



Australian Capital Territory

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The republished law

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Australian Capital Territory

DISCRIMINATION ACT 1991

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 31 January 1997

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Objects
4. Interpretation
5. Complainants and respondents
6. MLAs as employers

PART II—DISCRIMINATION TO WHICH ACT APPLIES

7. Grounds
8. What constitutes discrimination
9. Impairment—guide dogs etc.

PART III—UNLAWFUL DISCRIMINATION

Division 1—Discrimination in work

10. Applicants and employees
11. Employees—religious practice
12. Commission agents
13. Contract workers
14. Partnerships
15. Professional or trade organisations
16. Qualifying bodies
17. Employment agencies

Discrimination Act 1991

TABLE OF PROVISIONS—continued

Section

Division 2—Discrimination in other areas

- 18. Education
- 19. Access to premises
- 20. Goods, services and facilities
- 21. Accommodation
- 22. Clubs
- 23. Requests etc. for information

**PART IV—EXCEPTIONS TO UNLAWFUL
DISCRIMINATION**

Division 1—General exceptions

- 24. Domestic duties
 - 25. Residential care of children
 - 25A. Adoption
 - 26. Domestic accommodation etc.
 - 26A. Preselection by employment agencies
 - 27. Measures intended to achieve equality
 - 28. Insurance
 - 29. Superannuation
 - 30. Acts done under statutory authority etc.
 - 31. Voluntary bodies
 - 32. Religious bodies
 - 33. Educational institutions conducted for religious purposes
- Division 2—Exceptions relating to sex, marital status
or pregnancy*
- 34. Genuine occupational qualifications
 - 35. Employment of couple
 - 36. Educational institutions for members of one sex
 - 37. Pregnancy or childbirth
 - 38. Services for members of one sex
 - 39. Accommodation provided for employees, contract workers or students
 - 40. Clubs for members of one sex etc.
 - 41. Sport

Division 3—Exceptions relating to race

- 42. Genuine occupational qualifications
- 43. Clubs for members of one race etc.

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

- 44. Religious workers

Discrimination Act 1991

TABLE OF PROVISIONS—continued

Section	
45.	Political workers etc.
46.	Religious educational institutions
	<i>Division 5—Exceptions relating to impairment</i>
47.	Unjustifiable hardship
48.	Genuine occupational qualifications
49.	Work related discrimination
50.	Discrimination by qualifying bodies etc.
51.	Discrimination by educational institutions
52.	Discrimination concerning access to premises
53.	Discrimination in the provision of goods and services
54.	Discrimination concerning accommodation
55.	Discrimination by clubs
56.	Public health
57.	Sport
	<i>Division 6—Exceptions relating to age</i>
57A.	Genuine occupational qualifications
57B.	Youth wages
57C.	Employment and work—health and safety
57D.	Compulsory retirement—2-year exemption
57E.	Education—minimum-age admissions
57F.	Education—senior secondary colleges (until 1 January 1996)
57G.	Legal capacity
57H.	Benefits and concessions
57J.	Goods, services and facilities—health and safety
57K.	Recreational tours and accommodation
57L.	Clubs
57M.	Sport
	<i>Division 7—Exceptions relating to profession, trade, occupation or calling</i>
57N.	Discrimination in profession, trade, occupation or calling
	PART V—SEXUAL HARASSMENT
58.	Meaning of sexual harassment
59.	Employment etc.
60.	Educational institutions
61.	Access to premises
62.	Provision of goods, services and facilities
63.	Accommodation
64.	Clubs

Discrimination Act 1991

TABLE OF PROVISIONS—continued

Section	
	PART VI—RACIAL VILIFICATION
65.	Interpretation
66.	Racial vilification—unlawful
67.	Serious racial vilification—offence
	PART VII—OTHER UNLAWFUL ACTS
68.	Victimisation
69.	Unlawful advertising
	PART VIII—COMPLAINTS
	<i>Division 1—Preliminary</i>
70.	Interpretation
71.	Reliance on exceptions and exemptions
	<i>Division 2—Making, investigation, conciliation and referral of complaints</i>
72.	Complaints about unlawful acts
73.	Investigation
74.	Notice of investigation
75.	Conduct of investigations
76.	Stale complaints
77.	Single investigation of several complaints
78.	Representative complaints
79.	Ordinary complaints not precluded by representative complaints
80.	Investigation without complaint
81.	Declining complaints
82.	Compulsory conferences
83.	Conciliation
84.	Conduct of conciliation
85.	Conciliated agreements
86.	Conciliation unlikely
87.	Referral of complaint
88.	Dismissal of complaint
89.	Application to strike out complaint
90.	Withdrawal of complaint
	<i>Division 3—Hearings before Discrimination Tribunal</i>
91.	Hearings
92.	Procedure
93.	Sittings
94.	Appearances
95.	Representation

Discrimination Act 1991

TABLE OF PROVISIONS—continued

Section	
96.	Witnesses
97.	Taking evidence
98.	Refusing to take oath or make affirmation
	<i>Division 4—Granting of relief by Discrimination Tribunal</i>
99.	Interim orders—complaint before Commissioner
100.	Interim orders—complaint before Tribunal
101.	Remittal of complaint
102.	Decisions following hearing
	<i>Division 5—Enforcement of orders and decisions of Discrimination Tribunal</i>
103.	Failure to comply
104.	Powers of enforcement
	<i>Division 6—Other powers of Commissioner and Tribunal</i>
105.	Effect of Division
106.	Joining parties
107.	Requiring answer or document
108.	Prohibiting or controlling publication
108A.	Review of directions by Commissioner
108B.	Prohibited publications
108C.	Obtaining information and documents
	<i>Division 7—Miscellaneous</i>
108D.	Appeal from decisions of Tribunal
108E.	Self incrimination etc.
108F.	Unlawful act not an offence
108G.	Unlawful act no basis for civil action
108H.	Aiding etc. unlawful acts
108I.	Conduct of directors servants and agents
108J.	Protection from civil proceedings
108K.	Expenses of witnesses etc.
108L.	Failure to attend before Commissioner or Tribunal
108M.	Failure to furnish information etc.
108N.	Obstructing Commissioner, Tribunal etc.
108O.	False information

