



Australian Capital Territory

Discrimination Act 1991

A1991-81

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Last amendment made by A2005-60
(republication for commenced expiry)

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Discrimination Act 1991* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 11 January 2006. It also includes any amendment, repeal or expiry affecting the republished law to 11 January 2006.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

Discrimination Act 1991

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

Part 1 Preliminary

1 Name of Act

This Act is the *Discrimination Act 1991*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*discriminate*—see section 8.' means that the word 'discriminate' is defined in section 8.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 Objects

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; and
- (b) to eliminate, so far as possible, sexual harassment in those areas; and

- (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 people.

4A Meaning of *doing* an act

- (1) In this Act:

doing an act includes failing to do the act.

Note The Legislation Act, dict, pt 1 defines *fail* to include refuse.

- (2) In this Act, a reference to doing an act because of a particular matter includes a reference to doing an act because of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for doing the act.

U 5 Meaning of *complainant* and *respondent*

In this Act:

complainant means—

- (a) for a complaint lodged by an agent—the person or each person on whose behalf the complaint is lodged; and
- (b) for an investigation for which there are 2 or more complainants—each complainant.

respondent means—

- (a) for a complaint—the person who is alleged to have done the act or acts to which the complaint relates; and
- (b) for an investigation of a complaint for which there are 2 or more respondents—each respondent; and
- (c) for an investigation initiated by the commissioner—each person whose actions are the subject of the investigation.

5AA Meaning of *disability*

(1) In this Act:

disability means—

- (a) total or partial loss of a bodily function; or
 - (b) total or partial loss of a part of the body; or
 - (c) malfunction of a part of the body; or
 - (d) malformation or disfigurement of a part of the body; or
 - (e) the presence in the body of organisms that cause or are capable of causing disease; or
 - (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.
- (2) Except in section 49 (Work related discrimination) and section 50 (Discrimination by qualifying bodies etc), *disability* includes a disability—
- (a) that the person has, or is thought to have (whether or not the person in fact has the disability); or
 - (b) that the person had in the past, or is thought to have had in the past (whether or not the person in fact had the disability); or
 - (c) that the person will have in the future, or is thought will have in the future (whether or not the person in fact will have the disability).

5A Meaning of *potential pregnancy*

In this Act:

potential pregnancy, of a woman, includes—

- (a) the fact that the woman is or may be capable of bearing children; and
- (b) the fact that the woman has expressed a desire to become pregnant; and
- (c) the fact that the woman is likely, or is perceived as being likely, to become pregnant.

6 MLAs as employers

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

- (2) In this section:

office-holder—see the *Legislative Assembly (Members' Staff) Act 1989*, section 3.

U 6A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to offences against pt 6 (see the Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg **conduct**, **intention**, **recklessness** and **strict liability**).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Discrimination to which Act applies

7 Grounds

- (1) This Act applies to discrimination on the ground of any of the following attributes:
 - (a) sex;
 - (b) sexuality;
 - (c) transsexuality;
 - (d) relationship status;
 - (e) status as a parent or carer;
 - (f) pregnancy;
 - (g) breastfeeding;
 - (h) race;
 - (i) religious or political conviction;
 - (j) disability;
 - (k) membership or nonmembership of an association or organisation of employers or employees;
 - (l) age;
 - (m) profession, trade, occupation or calling;
 - (n) association (whether as a relative or otherwise) with a person identified by reference to an attribute referred to in another paragraph of this subsection;
 - (o) spent conviction within the meaning of the *Spent Convictions Act 2000*.

- (2) In this Act, a reference to an attribute mentioned in subsection (1) includes—
- (a) a characteristic that people with that attribute generally have; and
 - (b) a characteristic that people with that attribute are generally presumed to have; and
 - (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.

8 What constitutes discrimination

- (1) For 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 people because they have an attribute referred to in section 7.
- (2) Subsection (1) (b) does not apply to a condition or requirement that is reasonable in the circumstances.
- (3) In deciding 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; and
 - (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.

9 Disability—guide-dogs etc

- (1) For this Act, a person discriminates against another person on the ground of disability if the discriminator treats the other person unfavourably because that person possesses or is accompanied by a guide-dog, a hearing dog, assistance animal or some other aid associated with the disability, whether or not it is the discriminator's practice to treat unfavourably people who possess or are accompanied by dogs, assistance animals or other things.
- (2) This section does not limit the operation of section 8 in relation to discrimination on the ground of disability.
- (3) This Act does not affect the liability of a person who is blind or deaf or has any other disability 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 the person's 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 3 Unlawful discrimination

Division 3.1 Discrimination in work

10 Applicants and employees

- (1) It is unlawful for an employer to discriminate against a person—
 - (a) in the arrangements made for the purpose of deciding who should be offered employment; or
 - (b) in deciding 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; or
 - (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; or
 - (c) by dismissing the employee; or
 - (d) by subjecting the employee to any other detriment.

11 Employees—religious practice

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 people of the same religious conviction as that of the employee; and

- (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.

12 Commission agents

- (1) It is unlawful for a principal to discriminate against a person—
 - (a) in the arrangements made for the purpose of deciding who should be engaged as a commission agent; or
 - (b) in deciding 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; or
 - (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; or
 - (c) by terminating the engagement; or
 - (d) by subjecting the agent to any other detriment.

13 Contract workers

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

- (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.

14 Partnerships

- (1) It is unlawful for any people who are proposing to form themselves into a partnership to discriminate against a person—
 - (a) in deciding 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 deciding 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; or
 - (b) by expelling the partner from the partnership; or
 - (c) by subjecting the partner to any other detriment.

15 Professional or trade organisations

- (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 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.

Note The Legislation Act, dict, pt 1 defines **fail** to include refuse.

- (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; or
 - (b) by depriving the member of membership or varying the terms of membership; or
 - (c) by subjecting the member to any other detriment.

16 Qualifying bodies

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 failing to confer, renew or extend the authorisation or qualification; or
- (b) in the terms or conditions on which it is prepared to confer, renew or extend the authorisation or qualification; or

(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.

Note The Legislation Act, dict, pt 1 defines *fail* to include refuse.

17 Employment agencies

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

(a) by refusing to provide the person with any of its services; or

(b) in the terms or conditions on which it offers to provide the person with any of its services; or

(c) in the way in which it provides the person with any of its services; or

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

Division 3.2 Discrimination in other areas

18 Education

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

(a) by 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.

Note The Legislation Act, dict, pt 1 defines *fail* to include refuse.

(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; or

- (b) by expelling the student; or
- (c) by subjecting the student to any other detriment.

19 Access to premises

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

20 Goods, services and facilities

It is unlawful for a person (the *provider*) 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; or

- (b) in the terms or conditions on which the provider provides those goods or services or makes those facilities available to the other person; or
- (c) in the way in which the provider provides those goods or services or makes those facilities available to the other person.

21 Accommodation

- (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; or
 - (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; or
 - (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.

22 Clubs

- (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 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.

Note The Legislation Act, dict, pt 1 defines *fail* to include refuse.

- (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; or
 - (b) by failing to accept the member's application for a particular class or type of membership; or
 - (c) by denying the member access, or limiting the member's access, to any benefit provided by the club; or
 - (d) by depriving the member of membership or varying the terms of membership; or
 - (e) by subjecting the member to any other detriment.

23 Requests etc for information

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 5, 6 or 7.

Part 4 **Exceptions to unlawful discrimination**

Division 4.1 **General exceptions**

24 **Domestic duties**

Section 10 (1) (a) or (b) or section 13 (b) does not make it unlawful for a person (the *first person*) to discriminate against someone else in relation to a position as an employee or contract worker if the duties of the position involve doing domestic duties on the premises where the first person lives.

25 **Residential care of children**

Section 10 (1) (a) or (b) or section 13 (b) does not make it unlawful for a person to discriminate against someone else in relation to a position as an employee or contract worker if the duties of the position involve the care of a child where the child lives.

25A **Adoption**

This Act does not prevent the chief executive responsible for administering the *Adoption Act 1993* from discriminating against a person in making a decision—

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

26 Domestic accommodation etc

- (1) Section 21 does not make 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 people other than the person referred to in subparagraph (i) or near relatives of such a person; or
 - (b) the provision of accommodation by a religious body for members of a relevant class of people; or
 - (c) the provision of accommodation by a charitable or voluntary body for members of a relevant class of people.

