



AUSTRALIAN CAPITAL TERRITORY

# Discrimination Act 1991

No. 81 of 1991

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AUSTRALIAN CAPITAL TERRITORY

# Discrimination Act 1991

No. 81 of 1991

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## **An Act to render certain kinds of discrimination unlawful and to provide for related matters**

*[Notified in ACT Gazette S143: 13 December 1991]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### **PART I—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Discrimination Act 1991*.

#### **Commencement**

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions of this Act commence on a day, or on respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### Objects

3. The objects of this Act are—

- (a) to eliminate, so far as possible, discrimination to which this Act applies in the areas of work, education, access to premises, the provision of goods, services, facilities and accommodation and the activities of clubs;
- (b) to eliminate, so far as possible, sexual harassment in those areas;
- (c) to promote recognition and acceptance within the community of the equality of men and women; and
- (d) to promote recognition and acceptance within the community of the principle of equality of opportunity for all persons.

### Interpretation

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

“accommodation” includes residential and business accommodation;

“carer” means a person on whom another person is wholly or substantially dependent for ongoing care and attention;

“club” means a club that holds a Club Licence under the *Liquor Act 1975*;

“commission agent” means a person who does work for another person as the agent of that other person and who is remunerated (whether wholly or partially) by commission;

“Commissioner” means the Discrimination Commissioner appointed under section 112;

“committee of management”, in relation to a club or organisation, means the group or body of persons (however described) that manages the affairs of the club or organisation;

“Commonwealth Commission” means the Human Rights and Equal Opportunity Commission established by the *Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth;

- “complaint” means a complaint made in accordance with section 70;
- “compulsory conference” means a conference convened under section 81;
- “contract worker” means a person who does work for another person pursuant to a contract between the employer of the first-mentioned person and that other person;
- “*de facto* spouse”, in relation to a person, means a person of the opposite sex to the first-mentioned person who lives with the first-mentioned person as the husband or wife of that person on a *bona fide* domestic basis although not legally married to that person;
- “discriminate” has the meaning given by section 8;
- “educational authority” means a body or person administering an educational institution;
- “educational institution” means a school, college, university or other institution at which education or training is provided;
- “employer”, in relation to an unpaid worker, means the person for whom the unpaid worker performs work;
- “employment” includes—
- (a) work under a contract for services;
  - (b) work as a Territory employee; and
  - (c) work as an unpaid worker;
- “employment agency” means any person who or body that (whether for payment or not) assists persons to find employment or other work or assists employers to find employees or workers;
- “impairment” means—
- (a) total or partial loss of a bodily function;
  - (b) total or partial loss of a part of the body;
  - (c) malfunction of a part of the body;
  - (d) malformation or disfigurement of a part of the body;

- (e) the presence in the body of organisms that cause or are capable of causing disease;
- (f) an illness or condition which impairs a person's thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour; or
- (g) an intellectual disability or developmental delay;

“investigation” means an investigation under Division 2 of Part VIII;

“man” means a member of the male sex irrespective of age;

“marital status” means the status or condition of being—

- (a) single;
- (b) married;
- (c) married but living separately and apart from one's spouse;
- (d) divorced;
- (e) widowed; or
- (f) the *de facto* spouse of another person;

“near relative”, in relation to a person, means—

- (a) a parent, child, grandparent, grandchild, brother or sister of the person; or
- (b) a spouse or *de facto* spouse of the person or of a person referred to in paragraph (a);

“premises” includes—

- (a) a structure, building, aircraft, vehicle or vessel;
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

“principal” means—

- (a) in relation to a commission agent—a person for whom the commission agent does work as a commission agent; and

- (b) in relation to a contract worker—a person for whom the contract worker does work pursuant to a contract between the employer of the contract worker and the person;

“public hearing” means a hearing under section 82;

“race” includes—

- (a) colour, descent, ethnic and national origin and nationality; and
- (b) any 2 or more distinct races which are collectively referred to or known as a race;

“relative”, in relation to a person, means—

- (a) a person who is related to the first-mentioned person by blood, marriage, affinity or adoption; or
- (b) a *de facto* spouse of the person or of a person referred to in paragraph (a);

“relevant class of persons” means a class of persons the members of which are identified by reference to an attribute referred to in section 7;

“representative complaint” means a complaint that is dealt with by the Commissioner, in accordance with section 77, as a representative complaint;

“services” includes—

- (a) services relating to banking, insurance or the provision of grants, loans, credit or finance;
- (b) services relating to entertainment, recreation or refreshment;
- (c) services relating to transport or travel;
- (d) services of any profession, trade or business;
- (e) services provided by a government, a government authority, a local government body or a company or other body corporate in which a government has a controlling interest; and
- (f) the provision of scholarships, prizes or awards;

“sexuality” means heterosexuality, homosexuality (including lesbianism) or bisexuality;

“staff”, in relation to the Commissioner, means the staff referred to in section 118;

“Territory employee” means a person who is—

- (a) a member of the Public Service;
- (b) employed in an administrative unit of the Public Service otherwise than as a member of the Public Service; or
- (c) employed by a Territory authority;

“transsexual” means a person of one sex who—

- (a) assumes the bodily characteristics of the other sex, whether by means of medical intervention or otherwise; or
- (b) identifies himself or herself as a member of the other sex or lives, or seeks to live, as a member of that other sex;

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

“voluntary body” means an association or other body (whether incorporated or unincorporated) the activities of which are not engaged in for the purpose of making a profit, but does not include—

- (a) a club;
- (b) a body established by a law of the Territory, the Commonwealth, a State or another Territory; or
- (c) an association that provides grants, loans, credit or finance to its members;

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

(2) A reference in this Act to the doing of an act shall be read as including a reference to a refusal or failure to do an act.

(3) A reference in this Act to the doing of an act by reason of a particular matter shall be read as including a reference to the doing of such an act by reason of 2 or more matters that include the particular matter,

whether or not the particular matter is the dominant or substantial reason for the doing of the act.

### **Complainants and respondents**

**5. (1)** Unless the contrary intention appears, a reference in this Act to a complainant shall—

- (a) in relation to a complaint lodged by an agent—be read as a reference to the person or each person on whose behalf the complaint is lodged; and
- (b) in relation to an investigation in respect of which there is more than one complainant—be read as a reference to each complainant.

**(2)** Unless the contrary intention appears, a reference in this Act to a respondent shall—

- (a) in relation to a complaint—be read as a reference to the person who is alleged to have done the act or acts to which the complaint relates;
- (b) in relation to the investigation of a complaint in respect of which there is more than one respondent—be read as a reference to each respondent; and
- (c) in relation to an investigation initiated by the Commissioner—be read as a reference to each person whose actions are the subject of the investigation.

### **Position of Crown**

**6.** This Act binds the Crown.

## **PART II—DISCRIMINATION TO WHICH ACT APPLIES**

### **Grounds**

**7. (1)** This Act applies to discrimination on the ground of any of the following attributes:

- (a) sex;
- (b) sexuality;
- (c) transsexuality;

- (d) marital status;
- (e) status as a parent or carer;
- (f) pregnancy;
- (g) race;
- (h) religious or political conviction;
- (i) impairment;
- (j) association (whether as a relative or otherwise) with a person identified by reference to an attribute referred to in another paragraph of this subsection.

(2) A reference in this Act to an attribute that is referred to in subsection (1) shall be read as including a reference to—

- (a) a characteristic that persons with that attribute generally have;
- (b) a characteristic that persons with that attribute are generally presumed to have;
- (c) such an attribute that a person is presumed to have; and
- (d) such an attribute that the person had in the past but no longer has.

### **What constitutes discrimination**

**8. (1)** For the purposes of this Act, a person discriminates against another person if—

- (a) the person treats or proposes to treat the other person unfavourably because the other person has an attribute referred to in section 7; or
- (b) the person imposes or proposes to impose a condition or requirement that has, or is likely to have, the effect of disadvantaging persons because they have an attribute referred to in section 7.