PART IX—EXEMPTIONS

109.	Grant of exemptions
110.	Review of decisions

PART A IXA—DISCRIMINATION TRIBUNAL

Discrimination Act 1991

TABLE OF PROVISIONS—continued

Section

- 110A. Establishment
- 110B. Constitution
- 110C. President of Tribunal
- 110D. Acting President of Tribunal
- 110E. Powers of Tribunal
- 110F. Registrar

PART X— DISCRIMINATION COMMISSIONER

- 111. Functions
- 112. Appointment
- 113. Remuneration and allowances
- 114. Resignation
- 115. Termination of appointment
- 116. Terms and conditions generally
- 117. Acting Commissioner
- 118. Staff
- 119. Authorisation by Commissioner
- 120. Delegation by Commissioner

PART XI—MISCELLANEOUS

- 121. Immunity from suit
- 122. Secrecy
- 123. Corporations—penalties
- 124. Inter-governmental arrangements
- 125. Performance of functions under inter-governmental arrangement
- 126. Relationship to other laws
- 127. Regulations



Australian Capital Territory

DISCRIMINATION ACT 1991

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

PART I—PRELIMINARY

Short title

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

Commencement

2.¹ (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;

Discrimination Act 1991

- (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;

Discrimination Act 1991

“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—

Discrimination Act 1991

- (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;

“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—

Discrimination Act 1991

- (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 78, 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 public servant; or
- (b) 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

Discrimination Act 1991

- (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;

“Tribunal” means the Discrimination Tribunal established by section 110A;

“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—

Discrimination Act 1991

- (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.

MLAs as employers

6. For the purposes of this Act, a member of the Legislative Assembly (whether in his or her capacity as an office-holder within the meaning of the *Legislative Assembly (Members' Staff) Act 1989* or otherwise) shall be taken to be an employer in relation to a person who is, or who is seeking to be, employed, under section 5 or 10 of that Act, as a member of the staff of the member.

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;
- (ia) membership or non-membership of an association or organisation of employers or employees;
- (ib) age;
- (ic) profession, trade, occupation or calling;

Discrimination Act 1991

(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,

Discrimination Act 1991

a hearing dog, assistance animal 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, assistance animals 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, assistance animal or other aid.

(4) In this section—

“assistance animal” means an animal trained to assist a person to alleviate the effect of a disability;

“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 association or 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.

Adoption

25A. Nothing in this Act prevents the Director of Family Services from discriminating against a person in making a decision—

- (a) under paragraph 16 (1) (a) of the *Adoption Act 1993* in relation to the inclusion of the person's name in the register of persons seeking the placement of a child for the purposes of adoption;
- (b) under paragraph 16 (1) (b) of the *Adoption Act 1993* in relation to the placement of a child in the custody of that person; or
- (c) under subsection 17 (4) of the *Adoption Act 1993* confirming or varying a decision under paragraph 16 (1) (a) of that Act.

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.

Preselection by employment agencies

26A. Nothing in Part III or IV renders unlawful discrimination by an employment agency in the selection of persons as suitable for a job vacancy if, had the proposed employer so discriminated against the person, that discrimination would not have been unlawful.

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. (1) 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.

(2) In the case of discrimination on the ground of age, subsection (1) only applies where—

- (a) the discrimination is due to the application of a standard in force under the *Occupational Superannuation Standards Act 1987* of the Commonwealth;
- (b) the discrimination is for the purpose of—
 - (i) complying with;
 - (ii) avoiding a penalty under; or
 - (iii) obtaining a benefit under;

Discrimination Act 1991

any other Act of the Commonwealth;

- (c) the discrimination is—
 - (i) based on actuarial or statistical data on which it is reasonable to rely; and
 - (ii) reasonable having regard to the data and any other relevant factors;
- (d) if there are no actuarial or statistical data on which it is reasonable to rely—the discrimination is—
 - (i) based on other data on which it is reasonable to rely; and
 - (ii) reasonable having regard to that data and any other relevant factors; or
- (e) if there are no data at all on which it is reasonable to rely—the discrimination is reasonable having regard to any other relevant factors.

(3) Subsection (2) applies in relation to a new superannuation fund condition irrespective of—

- (a) whether the fund was in existence immediately before the commencement date; and
- (b) when the person to whom the discrimination relates became a member of the fund.

(4) Subsection (2) does not apply in relation to an existing superannuation fund condition where the person to whom the discrimination relates became a member of the fund before, or not later than 12 months after, the commencement date.

(5) In this section—

“commencement date” means the date of commencement of the *Discrimination (Amendment) Act 1994*;

“existing superannuation fund condition” means a superannuation fund condition in existence immediately before the commencement date;

“new superannuation fund condition” means—

- (a) a superannuation fund condition that came into existence on or after the commencement date; or
- (b) an alteration made on or after the commencement date to an existing superannuation fund condition.

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) an order made by the Tribunal under Division 4 of Part VIII.

(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 persons, whether those persons are members of the body or otherwise.