- (2) In this section:

near relative, of a person, means—

- (a) a parent, child, grandparent, grandchild, brother or sister of the person; or
- (b) a domestic partner of the person or of a person mentioned in paragraph (a).

Note For the meaning of *domestic partner*, see Legislation Act, s 169.

26A Preselection by employment agencies

Part 3 or part 4 does not make unlawful discrimination by an employment agency in the selection of people as suitable for a job vacancy if, had the proposed employer discriminated against the person in the same way, the discrimination would not have been unlawful.

27 Measures intended to achieve equality

- (1) Part 3 does not make it unlawful to do an act if a purpose of the act is—
 - (a) to ensure that members of a relevant class of people have equal opportunities with other people; or
 - (b) to give members of a relevant class of people access to facilities, services or opportunities to meet the special needs they have as members of the relevant class.
- (2) However, subsection (1) does not make it lawful to do an act for a purpose mentioned in that subsection if the act discriminates against a member of the relevant class in a way that is not reasonable for the achievement of that purpose.

Example for s (1) (a)

An employer runs a management skills development course for female employees only. Part 3 does not make this unlawful if a purpose is to ensure that women have equal opportunities (in this case, for career development) with men. Women are ‘members of a relevant class of people’ (*relevant class of people* is defined in the dict) because they are a class of people whose members are identified by reference to an attribute mentioned in s 7, in this case, sex in s 7 (1) (a).

Example for s (1) (b)

A health clinic provides speech therapy for autistic children only. Part 3 does not make this unlawful if a purpose is to give autistic children access to a service that meets their special needs as autistic children. Autistic children are ‘members of a relevant class of people’ because they are a class of people whose members are identified by reference to 2 attributes mentioned in s 7, in this case, disability in s 7 (1) (j) and age in s 7 (1) (l) (the Legislation Act, s 145 (b) provides that words in the singular include the plural ie ‘attribute’ in the def of *relevant class of people* can mean ‘attributes’).

28 Insurance

Part 3 does not make it unlawful for a person (the *first person*) to discriminate against someone else (the *second person*) in relation to the terms on which an annuity or policy of insurance is offered to, or may be obtained by, the second 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 person to rely.

29 Superannuation

- (1) Part 3 does not make 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) For discrimination on the ground of age, subsection (1) applies only if—
 - (a) the discrimination is due to the application of a standard in force under the *Superannuation Industry (Supervision) Act 1993* (Cwlth); or
 - (b) the discrimination is for the purpose of—
 - (i) complying with; or
 - (ii) avoiding a penalty under; or
 - (iii) obtaining a benefit under;any other Act of the Commonwealth; or
 - (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; or
 - (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 4 March 1994; 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 if the person to whom the discrimination relates became a member of the fund before, or not later than 12 months after, 4 March 1994.
- (5) In this section:

existing superannuation fund condition means a superannuation fund condition in existence immediately before 4 March 1994.

new superannuation fund condition means—

- (a) a superannuation fund condition that came into existence on or after 4 March 1994; or
- (b) an alteration made on or after 4 March 1994 to an existing superannuation fund condition.

30 Acts done under statutory authority etc

- (1) This Act does not make unlawful anything done necessarily for the purpose of complying with a requirement of—
 - (a) a Territory law; or
 - (b) a determination or direction made under a Territory law; or
 - (c) an order of a court; or

- (d) an order made by the tribunal under division 8.4.
- (2) The Minister may, in writing, declare that subsection (1) (a) and (b) expire on a day stated in the declaration.
- (3) The declaration is a notifiable instrument.
Note A notifiable instrument must be notified under the Legislation Act.
- (4) Subsection (1) (a) and (b) and this subsection expire on the day stated in the declaration.

31 Voluntary bodies

Part 3 does not make it unlawful for a voluntary body to discriminate against a person in relation to—

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

32 Religious bodies

Part 3 does not apply in relation to—

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order; or
- (b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; or
- (c) the selection or appointment of people to exercise 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, if the act or practice 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.

33 Educational institutions conducted for religious purposes

- (1) Section 10 or 13 does not make it unlawful for a person (the *first person*) to discriminate against someone else in relation to—
- (a) employment as a member of the staff of an educational institution; or
 - (b) a position as a contract worker that involves doing work in an educational institution;

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

- (2) Section 18 does not make it unlawful for a person (the *first person*) to discriminate against someone else in relation to 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 person so discriminates in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed.

Division 4.2 Exceptions about sex, relationship status, pregnancy or breastfeeding

34 Genuine occupational qualifications—sex

- (1) Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful for a person to discriminate against someone else (the *relevant person*) on the ground of sex in relation to a position as an employee, commission agent, contract worker or partner if it is a genuine occupational qualification for the position that the position be filled by a person of the opposite sex to the relevant person.

- (2) Without limiting subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular sex (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 people not of the relevant sex; or
 - (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; or
 - (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; or
 - (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 people of that sex; or
 - (e) the duties of the position include the conduct of searches of the clothing or bodies of people of the relevant sex; or
 - (f) the occupant of the position is required to enter a lavatory ordinarily used by people of the relevant sex while the lavatory is in use by people of that sex; or
 - (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 people of each sex; and
 - (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 people of each sex; or
- (h) the occupant of the position is required to enter areas ordinarily used only by people of the relevant sex while those people are in a state of undress; or
- (i) the duties of the position involve providing people of the relevant sex with services for the purpose of promoting their welfare if those services can most effectively be provided by a person of that sex; or
- (j) the position is declared under the regulations to be a position in relation to which it is a genuine occupational qualification to be a person of a particular sex.

35 Employment of couple

Part 3 does not make unlawful discrimination against a person on the grounds of relationship status in relation to a job that is 1 of 2 jobs to be held by a couple in a domestic partnership.

Note For the meaning of *domestic partnership*, see Legislation Act, s 169.

36 Educational institutions for members of one sex

Section 18 does not make unlawful discrimination on the ground of sex in relation to a 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.

Note The Legislation Act, dict, pt 1 defines *fail* to include refuse.

37 Pregnancy, childbirth or breastfeeding

Part 3 does not make it unlawful for a person to discriminate against a man on the ground of sex only because the person gives a woman rights or privileges in relation to pregnancy, childbirth or breastfeeding.

38 Services for members of one sex

Part 3 does not make 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.

39 Accommodation provided for employees, contract workers or students

- (1) Part 3, in its application in relation to discrimination on the ground of sex, relationship status, pregnancy or breastfeeding, does not make 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 if—
 - (a) the standard of the accommodation provided is decided having regard to the number of people 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) Part 3 does not make unlawful discrimination on the ground of sex in relation to the provision of accommodation if the accommodation is provided solely for people of one sex who are students at an educational institution.

40 Clubs for members of one sex etc

- (1) Section 22 does not make 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 people of the opposite sex.
- (2) Section 22 (1) (b) or (2) does not make 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 if—

- (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 deciding any matter relating to the application of subsection (2), the following must be taken into account:
 - (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;
 - (e) any other relevant circumstances.

41 Sport

- (1) Part 3 does not make unlawful discrimination on the ground of sex in relation to the exclusion of people 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 people from participation in—
 - (a) the coaching of people engaged in any sporting activity; or
 - (b) the umpiring or refereeing of any sporting activity; or
 - (c) the administration of any sporting activity; or

- (d) any prescribed sporting activity.

Division 4.3 Exceptions relating to race

42 Genuine occupational qualifications—race

- (1) Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful for a person to discriminate against someone else (the *relevant person*) on the ground of race in relation to a position as an employee, commission agent, contract worker or partner if it is a genuine occupational qualification for the position that the position be filled by a person of a different race to the relevant person.
- (2) Without limiting 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; or
 - (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; or
 - (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 people in circumstances in which a person of that race is required for reasons of authenticity; or
 - (d) the duties of the position involve providing people of that race with services for the purpose of promoting their welfare, if those services can most effectively be provided by a person of that race; or

- (e) the position is declared under the regulations to be a position in relation to which it is a genuine occupational qualification to be a person of a particular race.