(2) Paragraph (1) (b) does not apply to a condition or requirement that is reasonable in the circumstances.

(3) In determining whether a condition or requirement is reasonable in the circumstances, the matters to be taken into account include—

- (a) the nature and extent of the resultant disadvantage;

- (b) the feasibility of overcoming or mitigating the disadvantage; and
- (c) whether the disadvantage is disproportionate to the result sought by the person who imposes or proposes to impose the condition or requirement.

**Impairment—guide dogs etc.**

**9. (1)** For the purposes of this Act, a person discriminates against another person on the ground of impairment if the discriminator treats the other person unfavourably because that person possesses or is accompanied by a guide dog, a hearing dog or some other aid associated with the impairment, whether or not it is the discriminator's practice to treat unfavourably persons who possess or are accompanied by dogs or other things.

**(2)** Nothing in this section shall be taken to limit the operation of section 8 in relation to discrimination on the ground of impairment.

**(3)** Nothing in this Act shall be taken to affect the liability of a person who is blind or deaf or has any other impairment for any injury, loss or damage caused by a guide dog, hearing dog or other aid.

**(4)** In this section—

“blind” includes partially blind;

“deaf” includes partially deaf;

“guide dog” means a dog that has been trained in the guidance of the blind and is, or is to be, used for the guidance of a blind person;

“hearing dog” means a dog that has been trained in the assistance of the deaf and is, or is to be, used for the assistance of a deaf person.

**PART III—UNLAWFUL DISCRIMINATION**

***Division 1—Discrimination in work***

**Applicants and employees**

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

- (a) in the arrangements made for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment; or

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

(2) It is unlawful for an employer to discriminate against an employee—

- (a) in the terms or conditions of employment that the employer affords the employee;
- (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training or to any other benefit associated with employment;
- (c) by dismissing the employee; or
- (d) by subjecting the employee to any other detriment.

#### **Employees—religious practice**

11. It is unlawful for an employer to discriminate against an employee on the ground of religious conviction by refusing the employee permission to carry out a religious practice during working hours, being a practice—

- (a) of a kind recognised as necessary or desirable by persons of the same religious conviction as that of the employee;
- (b) the performance of which during working hours is reasonable having regard to the circumstances of the employment; and
- (c) that does not subject the employer to unreasonable detriment.

#### **Commission agents**

12. (1) It is unlawful for a principal to discriminate against a person—

- (a) in the arrangements made for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms or conditions on which engagement as a commission agent is offered.

(2) It is unlawful for a principal to discriminate against a commission agent—

- (a) in the terms or conditions that the principal affords the agent;
- (b) by denying the agent access, or limiting the agent's access, to opportunities for promotion, transfer or training or to any other benefit associated with the position as an agent;

- (c) by terminating the engagement; or
- (d) by subjecting the agent to any other detriment.

**Contract workers**

**13.** It is unlawful for a principal to discriminate against a contract worker—

- (a) in the terms or conditions on which the principal allows the contract worker to work;
- (b) by not allowing the contract worker to work or continue to work;
- (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the relevant work; or
- (d) by subjecting the contract worker to any other detriment.

**Partnerships**

**14. (1)** It is unlawful for any persons who are proposing to form themselves into a partnership to discriminate against a person—

- (a) in determining who should be invited to become a partner in the partnership; or
- (b) in the terms or conditions on which the person is invited to become a partner in the partnership.

**(2)** It is unlawful for a partner in a partnership to discriminate against a person—

- (a) in determining who should be invited to become a partner in the partnership; or
- (b) in the terms or conditions on which the person is invited to become a partner in the partnership.

**(3)** It is unlawful for a partner in a partnership to discriminate against another partner in the partnership—

- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
- (b) by expelling the partner from the partnership; or
- (c) by subjecting the partner to any other detriment.

**Professional or trade organisations**

**15. (1)** In this section—

“organisation” means an organisation of employers or employees.

**(2)** It is unlawful for an organisation, the committee of management of an organisation or a member of the committee of management of an organisation to discriminate against a person who is not a member of the organisation—

- (a) by refusing or failing to accept the person’s application for membership; or
- (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.

**(3)** It is unlawful for an organisation, the committee of management of an organisation or a member of the committee of management of an organisation to discriminate against a member of the organisation—

- (a) by denying the member access, or limiting the member’s access, to any benefit provided by the organisation;
- (b) by depriving the member of membership or varying the terms of membership; or
- (c) by subjecting the member to any other detriment.

**Qualifying bodies**

**16.** It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person—

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;
- (b) in the terms or conditions on which it is prepared to confer, renew or extend the authorisation or qualification;
- (c) by revoking or withdrawing the authorisation or qualification or varying the terms or conditions on which it is held; or
- (d) by subjecting the person to any other detriment.

**Employment agencies**

**17.** It is unlawful for an employment agency to discriminate against a person—

- (a) by refusing to provide the person with any of its services;
- (b) in the terms or conditions on which it offers to provide the person with any of its services;
- (c) in the manner in which it provides the person with any of its services; or
- (d) by subjecting the person to any other detriment.

***Division 2—Discrimination in other areas***

**Education**

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

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

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

- (a) by denying the student access, or limiting the student's access, to any benefit provided by the authority;
- (b) by expelling the student; or
- (c) by subjecting the student to any other detriment.

**Access to premises**

**19.** It is unlawful for a person to discriminate against another person—

- (a) by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not);

- (b) in the terms or conditions on which the discriminator is prepared to allow the other person access to, or the use of, any such premises;
- (c) in relation to the provision of means of access to such premises;
- (d) by refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not);
- (e) in the terms or conditions on which the discriminator is prepared to allow the other person the use of any such facilities; or
- (f) by requiring the other person to leave such premises or cease to use such facilities.

**Goods, services and facilities**

**20.** It is unlawful for a person who (whether for payment or not) provides goods or services, or makes facilities available, to discriminate against another person—

- (a) by refusing to provide those goods or services or make those facilities available to the other person;
- (b) in the terms or conditions on which the first-mentioned person provides those goods or services or makes those facilities available to the other person; or
- (c) in the manner in which the first-mentioned person provides those goods or services or makes those facilities available to the other person.

**Accommodation**

**21. (1)** It is unlawful for a person (whether as principal or agent) to discriminate against another person—

- (a) by refusing the other person's application for accommodation;
- (b) in the terms or conditions on which accommodation is offered to the other person; or
- (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.

(2) It is unlawful for a person (whether as principal or agent) to discriminate against another person—

- (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person;
- (b) by evicting the other person from accommodation occupied by the other person; or
- (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.

### **Clubs**

22. (1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club—

- (a) by refusing or failing to accept the person's application for membership; or
- (b) in the terms or conditions on which the club is prepared to admit the person to membership.

(2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a member of the club—

- (a) in the terms or conditions of membership that are afforded to the member;
- (b) by refusing or failing to accept the member's application for a particular class or type of membership;
- (c) by denying 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 of membership; or
- (e) by subjecting the member to any other detriment.

### **Requests etc. for information**

23. It is unlawful for a person to discriminate against another person by requesting or requiring information (whether by way of completing a form or otherwise) in connection with, or for the purpose of performing, an

act that is or would be unlawful under any other provision of this Part or under Part V, VI or VII.

## **PART IV—EXCEPTIONS TO UNLAWFUL DISCRIMINATION**

### ***Division 1—General exceptions***

#### **Domestic duties**

**24.** Nothing in paragraph 10 (1) (a) or (b) or 13 (b) renders it unlawful for a person to discriminate against another person in connection with a position as an employee or contract worker where the duties of the position involve the performance of domestic duties on the premises on which the first-mentioned person resides.

#### **Residential care of children**

**25.** Nothing in paragraph 10 (1) (a) or (b) or 13 (b) renders it unlawful for a person to discriminate against another person in connection with a position as an employee or contract worker, where the duties of the position involve the care of a child in the place where the child resides.