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;

Discrimination Act 1991

- (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 and services

53. (1) 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.

(2) In subsection (1), a reference to services shall be taken to include a reference to services provided by an employment agency.

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.

Division 6—Exceptions relating to age

Genuine occupational qualifications

57A. 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 age 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 belonging to a particular age group 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 belonging to a particular age group is required for reasons of authenticity;
- (c) providing persons belonging to a particular age group with services for the purpose of promoting their welfare, where those services can most effectively be provided by a person belonging to a particular age group.

Youth wages

57B. (1) This section applies where an award provides for the payment of reduced wages to employees under the age of 21 years.

(2) Where this section applies, nothing in subsection 10 (1) or paragraph 10 (2) (a) or (b) renders it unlawful for an employer to discriminate on the ground of age against a person—

- (a) where the person is 21 years of age or older—in relation to the offer of employment to a person under the age of 21 years; or
- (b) where the person is under the age of 21 years—in relation to the payment of reduced wages to the person in accordance with the award.

(3) In this section—

“award” means an award in force under the *Industrial Relations Act 1988* of the Commonwealth.

Employment and work—health and safety

57C. (1) 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 to discriminate against a person on the ground of age in relation to employment or work, or qualifications for employment or work, where that discrimination is practised in order to comply with reasonable health and safety requirements relevant to such employment or work.

(2) In determining for the purposes of subsection (1) what health and safety requirements are reasonable, regard shall be had to all the relevant circumstances of the particular case, including the effects of the discrimination on the person discriminated against.

Compulsory retirement—2-year exemption

57D. (1) Nothing in Division 1 of Part III renders it unlawful to discriminate against an employee, commission agent, contract worker or partner on the ground of age by—

- (a) setting an age for the compulsory retirement of that person; or
- (b) requiring that person to retire.

(2) Subsection (1) ceases to have effect 2 years after the date of commencement of the *Discrimination (Amendment) Act 1994*.

Education—minimum-age admissions

57E. (1) Nothing in section 18 renders it unlawful to discriminate against a person on the ground of age in respect of the admission of the person to an educational institution where the level of education or training sought is provided only for students older than a particular age.

(2) Nothing in section 18 renders it unlawful to refuse or fail to accept an application for admission as a student at an educational institution under a mature age admission scheme, where the application is made by a person whose age is below the minimum age fixed under that scheme for admission.

Education—senior secondary colleges (until 1 January 1996)

57F. (1) Nothing in section 18 renders it unlawful to discriminate against a person on the ground of age in respect of the refusal to admit, or to re-admit, the person to a senior secondary college where there is a maximum age fixed for completion of studies at the college.

(2) Subsection (1) ceases to have effect on 1 January 1996.

Legal capacity

57G. Nothing in Part III renders it unlawful to discriminate against a person on the ground of age in relation to any transaction where the person is subject to a legal incapacity due to his or her age which is relevant to that transaction.

Benefits and concessions

57H. Nothing in Division 2 of Part III renders it unlawful to discriminate against a person in relation to the provision of *bona fide* benefits, including concessions, to another person by reason of his or her age.

Goods, services and facilities—health and safety

57J. (1) Nothing in section 19 or 20 renders it unlawful to discriminate against a person on the ground of age in relation to the provision of goods, services or facilities where that discrimination is practised in order to comply with reasonable health and safety requirements relevant to such provision.

(2) In determining for the purposes of subsection (1) what health and safety requirements are reasonable, regard shall be had to all the relevant circumstances of the particular case, including the effects of the discrimination on the person discriminated against.

Recreational tours and accommodation

57K. Nothing in section 20 or 21 renders it unlawful to discriminate against a person on the ground of age in relation to the provision of a recreational tour or recreational accommodation.

Clubs

57L. (1) Nothing in section 20 or 22 renders it unlawful for a club to discriminate against a person on the ground of age where the club's principal object is the provision of benefits for persons belonging to a particular age group.

(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 belong to the particular age group specified in the club's objects; and
- (c) any other relevant circumstance.

Sport

57M. (1) Nothing in Part III renders it unlawful to discriminate against a person on the ground of age by his or her exclusion from participation in any competitive sporting activity where competition is only permitted between persons belonging to a particular age group.

(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 sporting activity prescribed by the regulations.

Division 7—Exceptions relating to profession, trade, occupation or calling

Discrimination in profession, trade, occupation or calling

57N. Nothing in Part III renders it unlawful to discriminate against a person on the ground of the profession, trade, occupation or calling of the person in relation to any transaction where profession, trade, occupation or calling is relevant to that transaction and the discrimination is reasonable in those circumstances.

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.

(6) It is unlawful for a workplace participant to subject another workplace participant, or a person seeking to become a workplace participant at that workplace, to sexual harassment at a place that is a workplace, or potential workplace, as the case requires, of both of those persons.

(7) In this section—

“place” includes a ship, aircraft or vehicle;

“workplace” means a place at which a workplace participant works or otherwise carries out functions in connection with being a workplace participant;

“workplace participant” means any of the following:

- (a) an employer or employee;
- (b) a commission agent or contract worker;
- (c) a partner in a partnership.

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—COMPLAINTS

Division 1—Preliminary

Interpretation

- 70.** In this Part, unless the contrary intention applies—
- “party”, in relation to a complaint, an investigation under subsection 80 (1) or the hearing of a complaint, means—
- (a) the complainant (if any);
 - (b) the respondent;
 - (c) in relation to a complaint before the Commissioner—any person joined by the Commissioner under section 106; and
 - (d) in relation to a hearing before the Tribunal—any person joined by the Tribunal under section 106.