43 Clubs for members of one race etc

- (1) Section 22 does not make unlawful discrimination on the ground of race in relation to a club that has as its principal object providing benefits for people of a stated race if those people are described other than—
 - (a) by reference to colour; or
 - (b) in a way that has the effect of excluding some members of that race on the basis of colour.
- (2) In deciding what the principal object of the club is for subsection (1), the following must be taken into account:
 - (a) the essential character of the club;
 - (b) if the people mainly enjoying the benefits of membership are of the race stated in the principal object;
 - (c) any other relevant circumstance.

Division 4.4 Exceptions relating to religious or political convictions

44 Religious workers

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make 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.

45 Political workers etc

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make 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; or
- (b) as an officer or employee of, or a worker for, a political party; or
- (c) as a member of the electoral staff of a person; or
- (d) in any other similar employment or work.

46 Religious educational institutions

Section 18 does not make unlawful discrimination on the ground of religious conviction in relation to a 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.

Note The Legislation Act, dict, pt 1 defines *fail* to include refuse.

Division 4.5 Exceptions relating to disability

47 Unjustifiable hardship

In deciding what is unjustifiable hardship for this division, all the relevant circumstances of the particular case must be taken into account, including the following:

- (a) the nature of the benefit or detriment likely to accrue or be suffered by all people concerned;
- (b) the nature of the disability of the person concerned;
- (c) the financial circumstances of, and the estimated amount of expenditure by, the person claiming unjustifiable hardship.

48 Genuine occupational qualifications—disability

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful to discriminate against a person on the ground of disability in relation to employment or work that 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 disability 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 disability is required for reasons of authenticity;
- (c) providing people who have a particular disability with services for the purpose of promoting their welfare, if the services can most effectively be provided by a person with a similar disability;
- (d) a prescribed activity.

49 Work related discrimination

- (1) Section 10 (1) (b) or (2) (c), section 12 (1) (b) or (2) (c), section 13 (b) or section 14 (1) (a), (2) (a) or (3) (b) do not make unlawful discrimination by a person (the **first person**) against someone else (the **second person**) on the ground of disability if the first person believes on reasonable grounds that, because of a disability—
 - (a) the second person is, or would be, unable to carry out work that is essential to the position concerned; or
 - (b) the second person requires, or would require, to carry out the work, services or facilities that would not be required by a person who does not have the disability and providing the services or facilities would impose unjustifiable hardship on the first person.
- (2) Section 10 (1) (c) or (2) (a) or (b), section 12 (1) (c) or (2) (a) or (b), section 13 (a) or (c) or section 14 (1) (b), (2) (b) or (3) (a) does not make it unlawful for a person (the **first person**) to discriminate against someone else on the ground of disability in relation to any setting by the first person of terms or conditions for 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:
 - (a) any limitation or restriction that the disability 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 to carry out that work and that would not be or are not required by people who do not have such a disability.
- (3) In this section:

disability, of a person, includes a disability that the person has.

Note **Disability** is defined for the Act in s 5AA.

50 Discrimination by qualifying bodies etc

- (1) Section 16 does not make unlawful discrimination by an authority or body against a person on the ground of disability if the authority or body believes on reasonable grounds that, because of a disability, the person is, or would be, unable to carry out work that is essential to the position concerned.

- (2) In this section:

disability, of a person, includes a disability that the person has.

Note *Disability* is defined for the Act in s 5AA.

51 Discrimination by educational institutions

- (1) Section 18 does not make unlawful discrimination on the ground of disability in relation to a failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students who have a disability that the applicant does not have.

Note The Legislation Act, dict, pt 1 defines *fail* to include refuse.

- (2) Section 18 does not make unlawful discrimination on the ground of disability in relation to a failure to accept an application by a person who has a disability for admission as a student at an educational institution if the person, if so admitted, would require services or facilities that are not required by students who do not have a disability, the provision of which would impose unjustifiable hardship on the relevant educational authority.

52 Discrimination relating to access to premises

- (1) Section 19 does not make unlawful discrimination on the ground of disability 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 a disability; 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) The Minister may, in writing, declare that subsection (1) does not apply to a building the construction of which begins on or after a day stated in the declaration.
- (3) The declaration is a notifiable instrument.
Note A notifiable instrument must be notified under the *Legislation Act 2001*.
- (4) Subsection (1) does not apply to a building the construction of which begins on or after a day stated in the declaration.
- (5) For this section, the construction of a building begins on the day when a building approval for the erection of the building is granted under the *Building Act 2004*.

53 Discrimination in the provision of goods and services

- (1) Section 20 does not make unlawful discrimination on the ground of disability in relation to the provision of goods, services or facilities if—
 - (a) because of a person’s disability, the goods, services or facilities would have to be provided in a special way; and
 - (b) their provision in that way would impose unjustifiable hardship on the person providing, or proposing to provide, the goods, services or facilities.
- (2) In this section:
services includes services provided by an employment agency.

54 Discrimination relating to accommodation

Section 21 does not make unlawful discrimination on the ground of disability in relation to the provision of accommodation to a person who has a disability 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.

55 Discrimination by clubs

- (1) Section 22 does not make unlawful discrimination on the ground of disability in relation to a club that has as its principal object the provision of benefits to people who have a particular disability.
- (2) In deciding what the principal object of a club is for subsection (1), the following must be taken into account:
 - (a) the essential character of the club;
 - (b) if the people mainly enjoying the benefits of membership have the particular disability;
 - (c) any other relevant circumstance.
- (3) Section 22 does not make it unlawful to discriminate against a person on the ground of disability if the discrimination is in relation to the enjoyment of any benefit provided by a club if—
 - (a) because of the person's disability, the benefit would have to be provided to the person in a special way; and
 - (b) the provision of the benefit in that way would impose unjustifiable hardship on the club.

56 Public health

Part 3 does not make unlawful discrimination against a person on the ground of disability if the discrimination is necessary and reasonable to protect public health.

57 Sport

- (1) Part 3 does not make unlawful discrimination on the ground of disability in relation to the exclusion of a person from participation in any competitive sporting activity if—

- (a) the person has a disability and the activity requires physical or intellectual attributes that the person does not possess; or
 - (b) if the activity is conducted for, or mainly for, people who have a particular kind of disability—the person does not have a disability of that kind.
- (2) Subsection (1) does not apply in relation to the exclusion of people from participation in—
- (a) the coaching of people engaged in any sporting activity; or
 - (b) the umpiring or refereeing of any sporting activity; or
 - (c) the administration of any sporting activity; or
 - (d) any prescribed sporting activity.

Division 4.6 Exceptions relating to age

57A Genuine occupational qualifications—age

Section 10 (1) (a) or (b), section 12 (1) (a) or (b), section 13 (b) or section 14 (1) (a) or (2) (a) does not make it unlawful to discriminate against a person on the ground of age in relation to employment or work that 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 people belonging to a particular age group with services for the purpose of promoting their welfare, if the services can most effectively be provided by a person belonging to a particular age group.

57B Youth wages

- (1) This section applies if an award provides for the payment of reduced wages to employees under 21 years old.
- (2) If this section applies, section 10 (1) or (2) (a) or (b) does not make it unlawful for an employer to discriminate against a person on the ground of age—
 - (a) if the person is 21 years old or older—in relation to the offer of employment to a person under 21 years old; or
 - (b) if the person is under 21 years old—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 *Workplace Relations Act 1996* (Cwlth).

57C Employment and work—health and safety

- (1) Section 10 (1) (c) or (2) (a) or (b), section 12 (1) (c) or (2) (a) or (b), section 13 (a) or (c) or section 14 (1) (b), (2) (b) or (3) (a) does not make it unlawful to discriminate against a person on the ground of age in relation to employment or work, or qualifications for employment or work, if the discrimination is practised to comply with reasonable health and safety requirements relevant to the employment or work.
- (2) In deciding what health and safety requirements are reasonable for subsection (1), all the relevant circumstances of the particular case must be taken into account, including the effects of the discrimination on the person discriminated against.

57E Education—minimum-age admissions

- (1) Section 18 does not make it unlawful to discriminate against a person on the ground of age in relation to the admission of the person to an educational institution if the level of education or

training sought is provided only for students older than a particular age.

- (2) Section 18 does not make it unlawful to fail to accept an application for admission as a student at an educational institution under a mature age admission scheme, if the application is made by a person whose age is below the minimum age fixed under that scheme for admission.

Note The Legislation Act, dict, pt 1 defines *fail* to include refuse.