#### **Domestic accommodation etc.**

**26.** Nothing in section 21 renders unlawful discrimination in relation to—

- (a) the provision of accommodation if—
  - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
  - (ii) the accommodation provided in those premises is for no more than 6 persons other than the person referred to in subparagraph (i) or near relatives of such a person;
- (b) the provision of accommodation by a religious body for members of a relevant class of persons; or
- (c) the provision of accommodation by a charitable or voluntary body for members of a relevant class of persons.

#### **Measures intended to achieve equality**

**27.** Nothing in Part III renders it unlawful to do an act a purpose of which is—

- (a) to ensure that members of a relevant class of persons have equal opportunities with other persons; or
- (b) to afford members of a relevant class of persons access to facilities, services or opportunities to meet their special needs.

### **Insurance**

**28.** Nothing in Part III renders it unlawful for a person to discriminate against another person with respect to the terms on which an annuity or a policy of insurance is offered to, or may be obtained by, the other person, if the discrimination is reasonable in the circumstances, having regard to any actuarial or statistical data on which it is reasonable for the first-mentioned person to rely.

### **Superannuation**

**29.** Nothing in Part III renders it unlawful for a person to discriminate against another person in the terms or conditions relating to a superannuation or provident fund or scheme.

### **Acts done under statutory authority etc.**

**30. (1)** Nothing in this Act renders unlawful anything done necessarily for the purpose of complying with a requirement of—

- (a) a law of the Territory;
- (b) a determination or direction made under a law of the Territory;
- (c) an order of a court; or
- (d) a direction by the Commissioner under section 89 or 90.

**(2)** Paragraphs (1) (a) and (b) cease to have effect on a day (not earlier than 2 years after the commencement of this section) fixed by the Minister by notice in the *Gazette*.

### **Voluntary bodies**

**31.** Nothing in Part III renders it unlawful for a voluntary body to discriminate against a person in connection with—

- (a) the admission of persons as members of the body; or
- (b) the provision of benefits, facilities or services to members of the body.

**Religious bodies**

**32.** Nothing in Part III applies in relation to—

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- (c) the selection or appointment of persons to perform duties or functions for the purposes of, or in connection with, any religious observance or practice; or
- (d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion and is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

**Educational institutions conducted for religious purposes**

**33. (1)** Nothing in section 10 or 13 renders it unlawful for a person to discriminate against another person in connection with—

- (a) employment as a member of the staff of an educational institution;  
or
- (b) a position as a contract worker that involves the doing of work in an educational institution;

being an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

**(2)** Nothing in section 18 renders it unlawful for a person to discriminate against another person in connection with the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

***Division 2—Exceptions relating to sex, marital status or pregnancy*****Genuine occupational qualifications**

**34. (1)** Nothing in paragraph 10 (1) (a) or (b), 12 (1) (a) or (b), 13 (b) or 14 (1) (a) or (2) (a) renders it unlawful for a person to discriminate against another person on the ground of sex in connection with a position as an employee, commission agent, contract worker or partner, being a position in relation to which it is a genuine occupational qualification to be a person of the opposite sex to the sex of the other person.

**(2)** Without limiting the generality of subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular sex (in this subsection called the “relevant sex”) if—

- (a) the duties of the position can be performed only by a person having particular physical attributes (other than attributes of strength or stamina) that are not possessed by persons not of the relevant sex;
- (b) the duties of the position involve performing in a dramatic performance or other entertainment in a role that, for reasons of authenticity, aesthetics or tradition is required to be performed by a person of the relevant sex;
- (c) the duties of the position involve participating as an artist’s or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of the relevant sex is required for reasons of authenticity;
- (d) the duties of the position need to be performed by a person of the relevant sex to preserve decency or privacy because they involve the fitting of clothing for persons of that sex;
- (e) the duties of the position include the conduct of searches of the clothing or bodies of persons of the relevant sex;
- (f) the occupant of the position is required to enter a lavatory ordinarily used by persons of the relevant sex while the lavatory is in use by persons of that sex;
- (g) the occupant of the position is required to live on premises provided by the employer or principal and—
  - (i) the premises are not equipped with separate sleeping accommodation or sanitary facilities for persons of each sex;

- (ii) the premises are already occupied by a person of the relevant sex and are not occupied by any person not of the relevant sex; and
  - (iii) it is not reasonable to expect the employer or principal to provide separate sleeping accommodation or sanitary facilities for persons of each sex;
- (h) the occupant of the position is required to enter areas ordinarily used only by persons of the relevant sex while those persons are in a state of undress;
- (i) the duties of the position involve providing persons of the relevant sex with services for the purpose of promoting their welfare where those services can most effectively be provided by a person of that sex; or
- (j) the position is declared by the regulations to be a position in relation to which it is a genuine occupational qualification to be a person of a particular sex.

### **Employment of couple**

**35.** Nothing in Part III renders unlawful discrimination against a person on the grounds of marital status in relation to a job which is one of two to be held by a couple in a *bona fide* domestic relationship.

### **Educational institutions for members of one sex**

**36.** Nothing in section 18 renders unlawful discrimination on the ground of sex in relation to a refusal or failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students of the opposite sex to that of the applicant.

### **Pregnancy or childbirth**

**37.** Nothing in Part III renders it unlawful for a person to discriminate against a man on the ground of sex by reason only of the fact that the first-mentioned person grants to a woman rights or privileges in connection with pregnancy or childbirth.

### **Services for members of one sex**

**38.** Nothing in Part III renders unlawful discrimination on the ground of sex in relation to the provision of services the nature of which is such that they can only be provided to members of one sex.

**Accommodation provided for employees, contract workers or students**

**39. (1)** Nothing in Part III, so far as it applies in relation to discrimination on the ground of sex, marital status or pregnancy, renders it unlawful for an employer or principal who provides accommodation to employees or contract workers to provide accommodation of different standards to different employees or contract workers where—

- (a) the standard of the accommodation provided is determined having regard to the number of persons in the household of the employee or contract worker; and
- (b) it is not reasonable to expect the employer or principal to provide accommodation of the same standard for all employees or contract workers.

**(2)** Nothing in Part III renders unlawful discrimination on the ground of sex in relation to the provision of accommodation where the accommodation is provided solely for persons of one sex who are students at an educational institution.

**Clubs for members of one sex etc.**

**40. (1)** Nothing in section 22 renders it unlawful to discriminate against a person on the ground of that person's sex if membership of the relevant club is available only to persons of the opposite sex.

**(2)** Nothing in paragraph 22 (1) (b) or subsection 22 (2) renders it unlawful to discriminate against a person on the ground of sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the relevant club where—

- (a) it is not practicable for the benefit to be used or enjoyed, either simultaneously or to the same extent, by both men and women; and
- (b) either—
  - (i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other; or
  - (ii) men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.

**(3)** In determining any matter relating to the application of subsection (2), 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.

### **Sport**

**41. (1)** Nothing in Part III renders unlawful discrimination on the ground of sex in relation to the exclusion of persons of one sex from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.

**(2)** Subsection (1) does not apply in relation to the exclusion of persons from participation in—

- (a) the coaching of persons engaged in any sporting activity;
- (b) the umpiring or refereeing of any sporting activity;
- (c) the administration of any sporting activity; or
- (d) any prescribed sporting activity.

### ***Division 3—Exceptions relating to race***

#### **Genuine occupational qualifications**

**42. (1)** Nothing in paragraph 10 (1) (a) or (b), 12 (1) (a) or (b), 13 (b) or 14 (1) (a) or (2) (a) renders it unlawful for a person to discriminate against another person on the ground of race in connection with a position as an employee, commission agent, contract worker or partner, being a position in relation to which it is a genuine occupational qualification to be a person of a different race to that of the other person.