Reliance on exceptions and exemptions

71. (1) In considering whether an act is unlawful under Part III, V or VII or section 66, the Commissioner and Tribunal are not required to have regard to any exception provided for in Part IV or an exemption provided for in Part IX unless the Commissioner or Tribunal 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 or VII or section 66, the onus of establishing the exception, excuse, qualification or exemption lies on the person seeking to rely on it.

Division 2—Making, investigation, conciliation and referral of complaints

Complaints about unlawful acts

72. (1) A complaint alleging that a person has done an act that is unlawful under Part III, V or 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 1 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, in the opinion of the Commissioner based on reasonable grounds, is unable to make a complaint or authorise an agent to act.

(3) A complaint may be made jointly by 2 or more persons.

(4) A complaint shall be in writing in accordance with a form approved by the Commissioner.

Investigation

73. The Commissioner shall investigate a complaint made in accordance with section 72 for the purpose of determining—

- (a) whether the complaint can be dealt with under this Act;
- (b) whether the Commissioner may decline the complaint; and
- (c) if the complaint can be dealt with and the Commissioner does not decline it—whether resolution of the complaint by conciliation between the parties is reasonably likely.

Notice of investigation

74. Before commencing an investigation in relation to a complaint the Commissioner shall give each party written notice that the complaint is to be investigated.

Conduct of investigations

75. (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 into a complaint, 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 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).

Stale complaints

76. (1) Where the Commissioner makes a request of a complainant and the complainant does not, within a period of 3 months after the date on which the request is made, adequately respond to the request, the Commissioner shall, by notice in writing to the parties, dismiss the complaint.

(2) A notice to a complainant under subsection (1) shall include a statement to the effect that the complainant may, within 14 days after the date of the notice, apply to the Tribunal for a review of the decision of the Commissioner to dismiss the complaint if the complainant believes—

- (a) that he or she has adequately responded to the Commissioner's request; or
- (b) that exceptional circumstances have prevented him or her from adequately responding to the Commissioner's request.

(3) Application may be made to the Tribunal for review of the dismissal of a complaint by the Commissioner under subsection (1).

Single investigation of several complaints

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

Representative complaints

78. 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 do so.

Ordinary complaints not precluded by representative complaints

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

Investigation without complaint

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

(2) An investigation under subsection (1) shall, as far as practicable, be conducted as though it were an investigation in relation to a complaint.

(3) Where—

- (a) an investigation by the Commissioner under subsection (1) discloses unlawful conduct; and
- (b) the Commissioner notifies the parties under section 86 that resolution of the conduct by conciliation is not reasonably likely;

the person who was the object of the unlawful conduct may require the Commissioner to refer the conduct to the Tribunal under section 87 as if the person were the complainant and had complained of the conduct.

Declining complaints

81. (1) Where, as a result of the investigation of a complaint lodged in accordance with section 72, the Commissioner determines that a relevant ground exists in relation to the complaint the Commissioner shall decline the complaint.

(2) For the purposes of subsection (1), the following are relevant grounds:

- (a) the complaint is frivolous, vexatious, misconceived or lacking in substance or was not made in good faith;
- (b) a more appropriate remedy in relation to the matter complained of is reasonably available to the complainant;
- (c) the complaint relates to an act, or the last in a series of acts, that took place more than 12 months before the lodgment of the complaint;
- (d) the matter complained of is not unlawful under Part III, V or VII or section 66;
- (e) the matter complained of has already been adequately dealt with by the Commissioner or Tribunal;
- (f) the matter complained of has already been adequately dealt with otherwise than by the Commissioner or Tribunal;
- (g) the complainant does not want the complaint investigated;
- (h) having regard to the complaint and any other relevant matter before the Commissioner, in the opinion of the Commissioner it is not necessary to pursue the complaint.

(3) Where the Commissioner declines a complaint under subsection (1), the Commissioner shall give written notice of the decision to the parties no later than 60 days after the lodgment of the complaint.

(4) A notice to a complainant under subsection (3) shall include a statement to the effect that—

- (a) if, within 60 days after the date of the notice, the complainant does not require the Commissioner to refer the complaint to the Tribunal, the

Commissioner will dismiss the complaint and take no further action in relation to it; and

- (b) should the complaint be so dismissed, the complainant may apply to the Tribunal for the complaint to be heard if exceptional circumstances prevented him or her from requiring the referral.

Compulsory conferences

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

- (a) a party to the investigation of a complaint; 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 in writing and shall be given 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.

Conciliation

83. (1) Where, during or after investigation, the Commissioner decides it is reasonably likely that a complaint may be resolved by conciliation, the Commissioner shall—

- (a) notify the parties accordingly; and
- (b) endeavour to resolve the complaint by conciliation.

(2) Subsection (1) does not apply to a complaint if an application under section 89 in relation to the complaint has been made but not determined.

(3) Evidence of anything said or done during conciliation in relation to a complaint is not admissible in any proceedings.

Conduct of conciliation

84. Conciliation shall be conducted in such manner as the Commissioner thinks fit.

Conciliated agreements

85. (1) Where a complaint has been resolved by conciliation, the Commissioner shall assist the parties to record in writing the agreement they have reached.

(2) Where a record prepared in accordance with subsection (1) has been signed by the parties to the relevant complaint, the Commissioner shall ensure that each party has a copy of the record and shall notify them that, subject to a request under subsection (3), he or she will be taking no further action in relation to the complaint to which the agreement relates.

(3) Where a party to an agreement breaches the agreement, any other party to the agreement may request the Commissioner to refer the complaint to which the agreement relates to the Tribunal.