57G Legal incapacity

Part 3 does not make it unlawful to discriminate against a person on the ground of age in relation to a transaction if the person is subject to a legal incapacity because of his or her age and the incapacity is relevant to the transaction.

57H Benefits and concessions

Division 3.2 does not make it unlawful to discriminate against a person in relation to the provision of genuine benefits, including concessions, to someone else because of his or her age.

57J Goods, services and facilities—health and safety

- (1) Section 19 or section 20 does not make it unlawful to discriminate against a person on the ground of age in relation to the provision of goods, services or facilities if that discrimination is practised to comply with reasonable health and safety requirements relevant to such provision.
- (2) In deciding what health and safety requirements are reasonable for subsection (1), all the relevant circumstances of the particular case must be taken into account, including the effects of the discrimination on the person discriminated against.

57K Recreational tours and accommodation

Section 20 or section 21 does not make it unlawful to discriminate against a person on the ground of age in relation to the provision of a recreational tour or recreational accommodation.

57L Clubs

- (1) Section 20 or section 22 does not make it unlawful for a club to discriminate against a person on the ground of age if the club's principal object is providing benefits for people belonging to a particular age group.
- (2) In deciding what the principal object of a club is for subsection (1), the following must be taken into account:
 - (a) the essential character of the club;
 - (b) if the people mainly enjoying the benefits of membership belong to the particular age group stated in the club's objects;
 - (c) any other relevant circumstances.

57M Sport

- (1) Part 3 does not make it unlawful to discriminate against a person on the ground of age by his or her exclusion from participation in any competitive sport if competition is only allowed between people belonging to a particular age group.
- (2) This section does not apply in relation to the exclusion of people from participation in—
 - (a) coaching people doing any sporting activity; or
 - (b) umpiring or refereeing any sporting activity; or
 - (c) administering any sporting activity; or
 - (d) any sporting activity prescribed under the regulations.

Division 4.7 **Exceptions relating to profession,
trade, occupation or calling**

57N **Discrimination in profession, trade, occupation or calling**

Part 3 does not make 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 if profession, trade, occupation or calling is relevant to that transaction and the discrimination is reasonable in those circumstances.

Part 5 Sexual harassment

58 Meaning of *sexual harassment* for pt 5

- (1) In this part:

sexual harassment—a person subjects someone else 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) In this section:

conduct, of a sexual nature, includes 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.

59 Employment etc

- (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 people.

(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.

60 Educational institutions

(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.

61 Access to premises

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.

62 Provision of goods, services and facilities

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.

63 Accommodation

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.

64 Clubs

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 6 Racial, sexuality and HIV/AIDS vilification

65 Definitions for pt 6

In this part:

HIV/AIDS status means status as a person who has the Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome.

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; and
- (b) any conduct (other than 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.

66 Unlawful vilification—race, sexuality etc

- (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 people on the ground of any of the following characteristics of the person or members of the group:
 - (a) race;
 - (b) sexuality;
 - (c) transsexuality;
 - (d) HIV/AIDS status.

- (2) This section does not make unlawful—
- (a) a fair report of an act mentioned in subsection (1); or
 - (b) a communication or the distribution or dissemination of any matter consisting of a publication that is subject to a defence of absolute privilege in a proceeding for defamation; or
 - (c) a public act, done reasonably and honestly, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and presentations of any matter.

67 Serious vilification offence—race, sexuality etc

- (1) A person commits an offence if—
- (a) the person intentionally carries out an act; and
 - (b) the person is reckless about whether the act is a public act; and
 - (c) the act is a threatening act; and
 - (d) the person is reckless about whether the act incites hatred towards, serious contempt for, or severe ridicule of, a person or group of people on the ground of any of the following characteristics of the person or members of the group:
 - (i) race;
 - (ii) sexuality;
 - (iii) transsexuality;
 - (iv) HIV/AIDS status.

Maximum penalty: 50 penalty units.

- (2) For subsection (1) (c), an act is a ***threatening act*** only if the person carrying it out—

- (a) by the act, intentionally threatens physical harm towards, or towards any property of, the person, or members of the group, mentioned in subsection (1) (d); or
- (b) is reckless about whether the act incites others to threaten such physical harm.

Part 7 Other unlawful acts

U 68 **Victimisation**

- (1) It is unlawful for a person (the *first person*) to subject someone else to any detriment on the ground that the other person has—
- (a) made a complaint under this Act; or
 - (b) instituted proceedings against any person under this Act; or
 - (c) given information or produced a document to a person exercising a function under or for this Act; or
 - (d) given information, produced a document or answered a question when required to do so under this Act; or
 - (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 that is unlawful under this Act;
- or on the ground that the first person believes that the other person proposes to do such an act.
- (2) Subsection (1) (f) does not apply in relation to an allegation that is false and is not made in good faith.

69 Unlawful advertising

It is unlawful for a person to advertise any matter—

- (a) that indicates an intention to do an act that is unlawful under part 3, part 5 or this part; or
- (b) that could reasonably be understood as indicating such an intention.

U **Part 8** **Complaints**

U **Division 8.1** **Preliminary**

U **70** **Meaning of *party* for pt 8**

In this part:

party, in relation to a complaint, an investigation under section 80 (1) or the hearing of a complaint, means—

- (a) the complainant (if any); and
- (b) the respondent; and
- (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.

U **71** **Reliance on exceptions and exemptions**

- (1) In considering whether an act is unlawful under part 3, part 5 or part 7 or section 66, the commissioner and tribunal are not required to have regard to any exception provided for in part 4 or an exemption provided for in part 9 unless the commissioner or tribunal has information indicating that the exception or exemption is or may be applicable in relation to that act.
- (2) If, apart from an exception, excuse, qualification or exemption under this Act, conduct would be unlawful under part 3, part 5 or part 7 or section 66, the onus of establishing the exception, excuse, qualification or exemption lies on the person seeking to rely on it.

U **Division 8.2** **Making, investigation, conciliation and referral of complaints**

U **72** **Complaints about unlawful acts**

(1) A complaint alleging that a person has done an act that is unlawful under part 3, part 5 or part 7 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 people aggrieved by the act.

Note If a form is approved under s 126A (Approved forms—commissioner) for a complaint, the form must be used.

(2) A person must not act as an agent unless the person is—

- (a) authorised in writing to act on behalf of the aggrieved person or people 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 people.

U **73** **Investigation**

The commissioner must investigate a complaint made in accordance with section 72 to decide—

- (a) whether the complaint can be dealt with under this Act; and
- (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.

U 74 Notice of investigation

Before beginning an investigation in relation to a complaint, the commissioner must give each party written notice that the complaint is to be investigated.

U 75 Conduct of investigations

- (1) Subject to this part, an investigation is to be conducted in the way the commissioner considers appropriate.
- (2) An investigation must 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) must make a thorough examination of all matters relevant to the investigation; and
 - (b) must, 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 the directions about the procedure to be followed in an investigation and do the things that 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).

U 76 Stale complaints

- (1) If the commissioner makes a request of a complainant and the complainant does not, within a period of 3 months after the date when the request is made, adequately respond to the request, the

commissioner must, by written notice to the parties, dismiss the complaint.

- (2) A notice to a complainant under subsection (1) must 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).

U 77 **Single investigation of several complaints**

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.

U 78 **Representative complaints**

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 people the members of which have, or are reasonably likely to have, grievances against the respondent; and
- (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; and
- (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 relation to those grievances;
and

(d) it is desirable to do so.

U 79 Ordinary complaints not prevented by representative complaints

Section 78 does not prevent a person from lodging a complaint in relation to a grievance that is the subject of a representative complaint.

U 80 Investigation without complaint

- (1) The commissioner may, on his or her own initiative, investigate conduct that appears to the commissioner to be unlawful under part 3, 5 or 7 or section 66.
- (2) An investigation under subsection (1) must, as far as practicable, be conducted as though it were an investigation in relation to a complaint.
- (3) If—
 - (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.

U 81 Declining complaints

- (1) If, because of the investigation of a complaint lodged under section 72, the commissioner decides that a relevant ground exists in

relation to the complaint, the commissioner must decline the complaint.

- (2) For 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 3, part 5 or part 7 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) If the commissioner declines a complaint under subsection (1), the commissioner must 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) must 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.

