be in public unless the Commissioner directs otherwise.

87 Commissioner to attempt conciliation

If the Commissioner considers, either before or during the hearing of a complaint, that the complaint may be resolved by conciliation, the Commissioner may endeavour to resolve the complaint by conciliation.

88 Orders after hearing

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

89 Apologies and retractions

- (1) In addition to an order under section 88, the Commissioner may order a respondent to apologize to a complainant or a complainant to apologize to a respondent and make such retractions as the Commissioner considers appropriate.
- (2) For the purposes of subsection (1), the Commissioner may order an apology or retraction to be published or made in such manner as the Commissioner thinks fit.

Division 5 Miscellaneous

90 Conduct of proceedings

- (1) In the conduct of proceedings under this Act, the Commissioner:
- (a) is not bound by the rules of evidence and the Commissioner may obtain information on any matter as the Commissioner considers appropriate;
 - (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms;
 - (c) may give directions relating to procedure that, in the Commissioner'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;
 - (d) may draw conclusions of fact from any proceeding before a court or tribunal;
 - (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 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.

92 Powers of Commissioner in respect of proceedings

- (1) The Commissioner may, in writing, order a person:
- (a) to attend proceedings under this Act until excused;
 - (b) to give evidence on oath or affirmation;
 - (c) to provide to the Commissioner a document or class of documents as specified in the order; or
 - (d) to provide to the Commissioner, in writing signed by the person, information in the possession of the person relevant to the proceedings as specified in the order.
- (2) If a document is provided to the Commissioner under subsection (1), the Commissioner:
- (a) may take possession of, and may copy or take extracts from, the document;
 - (b) may retain possession of the document for such period as is reasonably necessary; and
 - (c) during the period a document is retained under paragraph (b), shall 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) For the purposes of subsection (1):
- (a) the Commissioner may administer an oath or affirmation; and
 - (b) a witness attending the proceedings may be examined, cross-examined and re-examined.
- (4) A person is not required to give evidence or provide a document under this section if the person objects on the ground of privilege that the person would be entitled to claim if the person were a witness in proceedings in the Supreme Court.
- (5) A person shall not, without reasonable excuse, contravene or fail to comply with an order of the Commissioner under subsection (1).

Penalty: In the case of a body corporate – \$5,000.

In the case of a natural person – \$1,000.

93 Fees for witnesses

- (1) A person requested or ordered to attend proceedings under this Act shall be paid, in respect of the person's attendance, such fees and allowances for expenses, if any, as may be fixed by or determined in accordance with the Regulations.
- (2) Subject to subsection (3), the fees and allowances payable under subsection (1) shall be paid:
 - (a) in a case where the person was requested or ordered at the request of a person, other than the Territory, by the person who made the request; or
 - (b) in any other case, by the Territory.
- (3) The Commissioner may determine that the fees and allowances payable to a person under subsection (2)(a) be paid, in whole or in part, by the Territory.

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.

95 Parties may be legally represented

A complainant or a respondent may be represented before the Commissioner by a legal practitioner with the leave of the Commissioner.

96 Costs

- (1) Subject to subsection (2) and section 80, each party to a complaint shall pay his or her own costs in respect of proceedings under this Act.
- (2) Notwithstanding subsection (1), the Commissioner may make an order as to costs.

97 Unincorporated association represented by committee

Member

- (1) If proceedings under this Act involve an unincorporated association:
 - (a) the president;

- (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 on whom a notice is served under subsection (1) shall not, without reasonable excuse, contravene or fail to comply with the notice.

Penalty: In the case of a body corporate – \$5,000.
 In the case of a natural person – \$1,000.

99 Publication of evidence

- (1) The Commissioner may order that any oral or documentary evidence given at proceedings under this Act not be published except as directed by the Commissioner.
- (2) A person shall not, without reasonable excuse, contravene or fail to comply with an order or a direction under subsection (1).

Penalty: In the case of a body corporate – \$5,000.
 In the case of a natural person – \$1,000.

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;
 - (b) being a respondent to a complaint;
 - (c) involvement in a prosecution for an offence against this Act;
 - (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 shall not, without reasonable excuse, contravene or fail to comply with an order of the Commissioner under subsection (1).

Penalty: In the case of a body corporate – \$5,000.

 In the case of a natural person – \$1,000.

101 Interim orders

- (1) Subject to subsection (2), the Commissioner may, at any stage of proceedings under this Act in respect of a complaint, make an interim order pending the completion of the proceedings:
- (a) to preserve:
 - (i) the status quo between; or
 - (ii) the rights of,

the parties to the complaint; or
 - (b) to preserve 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 shall not, without reasonable excuse, contravene or fail to comply with an interim order made under subsection (1).

Penalty: In the case of a body corporate – \$5,000.

 In the case of a natural person – \$1,000.

102 Discontinuance of complaint

- (1) The Commissioner may, at any stage of proceedings under this Act in respect of a complaint, discontinue the proceedings if the Commissioner reasonably believes that the complaint is:
 - (a) frivolous or vexatious;
 - (b) trivial;
 - (c) misconceived or lacking in substance; or
 - (d) fails to disclose any prohibited conduct.
- (2) Where a complaint is discontinued under subsection (1)(a), the Commissioner may order the complainant to pay to the respondent an amount, being an amount not more than that prescribed, that the Commissioner considers appropriate as compensation for loss or damage caused to the respondent by the complainant making the complaint.