(4) On receiving a request under subsection (3), the Commissioner shall refer the relevant complaint to the Tribunal.

Conciliation unlikely

86. (1) Where, after investigation of a complaint, the Commissioner is of the opinion that resolution of the complaint by conciliation between the parties is not reasonably likely, the Commissioner shall notify the parties accordingly.

(2) Where—

- (a) the Commissioner endeavours to resolve a complaint by conciliation; and
- (b) the Commissioner decides that such a resolution is not reasonably likely;

the Commissioner shall notify the parties of his or her decision.

(3) A notice to a complainant under subsection (1) or (2) shall include a statement to the effect that—

- (a) if, within 60 days after the date of the notice, the complainant does not require the Commissioner to refer the complaint to the Tribunal, the Commissioner will dismiss the complaint and take no further action in relation to it; and
- (b) should the complaint be so dismissed, the complainant may apply to the Tribunal for the complaint to be heard if exceptional circumstances prevented him or her from requiring the referral.

Referral of complaint

87. Where a complainant notified in accordance with subsection 81 (3) or 86 (1) or (2) requires the Commissioner to refer a complaint to the Tribunal, the Commissioner shall refer the complaint and shall notify the other parties of the referral.

Dismissal of complaint

88. Where a complainant who has been notified in accordance with subsection 81 (3) or 86 (1) or (2) fails, within the period of 60 days after the date of the notice, to require the Commissioner to refer the complaint to the Tribunal, the Commissioner shall dismiss the complaint, notify the parties to the investigation accordingly and take no further action in relation to the complaint.

Application to strike out complaint

89. A respondent may, at any time before the Tribunal commences hearing the complaint (other than a time when the complaint is being conciliated), apply to the Tribunal to strike out the complaint on the ground that the complaint is frivolous, vexatious, misconceived or lacking in substance or was not made in good faith.

Withdrawal of complaint

90. A complainant may, at any time before the complaint is referred to the Tribunal, by notice to the Commissioner, withdraw his or her complaint and the Commissioner shall take no further action in relation to the complaint.

Division 3—Hearings before Discrimination Tribunal

Hearings

91. (1) The Tribunal shall hear the following matters:

- (a) an application to strike out a complaint under section 89;
- (b) a complaint referred to it by the Commissioner;
- (c) an application to determine whether a complainant failed to adequately respond to a request by the Commissioner or was, due to exceptional circumstances, unable to adequately respond to a request before dismissal under section 76;
- (d) an application to determine whether a complainant was unable to require the referral of the complaint within the time specified under section 81 or 86 due to exceptional circumstances;
- (e) a complaint where the applicant referred to in paragraph (d) is successful;
- (f) an application for an interim order under section 99 or 100;
- (g) an application for review of a direction given by the Commissioner under section 108.

(2) The Registrar shall, at least 7 days before a hearing referred to in paragraph (1) (a) and 14 days before any other hearing referred to in subsection (1), give written notice to the parties of the time, date and place of the hearing.

(3) The Tribunal shall commence hearing a matter referred to in paragraph (1) (a) within 14 days after the date on which application is made.

Procedure

92. (1) The procedure of the Tribunal is, subject to this Act and the regulations and to any other enactment, within the discretion of the Tribunal.

(2) The Tribunal may, on application or of its own motion, direct that a hearing or part of a hearing take place in private and give directions as to the persons who may be present.

Sittings

93. (1) Subject to subsection (2), the Tribunal shall sit at such times and in such places in the Territory as the President determines.

(2) The Tribunal shall not sit in a place customarily used by a court for hearings unless the President is satisfied that no other suitable place is available or appropriate in the circumstances.

Appearances

94. A party to a Tribunal hearing may appear at the hearing.

Representation

95. (1) A party is not entitled to be represented at a hearing unless the Tribunal consents to such representation.

(2) Nothing in subsection (1) prevents the representation of a party that is a body of persons by a member, officer or employee of the party.

(3) In this section—

“party” includes an unincorporated association.

Witnesses

96. (1) For the purposes of a Tribunal hearing, the Tribunal may summon a person to appear as a witness before it—

- (a) to give evidence;
- (b) to produce any document or thing, specified in the summons, in the possession, custody or control of the person; or
- (c) to give evidence and produce any document or thing, specified in the summons, in the possession, custody or control of the person.

(2) The Tribunal may give a party leave to inspect a document or thing produced under a summons.

(3) A person shall be taken to have complied with a summons under paragraph (1) (b) if the person delivers the document or thing to the Registrar before the date specified in the summons.

(4) A summons shall be—

- (a) in writing; and
- (b) served on the person named in the summons.

Taking evidence

97. The Tribunal may take evidence on oath or affirmation and, for that purpose—

- (a) may require a person attending before the Tribunal to take an oath or make an affirmation; and
- (b) may administer an oath or affirmation to such a person.

Refusing to take oath or make affirmation

98. A person shall not, without reasonable excuse, fail to take an oath or make an affirmation when required to do so under paragraph 97 (a).

Penalty: 20 penalty units.

Division 4—Granting of relief by Discrimination Tribunal

Interim orders—complaint before Commissioner

99. (1) Where—

- (a) a complaint has been lodged with the Commissioner;
- (b) the applicant or respondent in relation to the complaint applies to the Tribunal for an interim order under this section; and
- (c) the Tribunal is satisfied that an order under this section is necessary to preserve—
 - (i) the status quo between the parties; or
 - (ii) the rights of the parties;

the Tribunal may make such interim order as it considers appropriate.

(2) An interim order remains in force until the making of a prescribed decision.