U 82 Compulsory conferences

- (1) For 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) must be in writing and shall be given to the person concerned; and
 - (b) must specify the time and place for the conference.
- (3) A conference must be held in private and is to be conducted in the way the commissioner considers appropriate.
- (4) Except with the consent of the commissioner—
 - (a) an individual is not entitled to be represented at a conference by someone else; and
 - (b) a body is not entitled to be represented at a conference by a person other than a member, officer or employee of the body.

U 83 Conciliation

- (1) If, during or after investigation, the commissioner decides it is reasonably likely that a complaint may be resolved by conciliation, the commissioner must—
 - (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 decided.
- (3) Evidence of anything said or done during conciliation in relation to a complaint is not admissible in any proceedings.

U 84 Conduct of conciliation

Conciliation is to be conducted in the way the commissioner considers appropriate.

U 85 Conciliated agreements

- (1) If a complaint has been resolved by conciliation, the commissioner must help the parties make a written record (the *agreement*) of the agreement they have reached.
- (2) Each party must sign the agreement.
- (3) The commissioner must—
 - (a) give each party a copy of the agreement; and
 - (b) tell the parties that the commissioner will not take any further action about the complaint to which the agreement relates; and
 - (c) give the agreement to the tribunal.
- (4) The agreement is enforceable as if it were an order of the tribunal.

U 86 Conciliation unlikely

- (1) If, 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 must notify the parties accordingly.
- (2) If—
 - (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 must notify the parties of his or her decision.
- (3) A notice to a complainant under subsection (1) or (2) must 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.

U 87 Referral of complaint

If a complainant notified in accordance with section 81 (3) or section 86 (1) or (2) requires the commissioner to refer a complaint to the tribunal, the commissioner must refer the complaint and shall notify the other parties of the referral.

U 88 Dismissal of complaint

If a complainant who has been notified in accordance with section 81 (3) or section 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 must dismiss the complaint, notify the parties to the investigation accordingly and take no further action in relation to the complaint.

U 89 Application to strike out complaint

A respondent may, at any time before the tribunal begins 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.

U 90 Withdrawal of complaint

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 must take no further action in relation to the complaint.

U Division 8.3 Hearings before discrimination tribunal

U 91 Hearings

- (1) The tribunal is to 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 decide 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 decide 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 if the applicant referred to in paragraph (d) is successful;
 - (f) an application for an interim order under section 99 or section 100;
 - (g) an application for review of a direction given by the commissioner under section 108.
- (2) The registrar must, at least 7 days before a hearing referred to in subsection (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 must begin hearing a matter referred to in subsection (1) (a) within 14 days after the date when application is made.

U 92 Procedure

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

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) The tribunal may, on application or its own initiative, direct that a hearing or part of a hearing take place in private and give directions about the people who may be present.

U 93 Sittings

- (1) The tribunal may sit in the places in the ACT that the president decides.

- (2) However, the tribunal must 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.

U 94 **Appearances**

A party to a tribunal hearing may appear at the hearing.

U 95 **Representation**

- (1) A party is not entitled to be represented at a hearing unless the tribunal consents to such representation.
- (2) Subsection (1) does not prevent the representation of a party that is a body by a member, officer or employee of the party.
- (3) In this section:
party includes an unincorporated association.

U 96 **Witnesses**

- (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; or
 - (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 is taken to have complied with a summons under subsection (1) (b) if the person delivers the document or thing to the registrar before the date specified in the summons.

- (4) A summons must be—
- (a) in writing; and
 - (b) served on the person named in the summons.

U 96A Appearance by audiovisual or audio links

- (1) This section applies if, in relation to a hearing or a part of a hearing (the *relevant hearing*), the tribunal has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (1) (Territory courts may take evidence and submissions from outside ACT) or section 32 (1) (Use of link in proceedings).
- (2) If this section applies a person who, in a relevant hearing—
- (a) is required or entitled to appear personally, whether as a party or as a witness; or
 - (b) is entitled to appear for another person;
- may appear in that hearing and participate or give evidence, as the case requires, in accordance with the direction.
- (3) A person who appears in a relevant hearing in accordance with this section is taken to be before the tribunal.

U 97 Taking evidence

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.

U 98 Refusing to take oath or make affirmation

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

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

U Division 8.4 Granting of relief by discrimination tribunal

U 99 Interim orders—complaint before commissioner

- (1) If—
- (a) a complaint has been lodged with the commissioner; and
 - (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 the interim order it considers appropriate.

Note If a form is approved under s 110K (Approved forms—registrar) for an application, the form must be used.

- (2) An interim order remains in force until the making of a prescribed decision.
- (3) If a person against whom an interim order is made is not present at the making of the order, the registrar must serve a copy of the order on the person as soon as practicable after the order is made.

- (4) For 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.

U 100 Interim orders—complaint before tribunal

- (1) If, 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 the interim order it considers appropriate.

Note If a form is approved under s 110K (Approved forms—registrar) for an application, the form must be used.

- (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) If a person against whom an interim order is made is not present at the making of the order, the registrar must serve a copy of the order on the person as soon as practicable after the order is made.

U 101 Remittal of complaint

If—

- (a) the tribunal hears an application referred to in section 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 must remit the relevant complaint to the commissioner and the complaint is taken to have been lodged on the date of remittal.

U 102 Decisions following hearing

- (1) In this section:
unlawful conduct means conduct that is unlawful under part 3, part 5 or part 7 or section 66.
- (2) After completing a hearing, the tribunal must—
 - (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; or

- (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 if 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 subsection (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
 - (b) if there is no prescribed scale—decided by the tribunal;
in relation to the expenses reasonably incurred by a person in connection with the hearing.
- (4) If the tribunal dismisses a complaint under subsection (2) (a) (i), the tribunal may, by written notice 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—decided by the tribunal;
in relation to the expenses reasonably incurred by the respondent in connection with the hearing.
- (5) If the tribunal dismisses a complaint or makes an order under subsection (2) (b) in relation to a complaint, the tribunal must, within 28 days after making that decision, give the parties to the hearing written notice of the decision and, if an order under subsection (2) (b) has been made, setting out the terms of the order.

U **Division 8.5** **Enforcement of orders and decisions
of discrimination tribunal**

U **103** **Failure to comply**

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

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

U **104** **Powers of enforcement**

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*.

U **Division 8.6** **Other powers of commissioner and
tribunal**

U **105** **Effect of div 8.6**

This division does not permit—

- (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.

U 106 Joining parties

If—

- (a) before the beginning 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 beginning 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 written notice given to the person, join that person as a party to the investigation or hearing.

U 107 Requiring answer or document

- (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) (a).

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

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

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

U 108 Prohibiting or controlling publication

- (1) The commissioner or tribunal may, in writing, direct that—
 - (a) any evidence given before the commissioner or tribunal; or
 - (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;must not be published, or must not be published except in the way, or to the people, the commissioner or tribunal specifies.
- (2) A direction to a particular person must be given to the person.
- (3) A direction to people generally is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.
- (4) A direction given by the commissioner under this section must 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 when it is given; or
 - (b) if a later date of effect is specified in the direction—on that later date.

U 108A Review of directions by commissioner

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.

U 108B Prohibited publications

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

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

U 108C Obtaining information and documents

- (1) If 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, for 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 must state—
 - (a) the place where the information or document is to be given or produced to the commissioner or tribunal; and
 - (b) the time when, or the period within which, the information or document is to be given or produced.
- (3) If 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) If 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; and
 - (b) may keep possession of the document for the period that is necessary for the purposes of the relevant investigation; and
 - (c) must 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 during the period.

U **Division 8.7** **Miscellaneous**

U **108D** **Statement of reasons**

- (1) This section applies if—
- (a) the tribunal makes a decision in a hearing; and
 - (b) within 14 days after the day the decision is made a party to the hearing asks for a statement of reasons for the making of the decision.
- (2) The tribunal must give the party a written statement of reasons for the making of the decision.

Note The Legislation Act, s 179 deals with what must be included in a statement of reasons.

U **108DA** **Referral of questions of law to Supreme Court**

- (1) If the tribunal considers that a question of law raises an issue of public importance, the tribunal may refer the question to the Supreme Court.
- (2) The tribunal may act under subsection (1) on its own initiative or on application by a party.