**(2)** Without limiting the generality of subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular race if—

- (a) the duties of the position involve participating in a dramatic performance or other entertainment in a role that, for reasons of authenticity, aesthetics or tradition is required to be performed by a person of that race;

- (b) the duties of the position involve participating as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of that race is required for reasons of authenticity;
- (c) the duties of the position involve working in a place where food or drink is (whether for payment or not) provided to and consumed by persons in circumstances in which a person of that race is required for reasons of authenticity;
- (d) the duties of the position involve providing persons of that race with services for the purpose of promoting their welfare, where those services can most effectively be provided by a person of that race; or
- (e) the position is declared by the regulations to be a position in relation to which it is a genuine occupational qualification to be a person of a particular race.

**Clubs for members of one race etc.**

**43. (1)** Nothing in section 22 renders unlawful discrimination on the ground of race in relation to a club that has as its principal object the provision of benefits for persons of a specified race if those persons are described otherwise than—

- (a) by reference to colour; or
- (b) in a manner which has the effect of excluding some members of that race on the basis of colour.

**(2)** In determining whether the principal object of a club is as referred to in subsection (1), regard shall be had to—

- (a) the essential character of the club;
- (b) whether the persons primarily enjoying the benefits of membership are of the race specified in the principal object; and
- (c) any other relevant circumstance.

***Division 4—Exceptions relating to religious or political convictions***

**Religious workers**

**44.** Nothing in paragraph 10 (1) (a) or (b), 12 (1) (a) or (b), 13 (b) or 14 (1) (a) or (2) (a) renders unlawful—

- (a) discrimination on the ground of religious conviction by an educational authority in relation to employment or work in an educational institution conducted by the authority; or
- (b) discrimination on the ground of religious conviction by a religious body in relation to employment or work in a hospital or other place conducted by the body in which health services are provided;

if the duties of the employment or work involve, or would involve, the participation by the employee or worker in the teaching, observance or practice of the relevant religion.

#### **Political workers etc.**

**45.** Nothing in paragraph 10 (1) (a) or (b), 12 (1) (a) or (b), 13 (b) or 14 (1) (a) or (2) (a) renders unlawful discrimination on the ground of political conviction in relation to employment or work—

- (a) as an adviser to, or a member of the staff of, a Minister, the Speaker of the Legislative Assembly or a member of the Legislative Assembly;
- (b) as an officer or employee of, or a worker for, a political party;
- (c) as a member of the electoral staff of a person; or
- (d) in any other similar employment or work.

#### **Religious educational institutions**

**46.** Nothing in section 18 renders unlawful discrimination on the ground of religious conviction in relation to a refusal or failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students having a religious conviction other than that of the applicant.

### ***Division 5—Exceptions relating to impairment***

#### **Unjustifiable hardship**

**47.** In determining what constitutes unjustifiable hardship for the purposes of this Division, all relevant circumstances of the particular case shall be taken into account, including the nature of the benefit or detriment likely to accrue or be suffered by all persons concerned, the nature of the impairment of the person concerned and the financial circumstances of, and

the estimated amount of expenditure required to be made by, the person claiming unjustifiable hardship.

### **Genuine occupational qualifications**

**48.** Nothing in paragraph 10 (1) (a) or (b), 12 (1) (a) or (b), 13 (b) or 14 (1) (a) or (2) (a) renders it unlawful to discriminate against a person on the ground of impairment in relation to employment or work which involves any of the following activities:

- (a) participation in a dramatic performance or other entertainment in a role in which a person with a particular impairment is required for reasons of authenticity;
- (b) participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person with a particular impairment is required for reasons of authenticity;
- (c) providing persons who have a particular impairment with services for the purpose of promoting their welfare, where those services can most effectively be provided by a person with a similar impairment;
- (d) a prescribed activity.

### **Work related discrimination**

**49. (1)** Nothing in paragraph 10 (1) (b), 12 (1) (b), 13 (b) or 14 (1) (a) or (2) (a) renders unlawful discrimination by a person against another person on the ground of impairment if the first-mentioned person believes on reasonable grounds that, because of an impairment—

- (a) the other person is, or would be, unable to carry out work that is essential to the position concerned; or
- (b) the other person requires, or would require, in order to carry out that work, services or facilities which would not be required by a person who does not have such an impairment, the provision of which would impose unjustifiable hardship on the first-mentioned person.

**(2)** Nothing in paragraph 10 (1) (c), (2) (a) or (b), 12 (1) (c), (2) (a) or (b), 13 (a) or (c) or 14 (1) (b), (2) (b) or (3) (a) renders it unlawful for a person to discriminate against another person on the ground of impairment in relation to any determination by the first-mentioned person of terms or

conditions relating to the performance of work that is essential to the position concerned, if the terms or conditions are reasonable having regard to either or both of the following matters:

- (a) any limitation or restriction that the impairment would or does impose on the other person's ability to carry out that work;
- (b) any services or facilities that would be or are required by the other person in order to carry out that work and that would not be or are not required by persons who do not have such an impairment.

#### **Discrimination by qualifying bodies etc.**

**50.** Nothing in section 16 renders unlawful discrimination by an authority or body against a person on the ground of impairment if the authority or body believes on reasonable grounds that, because of an impairment, the person is, or would be, unable to carry out work that is essential to the position concerned.

#### **Discrimination by educational institutions**

**51. (1)** Nothing in section 18 renders unlawful discrimination on the ground of impairment in relation to a refusal or failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students who have an impairment which the applicant does not have.

**(2)** Nothing in section 18 renders unlawful discrimination on the ground of impairment in relation to a refusal or failure to accept an application by a person who has an impairment for admission as a student at an educational institution where the person, if so admitted, would require services or facilities that are not required by students who do not have an impairment, the provision of which would impose unjustifiable hardship on the relevant educational authority.

#### **Discrimination concerning access to premises**

**52. (1)** Nothing in section 19 renders unlawful discrimination on the ground of impairment in relation to the provision of access to premises if—

- (a) the premises are so designed or constructed as to be inaccessible to a person who has an impairment; and
- (b) any alteration of the premises to provide such access would impose unjustifiable hardship on the person who would have to provide that access.

(2) Subsection (1) does not apply in relation to a building the construction of which commences on or after a date fixed by the Minister for the purposes of this section by notice published in the *Gazette*.

(3) For the purposes of this section, the construction of a building shall be taken to commence on the day on which a building permit in respect of the erection of the building is granted under the *Building Act 1972*.

### **Discrimination in the provision of goods, services or facilities**

53. Nothing in section 20 renders unlawful discrimination on the ground of impairment in relation to the provision of goods, services or facilities where—

- (a) because of a person's impairment, the goods, services or facilities would have to be provided in a special manner; and
- (b) their provision in that manner would impose unjustifiable hardship on the person providing, or proposing to provide, the goods, services or facilities.

### **Discrimination concerning accommodation**

54. Nothing in section 21 renders unlawful discrimination on the ground of impairment in relation to the provision of accommodation to a person who has an impairment if special services or facilities are, or would be, required by the person and their provision would impose unjustifiable hardship on the person providing or proposing to provide the accommodation.

### **Discrimination by clubs**

55. (1) Nothing in section 22 renders unlawful discrimination on the ground of impairment in relation to a club that has as its principal object the provision of benefits to persons who have a particular impairment.

(2) In determining whether the principal object of a club is as referred to in subsection (1), regard shall be had to—

- (a) the essential character of the club;
- (b) whether the persons primarily enjoying the benefits of membership have the particular impairment; and
- (c) any other relevant circumstance.

(3) Nothing in section 22 renders it unlawful to discriminate against a person on the ground of impairment if the discrimination occurs in relation to the enjoyment of any benefit provided by a club where—

- (a) because of the person's impairment, the benefit would have to be provided to the person in a special manner; and
- (b) the provision of the benefit in that manner would impose unjustifiable hardship on the club.