(3) An application under paragraph (1) (b) shall be in accordance with the form approved by the Registrar.

(4) Where a person against whom an interim order is made is not present at the making of the order, the Registrar shall cause a copy of the order to be served on the person as soon as practicable after the order is made.

(5) For the purpose of subsection (2), the following decisions of the Commissioner are prescribed in relation to a complaint:

- (a) a decision to decline the complaint;
- (b) a decision to endeavour to resolve the complaint by conciliation;
- (c) a decision that resolution of the complaint by conciliation is not reasonably likely.

Interim orders—complaint before Tribunal

100. (1) Where, before or during a hearing before the Tribunal—

- (a) a party to the hearing applies to the Tribunal for an interim order under this section; and
- (b) the Tribunal is satisfied that an order under this section is necessary to preserve—
 - (i) the status quo between the parties; or
 - (ii) the rights of the parties;

the Tribunal may make such interim order as it considers appropriate.

(2) An interim order remains in force until—

- (a) the Tribunal orders otherwise; or
- (b) the Tribunal dismisses the complaint or makes an order at the conclusion of the hearing of the complaint;

whichever is earlier.

(3) The Tribunal may, on application by a party, while an interim order is in force—

- (a) vary the order; or
- (b) rescind the order.

(4) An application under paragraph (1) (a) shall be in accordance with the form approved by the Registrar.

(5) Where a person against whom an interim order is made is not present at the making of the order, the Registrar shall cause a copy of the order to be served on the person as soon as practicable after the order is made.

Remittal of complaint

101. Where—

- (a) the Tribunal hears an application referred to in paragraph 91 (1) (c); and
- (b) the Tribunal is satisfied that the applicant did adequately respond or was unable to respond due to exceptional circumstances;

the Tribunal shall remit the relevant complaint to the Commissioner and the complaint shall be taken to have been lodged on the date of remittal.

Decisions following hearing

102. (1) In this section—

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

(2) After completing a hearing, the Tribunal shall—

- (a) dismiss any complaint that the Tribunal is satisfied—
 - (i) is frivolous, vexatious or not made in good faith; or
 - (ii) has not otherwise been substantiated; or
- (b) if satisfied that the respondent has engaged in unlawful conduct—
 - (i) order the respondent not to repeat or continue the unlawful conduct;
 - (ii) order 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; or
 - (iii) except where the complaint has been dealt with as a representative complaint—order 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.

(3) An order under subparagraph (2) (b) (iii) may include an order for payment of a specified amount—

- (a) authorised by the Tribunal in accordance with the prescribed scale; or

Discrimination Act 1991

- (b) if there is no prescribed scale—determined by the Tribunal;

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

(4) Where the Tribunal dismisses a complaint under subparagraph (2) (a) (i), the Tribunal may, by notice in writing given to the complainant, order the complainant to pay to the respondent a specified amount—

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

in respect of the expenses reasonably incurred by the respondent in connection with the hearing.

(5) Where the Tribunal dismisses a complaint or makes an order under paragraph (2) (b) in relation to a complaint, the Tribunal shall, within 28 days after making that decision, give the parties to the hearing notice in writing of the decision and, if an order under paragraph (2) (b) has been made, setting out the terms of the order.

Division 5—Enforcement of orders and decisions of Discrimination Tribunal

Failure to comply

103. A party to a hearing shall not, without reasonable excuse, fail to comply with an order of the Tribunal.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Powers of enforcement

104. The Tribunal has the same powers to enforce its decisions as the Magistrates Court has when exercising its jurisdiction under the *Magistrates Court (Civil Jurisdiction) Act 1982*.

Division 6—Other powers of Commissioner and Tribunal

Effect of Division

105. Nothing in this Division permits—

- (a) the Commissioner to join a party to a hearing before the Tribunal or to give a direction, make a requirement, authorise a payment or excuse or release a person from attendance in relation to such a hearing; or

- (b) the Tribunal to join a party to an investigation by the Commissioner or to give a direction, make a requirement, authorise a payment or excuse or release a person from attendance in relation to a complaint being so investigated.

Joining parties

106. Where—

- (a) 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; or
- (b) before the commencement of the hearing of a complaint by the Tribunal, or at any stage during the hearing, the Tribunal is of the opinion that a person ought to be joined as a party to the hearing;

the Commissioner or Tribunal may, by notice in writing given to the person, join that person as a party to the investigation or hearing.

Requiring answer or document

107. (1) The Commissioner or Tribunal may require a person appearing before the Commissioner or Tribunal—

- (a) to answer a question relevant to the investigation or hearing; or
- (b) to produce a document or other record relevant to the investigation or hearing.

(2) A person shall not, without reasonable excuse, fail to comply with subsection (1).

Penalty for contravention of subsection (2): 50 penalty units or imprisonment for 6 months, or both.

Prohibiting or controlling publication

108. (1) The Commissioner or Tribunal may direct that—

- (a) any evidence given before the Commissioner or Tribunal;
- (b) the contents of any document produced to the Commissioner or Tribunal; or
- (c) any information that might enable a person who has appeared before the Commissioner or Tribunal to be identified;

shall not be published, or shall not be published except in such manner, or to such persons, as the Commissioner or Tribunal 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 given by the Commissioner under this section shall include a statement to the effect that application may, within 28 days after the date of the direction, be made by an interested person to the Tribunal for review of the direction.

(5) 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.

Review of directions by Commissioner

108A. Application may be made to the Tribunal for review of a direction given by the Commissioner under section 108 within 28 days after the date of the direction.

Prohibited publications

108B. A person shall not, without reasonable excuse, publish matter in contravention of a direction under section 108.