103 Written reasons for orders

A complainant or respondent may, not later than 28 days after the Commissioner makes an order under section 88, request the Commissioner to give written reasons for the order and the Commissioner shall, not later than 28 days after receiving the request, give the written reasons.

104 Enforcement of orders

- (1) A person shall not, without reasonable excuse, contravene or fail to comply with an order of the Commissioner under this Part.

Penalty: In the case of a body corporate – \$10,000.

In the case of a natural person – \$2,500 or imprisonment for 3 months.

- (2) A person who is entitled to payment under an order made under this Part may register the order in a court of competent jurisdiction by filing in the court:
 - (a) a copy of the order, certified as a true copy by the Commissioner; and
 - (b) an affidavit stating the amount remaining unpaid.
- (3) An order registered under subsection (2) is a judgment debt of that court and may be recovered accordingly.

Part 7 Appeals

106 Appeals against decision of Commissioner

- (1) A party to a complaint aggrieved by a decision or order of the Commissioner may appeal to the Local Court against the decision or order.
- (2) An appeal may be on a question of law or fact or law and fact and shall be made:
 - (a) not later than 28 days after the day on which the decision or order was made; or
 - (b) if the Commissioner did not give written reasons at the time the decision or order was made, and the party making the appeal subsequently requests the Commissioner to do so, not later than 28 days after the day on which the party received the reasons in writing.
- (3) An appeal under this section shall be made in accordance with the rules of the Local Court.

107 Powers of Local Court

The Local Court, on hearing an appeal under this Part, may:

- (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 Commissioner may make under this Act;
- (c) remit the matter to the Commissioner for further hearing or consideration, or for rehearing; and/or
- (d) make such other orders (including as to costs) as the Court considers appropriate.

Part 8 Miscellaneous

108 Non-disclosure of private information

- (1) Subject to this section, a person who, in exercising a power or performing a function under this Act, acquires information about a person's affairs or has custody of, or access to, a document about a person's affairs shall not:
 - (a) make a record of the information; or

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- (b) communicate the information or produce the document to another person.

Penalty: In the case of a body corporate – \$5,000.

In the case of a natural person – \$1,000.

- (2) Subsection (1) does not apply to making a record of information, communicating information or producing a document if it:
- (a) is required for the exercise of a power or the performance of a function under this Act;
 - (b) is required or permitted under another Act or an Act of the Commonwealth, a State or another Territory of the Commonwealth; or
 - (c) relates to the commission of an offence against a law in force in the Territory.
- (3) Subject to this section, a person who, in exercising a power or performing a function under this Act, acquires information about a person's affairs or has custody of, or access to, a document about a person's affairs shall not be required:
- (a) to give the information to a court; or
 - (b) to produce the document in a court.
- (4) Subsection (3) does not apply if giving the information or producing the document:
- (a) is required for the exercise of a power or the performance of a function under this Act;
 - (b) is required or permitted by another Act or an Act of the Commonwealth, a State or another Territory of the Commonwealth; or
 - (c) is to a court in the prosecution of an offence against a law in force in the Territory.
- (5) Nothing in subsection (2)(b) or (c) or (4)(b) or (c) relates to information acquired during conciliation proceedings under this Act.
- (6) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

produce includes permit access to.

109 Discriminatory advertising prohibited

- (1) 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.

Penalty: In the case of a body corporate – \$5,000.

In the case of a natural person – \$1,000.

- (2) A prosecution for an offence against subsection (1) shall not be commenced or continued if a complaint has been made in respect of the advertisement and the complaint has lapsed or been withdrawn or dismissed, or the person alleged to have committed the offence has complied with an agreement or order made in respect of the complaint.

110 Offences in respect of proceedings

A person shall not:

- (a) hinder a person exercising a power or performing a function under this Act;
- (b) use insulting language towards a person exercising a power or performing a function under this Act; or
- (c) knowingly or recklessly provide false or misleading information to a person exercising a power or performing a function under this Act.

Penalty: In the case of a body corporate – \$5,000.

In the case of a natural person – \$1,000.

111 Inducement

A person shall not knowingly or recklessly make a false or misleading statement to a person in order to induce the publication or display of an advertisement that promotes or expresses prohibited conduct.

Penalty: In the case of a body corporate – \$5,000.

In the case of a natural person – \$1,000.

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.

114 Self incrimination

It is not a reasonable excuse for the purposes of section 92(5) 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;
- (b) by posting it to the person at the person's place of residence or business; 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.

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

3

SAVINGS AND TRANSITIONAL PROVISIONS

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

4

LIST OF AMENDMENTS

| | |
|-------|--|
| s 4 | amd No. 68, 1994, s 3; No. 17, 1996, s 6 |
| s 9 | amd No. 28, 1993, s 3; No. 17, 1996, s 6 |
| s 12 | amd No. 28, 1993, s 3 |
| s 85 | amd No. 45, 1996, s 2 |
| s 93 | amd No. 14, 1995, s 12 |
| s 105 | rep No. 58, 1996, s 2 |