U 108DB Appeals from tribunal decisions

- (1) A party to a tribunal hearing may, with the Supreme Court's leave, appeal to the court on a question of law from a decision of the tribunal in the hearing.
- (2) An appeal by a person under subsection (1) must be begun within—
 - (a) 28 days after the day the person is given written notice of the tribunal's decision under section 102 (5); or
 - (b) any further time the Supreme Court allows (whether on, before or after the day mentioned in paragraph (a)).
- (3) The Supreme Court must decide the appeal, and may make any of the following orders:
 - (a) an order confirming 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 court's directions;
 - (c) an order for costs.
- (4) The Supreme Court may also make any other order the court considers appropriate.

U 108E Selfincrimination etc

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
- (d) any other offence in relation to the falsity of the information, document or answer.

Note A reference to an offence against a Territory law includes a reference to a related ancillary offence, eg attempt (see Legislation Act, s 189).

U 108F Unlawful act not an offence

An act that is unlawful under part 3, part 5 or part 7 or section 66 does not constitute an offence.

U 108G Unlawful act no basis for civil action

Except as expressly provided by this Act, this Act does not give a person any right of action in relation to the doing of an act that is unlawful under part 3, part 5 or part 7 or section 66.

U 108H Aiding etc unlawful acts

A person who causes, instructs, induces, aids or permits another person to do an act that is unlawful under part 3, part 5 or part 7 or section 66 is taken, for this Act, also to have done the act.

U 108I Acts and omissions of representatives

- (1) In this section:

person means an individual or body politic.

Note See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

representative, of a person, means an employee or agent of the person.

state of mind, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
 - (b) the person’s reasons for the intention, opinion, belief or purpose.
- (2) This section applies to a prosecution for any offence against this Act.
- (3) If it is relevant to prove a person’s state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative’s actual or apparent authority; and
 - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative’s actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

U 108J Protection from civil proceedings

Civil proceedings do not lie against a person in relation to 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 this Act, whether or not the statement was made, or the document or information was given, under a requirement under section 107 or section 108C.

U 108K Expenses of witnesses etc

A person attending before the commissioner under a requirement under section 82 or before the commissioner or tribunal under a requirement under section 108C is entitled to be paid by the Territory in relation to 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—the amount that the commissioner or tribunal decides.

U 108L Failure to attend before commissioner or tribunal

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.

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

U 108M Failure to give information etc

A person shall not, without reasonable excuse, fail to—

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

when required to do so under section 107 or section 108C.

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

U 108N Disrupting proceedings before commissioner or tribunal

A person shall not, without reasonable excuse, disrupt proceedings before the commissioner or tribunal.

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

U Part 9 Exemptions

U 109 Grant of exemptions

- (1) The commissioner may, on written application, exempt the applicant in writing from the operation of a specified provision of part 3, part 5 or part 7.
- (2) The commissioner may, on a written application made—
 - (a) by a person to whom an exemption has been granted; and
 - (b) before expiry of that exemption;further exempt the applicant, in writing, from the operation of the provision concerned.
- (3) In the exercise of a power under subsection (1) or subsection (2), the matters to which the commissioner must have regard include the following matters:
 - (a) the need to promote an acceptance of, and compliance with, this Act;
 - (b) the desirability, if relevant, of certain discriminatory actions being permitted for the purpose of redressing the effects of past discrimination.
- (4) An exemption or further exemption—
 - (a) is a notifiable instrument; and
 - (b) is subject to the conditions (if any) specified in the notice; and
 - (c) has effect according to its terms for the period not longer than 3 years specified in the notice.

Note A notifiable instrument must be notified under the Legislation Act.

- (5) If the commissioner refuses to grant an exemption or a further exemption, the commissioner must give the applicant or each applicant written notice of the refusal.
- (6) A notice referred to in subsection (4) or subsection (5) must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

U 110 Review of decisions

Application may be made to the administrative appeals tribunal for review of a decision of the commissioner under section 109.

U Part 9A **Discrimination tribunal**

U Division 9A.1 **Establishment, functions and powers**

U 110A **Establishment**

The Discrimination Tribunal is established by this section.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

U Division 9A.2 **Tribunal members**

U 110C **Membership of tribunal**

- (1) The tribunal consists of the president and deputy presidents.
- (2) The members of the tribunal are to be appointed by the Executive.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

U 110D **Eligibility for appointment**

- (1) A person is eligible to be appointed president only if the person is a magistrate.
- (2) A person is eligible to be appointed deputy president only if the person is a magistrate or a lawyer of at least 5 years standing.

U 110E **Conditions of appointment generally**

- (1) A member may be appointed as a full-time or part-time member.
- (2) A member holds office on the conditions not provided by this Act that are decided by the Executive.

- (3) This section does not apply to a member who is a magistrate.

U 110F Matters to be included in instrument of appointment etc

The instrument appointing, or evidencing the appointment of, a member must state—

- (a) whether the member is the president or a deputy president; and
- (b) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

U 110G Duration of appointment

- (1) A member is to be appointed for a term of not longer than 5 years.
- (2) The Executive may end the appointment of a member who is not a magistrate—
 - (a) for misbehaviour or physical or mental incapacity; or
 - (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

- (3) The Executive must end the appointment of—
 - (a) a member who is a magistrate if the member ceases to be a magistrate; or
 - (b) a member who is not a magistrate if the member—
 - (i) ceases to be eligible for appointment; or
 - (ii) is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.

U **Division 9A.3 Registrar and deputy registrars**

U **110H Registrar and deputy registrars**

- (1) The registrar of the Magistrates Court is the registrar of the tribunal.
- (2) Each deputy registrar of the Magistrates Court is a deputy registrar of the tribunal.
- (3) Subject to any direction of the registrar, a deputy registrar of the tribunal may exercise the functions of the registrar of the tribunal.
- (4) The registrar may delegate the registrar's functions under this Act to a public servant.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

U **Division 9A.4 Other provisions**

U **110I Constitution of tribunal**

The tribunal is to be constituted for a hearing by a single member.

U **110J Role of president**

- (1) The president is responsible for ensuring the orderly and prompt discharge of the tribunal's business.
- (2) Without limiting subsection (1), the president may give directions about the member who is to constitute the tribunal for a particular proceeding.

U **110K Approved forms—registrar**

- (1) The registrar may, in writing, approve forms in relation to proceedings before the tribunal.

Note For other provisions about forms, see Legislation Act, s 255.

- (2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

U Part 10 Discrimination commissioner**U 111 The Discrimination Commissioner**

There is to be a Discrimination Commissioner.

U 112 Functions of commissioner

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) to exercise any other function given to the commissioner under this Act, the *Human Rights Act 2004* or another Territory law;
- (g) to exercise any functions of the Commonwealth commission given to the commissioner under an arrangement made under the *Human Rights and Equal Opportunity Commission Act 1986* (Cwlth);

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

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

U 113 Appointment of commissioner

The discrimination commissioner is appointed by the Executive.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

U 114 Term of appointment of commissioner

The commissioner must be appointed for a term of not longer than 7 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

U 115 Ending of appointment of commissioner

The Executive may end the appointment of the commissioner for misbehaviour or physical or mental incapacity.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

U 116 Conditions of appointment of commissioner

The commissioner holds the position on the conditions (if any) about matters not provided for by this Act that are decided by the Minister in writing.

U 118 Staff

- (1) The staff assisting the commissioner are 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.

U 119 Authorisation by commissioner

- (1) The commissioner may, in writing, authorise a member of his or her staff to exercise 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 exercise of the authorised functions.
- (3) The exercise by a person of the commissioner's functions under an authorisation under subsection (1) is taken, for all purposes, to be the exercise by the commissioner of the functions.

U 120 Delegation

The commissioner may delegate the commissioner's functions under section 80 or section 82 to a member of the commissioner's staff.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

U Part 11 Miscellaneous

U 121 Immunity from suit

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

- (a) the president of the tribunal; or
- (b) the commissioner; or
- (c) the registrar; or
- (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 function, 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.

U 122 Secrecy

- (1) In this section:

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

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

- (a) the president of the tribunal; or

- (b) the commissioner; or
- (c) the registrar; or
- (d) a member of the staff of the president, tribunal or commissioner; or
- (e) a person authorised to exercise a function under or in relation to this Act.

produce includes permit access to.

protected information means information that—

- (a) concerns a person; and
 - (b) is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a 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 about another person;

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

Maximum penalty: 50 penalty units, 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 if it is necessary to do so for this Act or another Act.