### **Public health**

56. Nothing in Part III renders unlawful discrimination against a person on the ground of impairment if the discrimination is necessary and reasonable to protect public health.

### **Sport**

57. (1) Nothing in Part III renders unlawful discrimination on the ground of impairment in relation to the exclusion of a person from participation in any competitive sporting activity if—

- (a) the person has an impairment and the activity requires physical or intellectual attributes that the person does not possess; or
- (b) where the activity is conducted wholly or mainly for persons who have a particular kind of impairment—the person does not have an impairment of that kind.

(2) Subsection (1) does not apply in relation to the exclusion of persons from participation in—

- (a) the coaching of persons engaged in any sporting activity;
- (b) the umpiring or refereeing of any sporting activity;
- (c) the administration of any sporting activity; or
- (d) any prescribed sporting activity.

## **PART V—SEXUAL HARASSMENT**

### **Meaning of sexual harassment**

58. (1) For the purposes of this Part, a person subjects another person to sexual harassment if the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person or engages in

other unwelcome conduct of a sexual nature in circumstances in which the other person reasonably feels offended, humiliated or intimidated.

(2) A reference in subsection (1) to conduct of a sexual nature shall be read as including a reference to the making of a statement of a sexual nature to, or in the presence of, a person, whether the statement is made orally or in writing.

### **Employment etc.**

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

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

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

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

(5) It is unlawful for a partner in a partnership to subject another partner in the partnership, or a person seeking to become a partner in the partnership, to sexual harassment.

### **Educational institutions**

**60. (1)** It is unlawful for a member of the staff of an educational institution to subject a student at that institution, or a person seeking admission to the institution as a student, to sexual harassment.

(2) It is unlawful for a student at an educational institution to subject—

- (a) another student at the institution; or
- (b) a member of the staff of the institution;

to sexual harassment.

### **Access to premises**

**61.** It is unlawful for a person to subject another person to sexual harassment in the course of providing, or offering to provide, the other person with access to any premises to which the public or a section of the public are entitled to have access, whether for payment or not.

**Provision of goods, services and facilities**

**62.** It is unlawful for a person to subject another person to sexual harassment in the course of providing, or offering to provide, goods, services or facilities to the other person.

**Accommodation**

**63.** It is unlawful for a person to subject another person to sexual harassment in the course of providing, or offering to provide, accommodation to the other person.

**Clubs**

**64.** It is unlawful for a member of the committee of management of a club to subject a member of the club, or a person seeking to become a member of the club, to sexual harassment.

**PART VI—RACIAL VILIFICATION****Interpretation**

**65.** In this Part, “public act” includes—

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material;
- (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia; and
- (c) the distribution or dissemination of any matter to the public.

**Racial vilification—unlawful**

**66. (1)** It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.

**(2)** Nothing in this section renders unlawful—

- (a) a fair report of a public act referred to in subsection (1);
- (b) a communication or the distribution or dissemination of any matter comprising a publication which is subject to a defence of absolute privilege in proceedings for defamation; or

- (c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

**Serious racial vilification—offence**

**67.** A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include—

- (a) threatening physical harm towards, or towards any property of, the person or group of persons; or
- (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Penalty: \$2,000.

**PART VII—OTHER UNLAWFUL ACTS**

**Victimisation**

**68. (1)** It is unlawful for a person to subject another person to any detriment on the ground that the other person has—

- (a) made a complaint under this Act;
- (b) instituted proceedings against any person under this Act;
- (c) given information or produced a document to a person exercising a power or performing a function under or in relation to this Act;
- (d) given information, produced a document or answered a question when required to do so under this Act;
- (e) reasonably asserted any rights that a person (including that other person) has under this Act; or
- (f) alleged that a person has committed an act which is unlawful under this Act;

or on the ground that the first-mentioned person believes that the other person proposes to do such an act.

**(2)** Paragraph (1) (f) does not apply in relation to an allegation that is false and is not made in good faith.

**Unlawful advertising**

- 69.** It is unlawful for a person to advertise any matter—
- (a) that indicates an intention to do an act that is unlawful under Part III or V or this Part; or
  - (b) that could reasonably be understood as indicating such an intention.

**PART VIII—RESOLUTION OF COMPLAINTS*****Division 1—Complaints*****Complaints about unlawful acts**

**70. (1)** A complaint alleging that a person has done an act that is unlawful under Part III, V, VII or section 66 may be lodged with the Commissioner by—

- (a) a person aggrieved by the act; or
  - (b) an agent acting on behalf of one or more persons aggrieved by the act.
- (2)** A person shall not act as an agent unless the person is—
- (a) authorised in writing to so act on behalf of the aggrieved person or persons concerned; or
  - (b) authorised by the Commissioner to act on behalf of an aggrieved person who is unable to make a complaint or authorise an agent to act.
- (3)** Two or more persons may make a complaint jointly.
- (4)** A complaint shall be in writing specifying—
- (a) particulars of the complaint; and
  - (b) so far as practicable, the respondent or each respondent to the complaint.

**Complaints not requiring investigation or further investigation**

**71. (1)** The Commissioner may decide not to investigate a complaint, or not to investigate a complaint any further, if the Commissioner believes on reasonable grounds that—

- (a) the complainant does not want the complaint to be investigated or further investigated;
- (b) the act, or the last of the series of acts, to which the complaint relates became known to the complainant more than 12 months before the complaint was made to the Commissioner;
- (c) the act or acts to which the complaint relates is not unlawful under Part III, V, VII or section 66;
- (d) the complaint is frivolous, vexatious, misconceived or lacking in substance or was not made in good faith;
- (e) the subject matter of the complaint has already been dealt with adequately by the Commissioner ;
- (f) some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the complainant;
- (g) where some other remedy has been sought in relation to the subject matter of the complaint—the matter has been dealt with adequately; or
- (h) having regard to the complaint and any other relevant matter before the Commissioner, it is not necessary to make any further investigation.

(2) The Commissioner shall give notice in writing of a decision under subsection (1), setting out the Commissioner's reasons for the decision, to the complainant, the respondent and any other person who is a party to any investigation of the complaint.

### **Preliminary inquiries**

**72.** The Commissioner may make inquiries of the respondent to a complaint for the purpose of determining—

- (a) whether the Commissioner has power to investigate the matter to which the complaint relates; or
- (b) whether the Commissioner may decide not to investigate the matter.

***Division 2—Investigations*****Initiation**

**73. (1)** Subject to section 71, the Commissioner shall investigate each complaint made in accordance with section 70.

**(2)** The Commissioner may, of his or her own motion, investigate conduct that appears to the Commissioner to be unlawful under Part III, V, VII or section 66.

**Parties to investigation**

**74. (1)** The parties to an investigation are the complainant (if any), the respondent and any person joined by the Commissioner as a party to the investigation.

**(2)** Where, before the commencement of an investigation, or at any stage during the conduct of an investigation, the Commissioner is of the opinion that a person ought to be joined as a party to the investigation, the Commissioner may, by notice in writing given to the person, join that person as a party to the investigation.

**Single investigation of several complaints**

**75.** The Commissioner may hold a single investigation in relation to 2 or more complaints that arise out of the same or substantially the same circumstances or subject matter.

**Notice of investigation**

**76.** Before commencing an investigation in relation to a matter the Commissioner shall, in writing—

- (a) give each party to the investigation notice that the matter is to be investigated; and
- (b) invite each party to present his or her case to the Commissioner.

**Representative complaints**

**77.** The Commissioner may deal with a complaint as a representative complaint if the Commissioner believes on reasonable grounds that—

- (a) the complainant is a member of a class of persons the members of which have, or are reasonably likely to have, grievances against the respondent;

- (b) the material facts of the complainant's grievance are the same as, or similar or related to, the material facts of the grievances of other members of the class;
- (c) common questions of law or fact arise, or would arise, in the investigation of complaints that have been, or could be, made by other members of the class in respect of those grievances; and
- (d) it is desirable to proceed in that way.