Penalty: 50 penalty units.

Obtaining information and documents

108C. (1) Where the Commissioner or Tribunal believes on reasonable grounds that a person is capable of providing information or producing a document relevant to an investigation or a hearing, the Commissioner or Tribunal may, by written notice given to the person, require the person—

(a) to give the information to the Commissioner or Tribunal in writing signed by the person or, in the case of a body politic or corporate, by an officer of the body; or

(b) to produce the document to the Commissioner or Tribunal.

(2) The notice shall state—

Discrimination Act 1991

- (a) the place at which the information or document is to be given or produced to the Commissioner or Tribunal; 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 or Tribunal believes on reasonable grounds that a person has information relevant to an investigation, the Commissioner or Tribunal may, by written notice given to the person, require the person to attend before the Commissioner or Tribunal 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 or Tribunal in accordance with a requirement under subsection (1), the Commissioner or Tribunal—

- (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 or Tribunal, to inspect the document at any reasonable time.

Division 7—Miscellaneous

Appeal from decisions of Tribunal

108D. (1) A party to a Tribunal hearing may appeal to the Supreme Court on a question of law from a decision of the Tribunal in that hearing.

(2) An appeal by a person under subsection (1) shall be instituted no later than 28 days after the day on which a notice under subsection 102 (5) is given to the person or within such further time as the Supreme Court (whether on, before or after that day) allows.

(3) On hearing an appeal the Supreme Court may make any of the following orders:

- (a) an order affirming or setting aside the decision of the Tribunal;

- (b) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the Tribunal in accordance with the directions of the Court;
- (c) such other order as the Court considers appropriate.

Self incrimination etc.

108E. (1) A person is not excused from providing information, producing a document or answering a question when required to do so under section 107 or 108C 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 108M or 108O;
- (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*.

Unlawful act not an offence

108F. An act that is unlawful under Part III, V or VII or section 66 does not constitute an offence.

Unlawful act no basis for civil action

108G. 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 or VII or section 66.

Aiding etc. unlawful acts

108H. A person who causes, instructs, induces, aids or permits another person to do an act that is unlawful under Part III, V or 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

108I. (1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body politic or 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 politic or 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

108J. 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, the Tribunal or a member of the staff of the Commissioner or Tribunal, 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 107 or 108C.

Expenses of witnesses etc.

108K. A person attending before the Commissioner pursuant to a requirement under section 82 or before the Commissioner or Tribunal pursuant to a requirement under section 108C 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 or Tribunal in accordance with the prescribed scale; or
- (b) if there is no prescribed scale—such amount as the Commissioner or Tribunal determines.

Failure to attend before Commissioner or Tribunal

108L. A person who is required under section 82 to attend before the Commissioner or under section 108C to attend before the Commissioner or Tribunal 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 or Tribunal.

Penalty: 20 penalty units.

Failure to furnish information etc.

108M. 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 107 or 108C.

Penalty: 20 penalty units.

Obstructing Commissioner, Tribunal etc.

108N. A person shall not, without reasonable excuse—

- (a) obstruct the Commissioner, Tribunal or a member of the staff of the Commissioner or Tribunal 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 or Tribunal.

Penalty: 20 penalty units.

False information

108O. A person shall not, in purported compliance with a requirement under section 107 or 108C—

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

Penalty: 50 penalty units 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.

Discrimination Act 1991

- (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.

(6) A notice referred to in subsection (4) or (5) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

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 IXA—DISCRIMINATION TRIBUNAL

Establishment

110A. The Discrimination Tribunal is established by this section.

Constitution

110B. The Tribunal shall consist of the President or an Acting President.

President of Tribunal

110C. (1) The President of the Tribunal shall be a Magistrate appointed by the Executive by instrument.

(2) The President holds office for the period (not exceeding 5 years) specified in the instrument of appointment but is eligible for reappointment.

Acting President of Tribunal

110D. (1) The Executive may, by instrument, appoint a Magistrate to be the Acting President.

(2) The Acting President shall act as President—

- (a)** during a vacancy in the office of President, whether or not an appointment has previously been made to the office; or
- (b)** during any period or during all periods when the President is, for any reason, unable to perform the functions of the office.

(3) An Acting President shall not act continuously as President for more than 12 months.

(4) Anything done in good faith by or in relation to a person purporting to act under subsection (2) is not invalid on the ground that—

- (a)** the person's appointment was ineffective or had ceased to have effect; or
- (b)** the occasion for the person to act had not arisen or had ceased.

Powers of Tribunal

110E. Subject to this Act, the Tribunal has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Registrar

110F. (1) There shall be a Registrar of the Tribunal.

(2) The functions of the Registrar are those conferred on the Registrar by this Act and any other law of the Territory.

(3) The Chief Executive shall create and maintain an office in the Australian Capital Territory Public Service the duties of which include performing the functions of the Registrar.

(4) The Registrar shall be the public servant for the time being performing the duties of the Australian Capital Territory Public Service office referred to in subsection (3).

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. (1) The staff assisting the Commissioner shall be employed under the *Public Sector Management Act 1994*.

(2) The *Public Sector Management Act 1994* applies in relation to the management of the staff assisting the Commissioner.

Authorisation by Commissioner

119. (1) The Commissioner may, in writing, authorise a member of his or her staff to perform the functions of the Commissioner referred to in section 73.

(2) A person authorised under subsection (1) has all the powers and duties of the Commissioner in relation to the performance of the authorised functions.

(3) The performance of the Commissioner's functions pursuant to an authorisation under subsection (1) shall, for all purposes, be taken to be performance by the Commissioner of those functions.