U 123 Regulation-making power

U 124 Intergovernmental arrangements

- (1) The Minister may make an arrangement with a Commonwealth Minister in relation to—
 - (a) the exercise on a joint basis of any of the functions of the Commonwealth commission; or
 - (b) the exercise by the commissioner of any of the functions of the Commonwealth commission; or
 - (c) the exercise by the Commonwealth commission, on behalf of the Territory, of any of the commissioner’s functions.
- (2) An arrangement may contain the incidental or supplementary provisions that the Minister and the Commonwealth Minister consider 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, must be in writing.
- (5) An arrangement, or a variation or revocation of an arrangement, is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

U 125 Exercise of functions under intergovernmental arrangement

An act done by or in relation to the Commonwealth commission under an arrangement made under section 124 in relation to the exercise by the Commonwealth commission of any of the commissioner's functions is taken, for this Act, to have been done by or in relation to the commissioner.

U 126 Relationship to other laws

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.

U 126A Approved forms—commissioner

- (1) The commissioner may, in writing, approve forms for this Act (other than in relation to proceedings before the tribunal).

Note For other provisions about forms, see Legislation Act, s 255.

- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

U 127 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) The regulations may except people, activities or other things from the operation of particular provisions of part 3, part 5 or part 7.

U Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 In particular, the Legislation Act, dict, pt 1, defines the following terms:

- body
- chief executive
- corporation
- domestic partner (see s 169)
- domestic partnership (see s 169)
- external Territory
- fail
- for
- individual
- in relation to
- State
- Territory authority
- the Territory
- under.

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.

committee of management, in relation to a club or organisation, means the group or body of people (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* (Cwlth).

complainant—see section 5.

complaint means a complaint made in accordance with section 72.

compulsory conference means a conference called under section 82.

contract worker means a person (the ***worker***) who does work for someone else (the ***third person***) under a contract between the worker's employer and the third person.

deputy president means a deputy president of the tribunal.

disability—see section 5AA.

discriminate—see section 8.

doing an act—see section 4A.

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; and
- (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 people to find employment or other work or assists employers to find employees or workers.

HIV/AIDS status, for part 6 (Racial, sexuality and HIV/AIDS vilification)—see section 65.

investigation means an investigation under division 8.2.

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

member, of the tribunal, means the president or a deputy president.

party, for part 8 (Complaints)—see section 70.

potential pregnancy—see section 5A.

pregnancy includes potential pregnancy.

premises includes—

- (a) a structure, building, aircraft, vehicle or vessel; and
- (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 paragraph (b)).

president means the president of the tribunal.

principal means—

- (a) for a commission agent—a person for whom the commission agent does work as a commission agent; or
- (b) for a contract worker—a person for whom the contract worker does work under a contract between the contract worker's employer and the person.

public act, for part 6 (Racial, sexuality and HIV/AIDS vilification)—see section 65.

race includes—

- (a) colour, descent, ethnic and national origin and nationality; and

- (b) any 2 or more distinct races that are collectively referred to or known as a race.

relationship status means the status or condition of being—

- (a) single; or
- (b) married; or
- (c) married but living separately and apart from one's spouse; or
- (d) divorced; or
- (e) widowed; or
- (f) the domestic partner (other than the spouse) of someone else.

Note For the meaning of ***domestic partner***, see Legislation Act, s 169.

relative, of a person, means—

- (a) a person who is related to the person by blood, marriage, affinity or adoption; or
- (b) a domestic partner of the person or of a person mentioned in paragraph (a).

relevant class of people means a class of people whose members are identified by reference to an attribute mentioned in section 7.

representative complaint means a complaint that is dealt with by the commissioner, in accordance with section 78, as a representative complaint.

respondent—see section 5.

services includes—

- (a) services relating to banking, insurance or the provision of grants, loans, credit or finance; and
- (b) services relating to entertainment, recreation or refreshment; and
- (c) services relating to transport or travel; and

- (d) services of any profession, trade or business; and
- (e) services provided by a government, government authority, local government body or corporation in which a government has a controlling interest; and
- (f) the provision of scholarships, prizes or awards.

sexual harassment, for part 5 (Sexual harassment)—see section 58.

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
- (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; or

- (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.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Discrimination Act 1991 No 81

notified 13 December 1991 (Gaz 1991 No S143)
s 1, s 2 commenced 13 December 1991 (s 2 (1))
remainder commenced 20 January 1992 (Gaz 1992 No 6)

as amended by

Discrimination (Amendment) Act 1993 No 25

notified 21 May 1993 (Gaz 1993 S83)
commenced 21 May 1993 (s 2)

Acts Revision (Position of Crown) Act 1993 No 44 sch 2

notified 27 August 1993 (Gaz 1994 S165)
commenced 27 August 1993 (s 2)

Discrimination (Amendment) Act 1994 No 1

notified 4 March 1994 (Gaz 1994 S35)
commenced 4 March 1994 (s 2)

Discrimination (Amendment) Act (No 2) 1994 No 11

notified 14 March 1994 (Gaz 1994 S44)
s 1, s 2 commenced 14 March 1994 (s 2 (1))
remainder commenced 14 May 1994 (s 2 (2))

Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 28

notified 30 June 1994 (Gaz 1994 S121)
s 1, s 2 commenced 30 June 1994 (s 2 (1))
sch 1 pt 28 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1

notified 11 October 1994 (Gaz 1994 S197)
s 1, s 2 commenced 11 October 1994 (s 2 (1))
sch 1 commenced 14 November 1994 (s 2 (2) and Gaz 1994 No S250)

Discrimination (Amendment) Act (No 3) 1994 No 103

notified 22 December 1994 (Gaz 1994 S289)
commenced 22 December 1994 (s 2)

Endnotes

3 Legislation history

Discrimination (Amendment) Act 1995 No 9

notified 30 June 1995 (Gaz 1995 S135)
commenced 30 June 1995 (s 2)

Annual Reports (Government Agencies) (Consequential Provisions) Act 1995 No 25 sch

notified 5 September 1995 (Gaz 1995 S212)
sch commenced 5 September 1995 (s 2)

Statute Law Revision Act 1995 No 46 sch

notified 18 December 1995 (Gaz 1995 S306)
sch commenced 18 December 1995 (s 2)

Discrimination (Amendment) Act 1996 No 67

notified 20 December 1996 (Gaz 1996 S328)
ss 1-3 commenced 20 December 1996 (s 2 (1))
ss 4-24 commenced 31 December 1996 (s 2 (2) and Gaz 1996 No S350)
remainder commenced 8 January 1997 (s 2 (2) and Gaz 1997 No S3)

Remuneration Tribunal (Consequential Amendments) Act 1997 No 41 sch 1 (as am by Act 2002 No 49 amdt 3.222)

notified 19 September 1997 (Gaz 1997 S264)
commenced 24 September 1997 (s 2 as am by Act 2002 No 49 amdt 3.222)

Building (Amendment) Act (No 2) 1998 No 52 sch

notified 16 November 1998 (Gaz 1998 S205)
ss 1-3 commenced 16 November 1998 (s 2 (1))
sch commenced 4 January 1999 (s 2 (2) and Gaz 1999 No S1)

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 S207)
s 1, s 2 commenced 27 November 1998 (s 2 (1))
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Courts and Tribunals (Audio Visual and Audio Linking) Act 1999 No 22 s 12

notified 14 April 1999 (Gaz 1999 S16)
s 1, s 2 commenced 14 April 1999 (s 2 (1))
s 12 commenced 1 September 1999 (s 2 (2) and Gaz 1999 No 35)

Discrimination Amendment Act 1999 No 60

notified 10 November 1999 (Gaz 1999 No 45)
commenced 10 November 1999 (s 2 (1))

**Children and Young People (Consequential Amendments) Act 1999
No 64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)
s 1, s 2 commenced 10 November 1999 (IA s 10B)
sch 2 commenced 10 May 2000 (s 2 (2))

Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3

notified 10 November 1999 (Gaz 1999 No 45)
sch 3 commenced 10 November 1999 (s 2)

Discrimination Amendment Act (No 2) 1999 No 83

notified 23 December 1999 (Gaz 1999 S65)
commenced 23 December 1999 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000
(No 2) No 2 sch**

notified 9 March 2000 (Gaz 2000 No 10)
commenced 9 March 2000 (s 2)