**Ordinary complaints not precluded by representative complaints**

**78.** Nothing in section 77 prevents a person from lodging a complaint in respect of a grievance that is the subject of a representative complaint.

**Conduct of investigations**

**79. (1)** Subject to this Part, an investigation shall be conducted in such manner as the Commissioner thinks fit.

**(2)** An investigation shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and any other relevant enactment and a proper consideration of the matters before the Commissioner permit.

**(3)** In conducting an investigation, the Commissioner—

- (a) shall make a thorough examination of all matters relevant to the investigation;
- (b) shall, subject to this Part, ensure that each party to the investigation is given a reasonable opportunity to present his or her case; and
- (c) is not bound by the rules of evidence.

**(4)** The Commissioner may give such directions as to the procedure to be followed in an investigation and do such things as the Commissioner considers are necessary or expedient for the expeditious and just completion of the investigation.

**(5)** The Commissioner may at any time vary or revoke a direction given under subsection (4).

**(6)** Subject to subsection (7), it is not necessary for a complainant or respondent to be afforded an opportunity to appear before the Commissioner in connection with an investigation.

(7) The Commissioner shall not give a direction under section 89 or 90 that is adverse to a complainant or respondent unless the Commissioner has afforded that person an opportunity to appear before the Commissioner and to make submissions, orally or in writing, or both, in relation to the relevant matter.

### **Conciliation**

**80.** Subject to this Part, the Commissioner shall endeavour to resolve each complaint by conciliation.

### **Compulsory conferences**

**81. (1)** For the purposes of this Part, the Commissioner may require—

- (a) a party to an investigation; or
- (b) any other person whom the Commissioner believes on reasonable grounds is likely to be able to provide information relevant to the investigation or whose presence at a conference is likely to assist in the proper resolution of the relevant complaint;

to attend a conference presided over by the Commissioner.

**(2)** A requirement under subsection (1)—

- (a) shall be given in writing to the person concerned; and
- (b) shall specify the time and place for the conference.

**(3)** A conference shall be held in private and shall be conducted in such manner as the Commissioner thinks fit.

**(4)** Except with the consent of the Commissioner—

- (a) a natural person is not entitled to be represented at a conference by another person; and
- (b) a body of persons (whether incorporated or unincorporated) is not entitled to be represented at a conference by a person other than a member, officer or employee of the body.

### **Public hearings**

**82. (1)** For the purposes of this Part, the Commissioner may hold a public hearing in relation to a matter if—

- (a) the Commissioner believes on reasonable grounds that the matter cannot be resolved by conciliation;
- (b) the Commissioner has been unsuccessful in attempting to resolve the matter by conciliation; or
- (c) the Commissioner believes on reasonable grounds that the matter is of such a nature that a public hearing is necessary or desirable in order to resolve the matter.

(2) Subject to this Part, the procedure at a public hearing shall be determined by the Commissioner.

#### **Notice of public hearings**

**83. (1)** Before commencing a public hearing, the Commissioner shall give each party to the relevant investigation notice in writing of the time and place at which the hearing is to commence.

(2) If a party to an investigation to whom notice of a public hearing has been given fails to attend at the time and place specified for the hearing, the Commissioner may conduct the hearing in the absence of that party.

#### **Appearance and representation at public hearings**

**84. (1)** At a public hearing, each party to the relevant investigation is entitled to appear personally, or where the party is a body of persons (whether incorporated or unincorporated), by an officer, employee or agent of the party.

(2) Except with the consent of the Commissioner—

- (a) a natural person is not entitled to be represented at a public hearing by another person; and
- (b) a body of persons (whether incorporated or unincorporated) is not entitled to be represented at a public hearing by a person other than a member, officer or employee of the body.

#### **Power to obtain information and documents**

**85. (1)** Where the Commissioner believes on reasonable grounds that a person is capable of providing information or producing a document relevant to an investigation, the Commissioner may, by written notice given to the person, require the person—

- (a) to give the information to the Commissioner in writing signed by the person or, in the case of a body corporate, by an officer of the body corporate; or
- (b) to produce the document to the Commissioner.

(2) The notice shall state—

- (a) the place at which the information or document is to be given or produced to the Commissioner; and
- (b) the time at which, or the period within which, the information or document is to be given or produced.

(3) Where the Commissioner believes on reasonable grounds that a person has information relevant to an investigation, the Commissioner may, by written notice given to the person, require the person to attend before the Commissioner (whether at a compulsory conference, public hearing or otherwise) at a time and place specified in the notice to answer questions relevant to the investigation.

(4) Where a document is produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner—

- (a) may take possession of, and may make a copy of, or take extracts from, the document;
- (b) may retain possession of the document for such period as is necessary for the purposes of the relevant investigation; and
- (c) during that period shall permit a person who would be entitled to inspect the document, if it was not in the possession of the Commissioner, to inspect the document at any reasonable time.

### **Taking evidence**

**86. (1)** For the purposes of this Part, the Commissioner may take evidence on oath or affirmation and, for that purpose—

- (a) may require a person attending before the Commissioner pursuant to a requirement under section 81 or 85 to take an oath or make an affirmation; and
- (b) may administer an oath or affirmation to such a person.

(2) For the purposes of this Part, the Commissioner may require a person attending before the Commissioner—

- (a) to answer a question relevant to the investigation; or
- (b) to produce a document relevant to the investigation.
- (3) In the course of an investigation, the Commissioner may—
  - (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal and draw any conclusions of fact from the transcript that the Commissioner considers proper;
  - (b) adopt any finding, decision or judgment of a court or tribunal that may be relevant to the investigation;
  - (c) adopt any findings or decisions of the Commissioner in any other investigation that are relevant to the first-mentioned investigation; or
  - (d) receive in evidence any report of the Commissioner that is relevant to the investigation if a copy of the report has been made available to every party to the investigation.

**Reliance on exceptions and exemptions**

**87. (1)** In considering whether an act is unlawful under Part III, V, VII or section 66, the Commissioner is not required to have regard to any exception provided for in Part IV or an exemption provided for in Part IX unless the Commissioner has information indicating that the exception or exemption is or may be applicable in relation to that act.

**(2)** Where, but for an exception, excuse, qualification or exemption under or by virtue of this Act, conduct would be unlawful under Part III, V, VII or section 66, the onus of establishing the exception, excuse, qualification or exemption lies on the person seeking to rely on it.

**Commissioner may prohibit publication of evidence etc.**

- 88. (1)** The Commissioner may direct that—
- (a) any evidence given before the Commissioner;
  - (b) the contents of any document produced to the Commissioner; or
  - (c) any information that might enable a person who has appeared before the Commissioner to be identified;

shall not be published, or shall not be published except in such manner, or to such persons, as the Commissioner specifies.

(2) A direction to a particular person shall be given to the person in writing.

(3) A direction to persons generally shall be given by notice published in the *Gazette*.

(4) A direction takes effect—

- (a) on the day on which it is given; or
- (b) if a later date of effect is specified in the direction—on that later date.

### ***Division 3—Decisions of the Commissioner***

#### **Interim decisions**

**89. (1)** The Commissioner may, at any time during an investigation, give such directions to a party as are necessary to preserve—

- (a) the status quo between the parties; or
- (b) the rights of the parties;

pending the completion of the investigation.

(2) A direction shall be—

- (a) in writing; and
- (b) accompanied by a written statement setting out the Commissioner's reasons for the direction.

(3) The validity of a direction shall not be taken to be affected by a failure to comply with paragraph (2) (b).

#### **Decisions following investigation**

**90. (1)** In this section—

“unlawful conduct” means conduct that is unlawful under Part III, V, VII or section 66.