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 80 or 82.

PART XI—MISCELLANEOUS

Immunity from suit

121. No civil proceeding lies against a person who is or has been—

- (a) the President of the Tribunal or an Acting President;
- (b) the Commissioner;
- (c) the Registrar;
- (d) a member of the staff of the President, Tribunal or Commissioner; or
- (e) a person acting under the direction or authority of the President, Tribunal or Commissioner or a member of the staff of the President, Tribunal or Commissioner;

in relation to—

- (f) an act done or omitted to be done in good faith in the exercise, or purported exercise, of a power or the performance, or purported performance, of a function or duty, under or in relation to this Act; or
- (g) the provision, in good faith, of information or advice in relation to this Act or any other Act, including an Act of the Commonwealth, a State or another Territory.

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 sections applies” means a person who is, or has been—

- (a) the President of the Tribunal or an Acting President;
- (b) the Commissioner;
- (c) the Registrar;
- (d) a member of the staff of the President, Tribunal or Commissioner; or
- (e) a person authorised to exercise a power or perform a duty or function under or in relation to this Act;

Discrimination Act 1991

“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

Discrimination Act 1991

(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.

NOTE

1. The *Discrimination Act 1991* as shown in this reprint comprises Act No. 81, 1991 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Discrimination Act 1991</i>	81, 1991	13 Dec 1991	Ss. 1 and 2: 13 Dec 1991 Remainder: 20 Jan 1992 (see <i>Gazette</i> 1992, No. S6)	
<i>Discrimination (Amendment) Act 1993</i>	25, 1993	21 May 1993	21 May 1993	—
<i>Acts Revision (Position of Crown) Act 1993</i>	44, 1993	27 Aug 1993	27 Aug 1993 (see s. 2)	—
<i>Discrimination (Amendment) Act 1994</i>	1, 1994	4 Mar 1994	4 Mar 1994	—
<i>Discrimination (Amendment) Act (No. 2) 1994</i>	11, 1994	14 Mar 1994	Ss. 1 and 2: 14 Mar 1994 Remainder: 14 May 1994	—
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
<i>Administrative Appeals (Consequential Amendments) Act 1994</i>	60, 1994	11 Oct 1994	Ss. 1 and 2: 11 Oct 1994 Remainder: 14 Nov 1994 (see s. 2 (2) and <i>Gazette</i> 1994, No. S250)	—
<i>Discrimination (Amendment) Act (No. 3) 1994</i>	103, 1994	22 Dec 1994	22 Dec 1994	—
<i>Discrimination (Amendment) Act 1995</i>	9, 1995	30 June 1995	30 June 1995	—

Discrimination Act 1991

NOTE—continued

Table of Acts—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Annual Reports (Government Agencies) (Consequential Provisions) Act 1995</i>	25, 1995	5 Sept 1995	5 Sept 1995	—
<i>Statute Law Revision Act 1995</i>	46, 1995	18 Dec 1995	18 Dec 1995	—
(Reprinted as at 1 January 1996)				
<i>Discrimination (Amendment) Act 1996</i>	67, 1996	20 Dec 1996	Ss. 1-3: 20 Dec 1996 Ss. 4-24: 31 Dec 1996 (see <i>Gazette</i> 1996, No. S350) Remainder: 8 Jan 1997 (see <i>Gazette</i> 1997, No. S3)	Part III (ss. 16-25)

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 4	am. No. 38, 1994; No. 67, 1996
S. 6	rep. No. 44, 1993 ad. No. 9, 1995
S. 7	am. No. 25, 1993; Nos. 1 and 11, 1994
S. 9	am. No. 67, 1996
S.15	am. No. 25, 1993
S. 25A	ad. No. 1, 1994
S. 26A	ad. No. 67, 1996
S. 29	am. No. 1, 1994
Ss. 30, 31	am. No. 67, 1996
S. 53	am. No. 67, 1996
Div. 6 of Part IV (ss. 57A-57M)	ad. No. 1, 1994
Ss. 57A-57M	ad. No. 1, 1994
Div. 7 of Part IV (s. 57N)	ad. No. 11, 1994
S. 57N	ad. No. 11, 1994
S. 59	am. No. 9, 1995
Part VIII (ss. 70-94, 96-108)	rep. No. 67, 1996

Discrimination Act 1991

NOTE—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
Part VII (ss. 70-108, 108A-108O)	ad. No. 67, 1996
S. 70	rs. No. 67, 1996
S. 71	am. No. 60, 1994
	rs. No. 67, 1996
Ss. 72-79	rs. No. 67, 1996
S. 80	am. No. 103, 1994
	rs. No. 67, 1996
Ss. 81-87	rs. No. 67, 1996
Ss. 88-90	am. No. 60, 1994
	rs. No. 67, 1996
Ss. 91, 92	rs. No. 67, 1996
S. 93	am. No. 60, 1994
	rs. No. 67, 1996
S. 94	rs. No. 67, 1996
S. 95	rep. No. 60, 1994
	ad. No. 67, 1996
S. 96	am. No. 46, 1995
	rs. No. 67, 1996
Ss. 97-108	rs. No. 67, 1996
Ss. 108A-108O	ad. No. 67, 1996
S. 109	am. No. 60, 1994
Part IXA (ss. 110A-110F).....	ad. No. 67, 1996
Ss. 110A-110F.....	ad. No. 67, 1996
S. 118	rs. No. 38, 1994
S. 119	rep. No. 25, 1995
	ad. No. 67, 1996
S. 120	am. No. 67, 1996
S. 121	rs. No. 67, 1996
S. 122	am. No. 67, 1996