(2) After completing an investigation, the Commissioner shall—

- (a) dismiss any complaint that the Commissioner is satisfied has not been substantiated; or
- (b) if satisfied that the respondent has engaged in unlawful conduct—

- (i) direct the respondent not to repeat or continue the unlawful conduct;
- (ii) direct the respondent to perform any reasonable act or acts to redress any loss or damage suffered by a person as a result of the unlawful conduct by the respondent;
- (iii) except where the complaint has been dealt with as a representative complaint—direct the respondent to pay to a person a specified amount by way of compensation for any loss or damage suffered by the person as a result of the unlawful conduct by the respondent; or
- (iv) decide not to take any further action in the matter.

**(3)** A direction under subparagraph (2) (b) (iii) may include a direction for payment of a specified amount—

- (a) authorised by the Commissioner in accordance with the prescribed scale; or
- (b) if there is no prescribed scale—determined by the Commissioner;

in respect of the expenses reasonably incurred by a person in connection with the investigation.

**(4)** A direction under subparagraph (2) (b) (i), (ii) or (iii) shall be—

- (a) in writing; and
- (b) accompanied by a written statement setting out the Commissioner's reasons for the direction.

**(5)** Where the Commissioner gives a direction under subparagraph (2) (b) (i), (ii) or (iii) in relation to an investigation initiated by a complaint, the Commissioner shall give the complainant a notice in writing setting out the terms of the direction and the Commissioner's reasons for the direction.

**(6)** The validity of a direction under subparagraph (2) (b) (i), (ii) or (iii) shall not be taken to be affected by a failure to comply with paragraph (4) (b) or subsection (5).

**(7)** Where the Commissioner dismisses a complaint or decides not to take any further action in a matter, the Commissioner shall give each party to the relevant investigation notice in writing of the decision setting out the Commissioner's reasons for the decision.

**Contravention of directions**

**91.** A person who, without reasonable excuse, contravenes a direction under section 89 or subparagraph 90 (2) (b) (i) or (ii) is, in respect of each day during which the contravention continues (including the day of a conviction under this section or any subsequent day), guilty of a separate offence punishable on conviction by a fine not exceeding \$500.

**Recovery of compensation**

**92.** Where, under subparagraph 90 (2) (b) (iii), the Commissioner directs a respondent to pay an amount to a person, the amount is a debt due by the respondent to the person.

**Vexatious complaints—expenses**

**93. (1)** Where the Commissioner dismisses a complaint which the Commissioner believes on reasonable grounds is vexatious or frivolous or was not made in good faith, the Commissioner may, by notice in writing given to the complainant, direct the complainant to pay to a respondent a specified amount—

- (a) authorised by the Commissioner in accordance with the prescribed scale; or
- (b) if there is no prescribed scale—determined by the Commissioner;

in respect of the expenses reasonably incurred by the respondent in relation to the investigation of the complaint.

**(2)** The amount specified in a direction is a debt due by the complainant to the respondent.

**Review of decisions**

**94.** Application may be made to the Administrative Appeals Tribunal for review of a direction or other decision of the Commissioner under section 71, 88, 89, 90 or 93.

**Notice of review rights**

**95. (1)** Where the Commissioner gives a direction under section 88, 89, 90 or 93, the notice conveying the direction shall be accompanied by a statement in writing to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Administrative Appeals Tribunal for a review of the direction.

(2) Where, under section 71 or 90, the Commissioner is required to give notice in writing to a person in respect of the making of a decision, the notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Administrative Appeals Tribunal for a review of the decision.

(3) The validity of a direction referred to in subsection (1), or a decision referred to in subsection (2), shall not be taken to be affected by a failure to comply with subsection (1) or (2).

#### ***Division 4—Miscellaneous***

##### **Self incrimination etc.**

**96.** (1) A person is not excused from providing information, producing a document or answering a question when required to do so under section 85 or 86 on the ground that the information, document or answer might tend to incriminate the person, but—

- (a) any information, document or answer so provided; and
- (b) any information or thing (including a document) obtained as a direct or indirect consequence of the provision of the information, document or answer;

is not admissible in evidence against the person in criminal proceedings, other than proceedings for—

- (c) an offence against section 104 or 108;
- (d) any other offence in respect of the falsity of the information, document or answer; or
- (e) an offence under or by virtue of Part VIII of the Crimes Act that relates to an alleged offence referred to in paragraph (c) or (d).

(2) In subsection (1)—

“Crimes Act” means the Crimes Act, 1900 of the State of New South Wales in its application in the Territory.

##### **Unlawful act not an offence**

**97.** An act that is unlawful under Part III, V, VII or section 66 does not constitute an offence.

**Unlawful act no basis for civil action**

**98.** Except as expressly provided by this Act, nothing in this Act confers on a person any right of action in respect of the doing of an act that is unlawful under Part III, V, VII or section 66.

**Aiding etc. unlawful acts**

**99.** A person who causes, instructs, induces, aids or permits another person to do an act that is unlawful under Part III, V, VII or section 66 shall, for the purposes of this Act, be taken also to have done the act.

**Conduct of directors, servants and agents**

**100. (1)** Where, for the purposes of this Act, it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show—

- (a) that a director, servant or agent of the body, or a servant or agent of the person, had that state of mind; and
- (b) that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

**(2)** A reference in subsection (1) to the state of mind of a body or person shall be read as including a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the body or person; and
- (b) the body's or person's reasons for the intention, opinion, belief or purpose.

**(3)** Any conduct engaged in on behalf of a body corporate or a natural person by a director, servant or agent of the body, or a servant or agent of the person, within the scope of his or her actual or apparent authority is to be taken, for the purposes of this Act, to have been engaged in also by the body or person unless the body or person establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

**(4)** Where—

- (a) a natural person is convicted of an offence against this Act; and
- (b) the person would not have been convicted of the offence if subsections (1) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to a director of a body corporate is to be read as including a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory, the Commonwealth, a State or another Territory.

(6) A reference in this section to engaging in conduct shall be read as including a reference to failing or refusing to engage in conduct.

### **Protection from civil proceedings**

**101.** Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person as a result of any of the following acts done in good faith:

- (a) the making of a complaint;
- (b) the making of a statement to, or the giving of a document or information to, the Commissioner or a member of the staff of the Commissioner, for the purposes of this Act, whether or not the statement was made, or the document or information was given, pursuant to a requirement under section 85 or 86.

### **Expenses of witnesses etc.**

**102.** A person attending before the Commissioner pursuant to a requirement under section 81 or 85 is entitled to be paid by the Territory in respect of the expenses reasonably incurred by the person in connection with the attendance—

- (a) an amount authorised by the Commissioner in accordance with the prescribed scale; or
- (b) if there is no prescribed scale—such amount as the Commissioner determines.

### **Failure to attend before Commissioner**

**103.** A person who is required under section 81 or 85 to attend before the Commissioner shall not, without reasonable excuse—

- (a) fail to attend as required; or
- (b) fail to attend and report from day-to-day unless excused, or released from further attendance, by the Commissioner.

Penalty: \$2,000.

**Failure to furnish information etc.**

**104.** A person shall not, without reasonable excuse, fail to—

- (a) furnish information;
- (b) produce a document; or
- (c) answer a question;

when required to do so under section 85 or 86.

Penalty: \$2,000.

**Refusing to take oath etc.**

**105.** A person shall not, without reasonable excuse, fail to take an oath or make an affirmation when required to do so under subsection 86 (1).

Penalty: \$2,000.

**Obstructing Commissioner etc.**

**106.** A person shall not, without reasonable excuse—

- (a) obstruct the Commissioner or a member of the staff of the Commissioner in the exercise of a power or the performance of a duty or function under or in relation to this Act; or
- (b) disrupt proceedings before the Commissioner.

Penalty: \$2,000.

**Prohibited publications**

**107.** A person shall not, without reasonable excuse, publish matter in contravention of a direction under section 88.

Penalty: \$5,000.

**False information**

**108.** A person shall not, in purported compliance with a requirement under section 85 or 86—

- (a) give the Commissioner, or a member of the staff of the Commissioner, information that the person knows to be false or misleading in a material particular; or

- (b) give the Commissioner, or a member of the staff of the Commissioner, a document containing information that the person knows to be false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 6 months, or both.

## **PART IX—EXEMPTIONS**

### **Grant of exemptions**

**109. (1)** The Commissioner may, on application in writing, grant the applicant an exemption from the operation of a specified provision of Part III, V or VII.

**(2)** The Commissioner may, on an application made in writing—

- (a) by a person to whom an exemption has been granted; and
- (b) before the expiration of that exemption;

grant the applicant a further exemption from the operation of the provision concerned.

**(3)** In the exercise of a power under subsection (1) or (2), the matters to which the Commissioner shall have regard include the following matters:

- (a) the need to promote an acceptance of, and compliance with, this Act;
- (b) the desirability, where relevant, of certain discriminatory actions being permitted for the purpose of redressing the effects of past discrimination.

**(4)** An exemption or further exemption—

- (a) shall be granted by notice published in the *Gazette*;
- (b) is subject to such conditions, if any, as are specified in the notice; and
- (c) has effect according to its terms for such period not exceeding 3 years as is specified in the notice.

**(5)** Where the Commissioner refuses to grant an exemption or a further exemption, the Commissioner shall give the applicant or each applicant notice in writing of the refusal setting out the Commissioner's reasons for the refusal.

(6) A notice referred to in subsection (4) or (5) shall contain a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, application may be made to the Administrative Appeals Tribunal for a review of the decision by or on behalf of any person or persons whose interests are affected by the decision.

(7) The validity of a decision under subsection (1) or (2) shall not be taken to have been affected by a failure to comply with subsection (5) or (6).

### **Review of decisions**

110. Application may be made to the Administrative Appeals Tribunal for review of a decision of the Commissioner under section 109.

## **PART X—DISCRIMINATION COMMISSIONER**

### **Functions**

111. (1) In addition to the other functions conferred on the Commissioner by or under this Act, the Commissioner has the following functions:

- (a) to promote an understanding and acceptance of, and compliance with, this Act;
- (b) to undertake research, and develop educational and other programs, for the purpose of promoting the objects of this Act;
- (c) to review the laws of the Territory for the purpose of ascertaining whether any of those laws is inconsistent with this Act, and to report to the Minister on the results of the review;
- (d) when requested to do so by the Minister—to examine any proposed law for the purpose of ascertaining whether the proposed law, if enacted, would be inconsistent with this Act, and to report to the Minister on the results of the examination;
- (e) to advise the Minister on any matter relevant to the operation of this Act;
- (f) such functions, if any, as are conferred on the Commissioner by or under any other law of the Territory;
- (g) such functions, if any, of the Commonwealth Commission as are conferred on the Commissioner by virtue of an arrangement made

under the *Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth;

- (h) to do anything incidental or conducive to any of the Commissioner's functions.

(2) The Commissioner has power to do all things that are necessary or convenient to be done in relation to the performance of the Commissioner's functions.

### **Appointment**

**112. (1)** There shall be a Discrimination Commissioner, who shall be appointed by the Executive.

(2) The Commissioner holds office, subject to this Part, for the period (not exceeding 7 years) specified in the instrument of appointment, but is eligible for reappointment.

### **Remuneration and allowances**

**113. (1)** The Commissioner shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply—

- (a) in relation to remuneration—if there is a subsisting determination relating to the remuneration to be paid to the Commissioner; or
- (b) in relation to an allowance of a particular kind—if there is a subsisting determination relating to an allowance of that kind to be paid to the Commissioner.

(3) In subsection (2)—

“determination” means a determination of the Remuneration Tribunal of the Commonwealth.

### **Resignation**

**114.** The Commissioner may resign by writing given to the Minister.

### **Termination of appointment**

**115.** The Executive may terminate the appointment of the Commissioner for misbehaviour or physical or mental incapacity.

**Terms and conditions generally**

**116.** The Commissioner holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined by the Minister in writing.

**Acting Commissioner**

**117. (1)** The Minister may appoint a person to act as Commissioner—

- (a) during a vacancy in the office of Commissioner (whether or not an appointment has previously been made to that office); or
- (b) during any period, or during all periods, when the Commissioner is or is expected to be absent from duty or from the Territory or is, for any reason, unable to perform the duties of office;

but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

**(2)** Anything done by or in relation to a person purporting to act in the office of Commissioner is not in doubt merely because—

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

**Staff**

**118.** The staff required to assist the Commissioner shall be public servants made available by the Head of Administration.

**Annual report**

**119. (1)** The Commissioner shall furnish to the Minister for presentation to the Legislative Assembly a report relating to the activities of the Commissioner during each financial year.

**(2)** A report under this section is a periodic report for the purposes of section 30A of the *Interpretation Act 1967*.

### **Delegation**

**120.** The Commissioner may, in writing, delegate to a member of the staff of the Commissioner any of the Commissioner's powers or functions under section 72, 73, 81 or 82.

## **PART XI—MISCELLANEOUS**

### **Immunity from suit**

**121.** No action, suit or proceeding lies against a person who is or has been—

- (a) the Commissioner;
- (b) a member of the staff of the Commissioner; or
- (c) a person acting under the direction or authority of the Commissioner or a member of the staff of the Commissioner;

in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance of a duty or function, under or in relation to this Act.

### **Secrecy**

**122. (1)** In this section—

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

“person to whom this section applies” means a person who is, or has been—

- (a) the Commissioner;
- (b) a member of the staff of the Commissioner; or
- (c) a person authorised to exercise a power or perform a duty or function under or in relation to this Act;

“produce” includes permit access to;

“protected information” means information that—

- (a) concerns a person; and

(b) is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a power or the performance of a duty or function by the person under or in relation to this Act.

(2) Subject to subsection (3), a person to whom this section applies shall not—

- (a) make a record of protected information; or
- (b) directly or indirectly, divulge or communicate to a person protected information concerning another person;

unless the record is made or the information divulged or communicated in relation to the exercise of a power, or the performance of a duty or function, as a person to whom this section applies, under or in relation to this Act or another Act.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(3) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information to a person about another person with the consent of that other person.

(4) A person to whom this section applies is not required—

- (a) to divulge or communicate protected information to a court; or
- (b) to produce a document containing protected information to a court;

except where it is necessary to do so for the purposes of this Act or another Act.

### **Corporations—penalties**

**123.** Where a body corporate is convicted of an offence against this Act, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

### **Inter-governmental arrangements**

**124.** (1) The Minister may make an arrangement with a Commonwealth Minister in relation to—

- (a) the performance on a joint basis of any of the functions of the Commonwealth Commission;

- (b) the performance by the Commissioner of any of the functions of the Commonwealth Commission; or
- (c) the performance by the Commonwealth Commission, on behalf of the Territory, of any of the Commissioner's functions.

(2) An arrangement may contain such incidental or supplementary provisions as the Minister and the Commonwealth Minister think necessary.

(3) The Minister may arrange with the Commonwealth Minister for the variation or revocation of an arrangement.

(4) An arrangement, and any variation or revocation of an arrangement, shall be in writing.

(5) The Minister shall publish a copy of an arrangement, and of any variation or revocation of an arrangement, in the *Gazette*.

#### **Performance of functions under inter-governmental arrangement**

**125.** An act done by or in relation to the Commonwealth Commission under an arrangement made under section 124 in relation to the performance by the Commonwealth Commission of any of the Commissioner's functions shall be deemed, for the purposes of this Act, to have been done by or in relation to the Commissioner.

#### **Relationship to other laws**

**126.** This Act is in addition to, and not in derogation of, any other law in force in the Territory that provides for the protection of a person from conduct that is or would be unlawful under this Act.

#### **Regulations**

**127. (1)** The Executive 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 excepting persons, activities or other things from the operation of specified provisions of Part III, V or VII of this Act.

*[Presentation speech made in Assembly on 17 October 1991]*

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