**Justice and Community Safety Legislation Amendment Act 2000
(No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)
commenced 1 June 2000 (s 2)

Spent Convictions Act 2000 No 48 pt 5

notified 28 September 2000 (Gaz 2000 No 39)
s 1, s 2 commenced 28 September 2000 (IA s 10B)
pt 5 (s 24) commenced 28 March 2001 (IA s 10E)

Legislation (Consequential Amendments) Act 2001 No 44 pt 105

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 105 commenced 12 September 2001 (s 2 and see Gaz 2001
No S65)

Endnotes

3 Legislation history

Legislation Amendment Act 2002 No 11 pt 2.16

notified LR 27 May 2002

s 1, s 2 commenced 27 May 2002 (LA s 75)

pt 2.16 commenced 28 May 2002 (s 2 (1))

Discrimination Amendment Act 2002 No 19

notified LR 13 June 2002

s 1, s 2 commenced 13 June 2002 (LA s 75)

remainder commenced 14 June 2002 (s 2)

Criminal Code 2002 No 51 pt 1.7

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75)

pt 1.7 commenced 1 January 2003 (s 2 (1))

Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.222

notified LR 20 December 2002

s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))

amdt 3.222 commenced 24 September 1997 (s 2 (3))

Note This Act only amends the Remuneration Tribunal (Consequential Amendments) Act 1997 No 41.

Discrimination Amendment Act 2003 A2003-15

notified LR 27 March 2003

s 1, s 2 commenced 27 March 2003 (LA s 75 (1))

remainder commenced 28 March 2003 (s 2)

Statute Law Amendment Act 2003 A2003-41 sch 3 pt 3.7

notified LR 19 August 2003

s 1, s 2 commenced 27 March 2003 (LA s 75 (1))

sch 3 pt 3.7 commenced 9 October 2003 (s 2 (1))

Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 sch 2 pt 2.5

notified LR 31 October 2003

s 1, s 2 commenced 31 October 2003 (LA s 75 (1))

sch 2 pt 2.5 commenced 30 April 2004 (s 2 and LA s 79)

Sexuality Discrimination Legislation Amendment Act 2004 A2004-2 sch 2 pt 2.3

notified LR 18 February 2004
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))
sch 2 pt 2.3 commenced 22 March 2004 (s 2 and CN2004-4)

Human Rights Act 2004 A2004-5 sch 2 pt 2.2

notified LR 10 March 2004
s 1, s 2 commenced 10 March 2004 (LA s 75 (1))
sch 2 pt 2.2 commenced 1 July 2004 (s 2)

Construction Occupations Legislation Amendment Act 2004 A2004-13 sch 2 pt 2.7

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 2 pt 2.7 commenced 1 September 2004 (s 2 and see Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 1 pt 1.8, sch 2 pt 2.26

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 1 pt 1.8, sch 2 pt 2.26 commenced 9 April 2004 (s 2 (1))

Discrimination Amendment Act 2004 A2004-51

notified LR 11 August 2004
s 1, s 2 commenced 11 August 2004 (LA s 75 (1))
remainder commenced 12 August 2004 (s 2)

Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.22

notified LR 2 September 2004
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))
sch 1 pt 1.22 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

Endnotes

4 Amendment history

Human Rights Commission Legislation Amendment Act 2005 A2005-41 sch 1 pt 1.2

notified LR 1 September 2005

s 1, s 2 commenced 1 September 2005 (LA s 75 (1))

sch 1 pt 1.2 commences on the day the Human Rights Commission
Act 2005 A2005-40 commences (s 2 (2))

Note default commencement for A2005-40 under LA s 79:
1 March 2006

Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.8 (as am by A2005-60 pt 1.13)

notified LR 26 October 2005

s 1, s 2 commenced 26 October 2005 (LA s 75 (1))

sch 1 pt 1.8 commences on the day the Human Rights Commission
Act 2005 A2005-40 commences (s 2 (2) (as am by A2005-60
amdt 1.54))

Note default commencement for A2005-40 under LA s 79:
1 March 2006

Justice and Community Safety Legislation Amendment Act 2005 (No 4) A2005-60 sch 1 pt 1.13

notified LR 1 December 2005

s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))

sch 1 pt 1.13 commenced 22 December 2005 (s 2 (4))

Note This Act only amends the Criminal Code (Administration of
Justice Offences) Amendment Act 2005 A2005-53.

4 Amendment history

Title

title am A2003-41 amdt 3.22

Name of Act

s 1 sub A2003-41 amdt 3.23

Dictionary

s 2 om 2001 No 44 amdt 1.1123
ins A2003-41 amdt 3.33

Notes

s 3 orig s 3 am A2003-41 amdt 3.206
renum as s 4
ins A2003-41 amdt 3.33

Objects

s 4 orig s 4 defs reloc to dict A2003-41 amdt 3.32
om A2003-41 amdt 3.33
def *de facto spouse* om A2003-15 s 4
def *impairment* sub A2003-15 s 5
om A2003-41 amdt 3.28
def *marital status* om A2003-15 s 6
def *near relative* om A2003-15 s 6
(prev s 3) renum A2003-41 amdt 3.24

Meaning of doing an act

s 4A ins A2002-41 amdt 3.34

Meaning of complainant and respondent

s 5 sub A2003-41 amdt 3.35
om A2005-41 amdt 1.3

Meaning of disability

s 5AA hdg am A2003-41 amdt 3.36
s 5AA ins A2003-15 s 9
am A2003-41 amdts 3.37-3.39

Meaning of potential pregnancy

s 5A ins 2002 No 19 s 5
am A2003-41 amdt 3.40

MLAs as employers

s 6 om 1993 No 44 sch 2
ins 1995 No 9 s 4
sub A2003-41 amdt 3.41

Offences against Act—application of Criminal Code etc

s 6A ins A2004-2 amdt 2.4
am A2005-41 amdt 1.4

Grounds

s 7 am 1993 No 25 s 4; 1994 No 1 s 4; 1994 No 11 s 4; 1996
No 67 s 5; 1999 No 60 s 4; 2000 No 48 s 24; A2003-15 s 10;
pars renum R11 LA (see A2003-15 s 11); A2003-41
amdt 3.42, amdt 3.43, amdt 3.206

What constitutes discrimination

s 8 am A2003-41 amdt 3.44, amdt 3.206

Disability—guide-dogs etc

s 9 hdg am A2003-41 amdt 3.207
s 9 am 1996 No 67 s 5; A2003-41 amdts 3.45-3.47, amdt 3.206,
amdt 3.207

Applicants and employees

s 10 am A2003-41 amdt 3.48

Endnotes

4 Amendment history

Employees—religious practice

s 11 am A2003-41 amdt 3.206

Commission agents

s 12 am A2003-41 amdt 3.49

Partnerships

s 14 am A2003-41 amdt 3.50, amdt 3.206

Professional or trade organisations

s 15 am 1993 No 25 s 5; A2003-41 amdt 3.51, amdt 3.52

Qualifying bodies

s 16 am A2003-41 amdt 3.53, amdt 3.54

Education

s 18 am A2003-41 amdt 3.55, amdt 3.56

Access to premises

s 19 am A2003-41 amdts 3.57-3.62

Goods, services and facilities

s 20 am A2003-41 amdt 3.63, amdt 3.64

Clubs

s 22 am A2003-41 amdts 3.65-3.67

Domestic duties

s 24 sub A2003-41 amdt 3.68

Residential care of children

s 25 sub A2003-41 amdt 3.68

Adoption

s 25A ins 1994 No 1 s 5
am 1999 No 64 sch 2; A2003-41 amdt 3.69, amdt 3.206

Domestic accommodation etc

s 26 am A2003-15 s 12, s 13; A2003-41 amdt 3.206

Preselection by employment agencies

s 26A ins 1996 No 67 s 6
sub A2003-41 amdt 3.70

Measures intended to achieve equality

s 27 am 1999 No 83 s 4; A2003-41 amdt 3.71, amdt 3.206
sub A2004-51 s 4

Insurance

s 28 sub A2003-41 amdt 3.72

Superannuation

s 29 am 1994 No 1 s 6; A2003-41 amdts 3.73-3.77, amdt 3.209

Acts done under statutory authority etc

s 30 am 1996 No 67 s 7; 2001 No 44 amdt 1.1124; A2003-41
amdt 3.78
(1) (a), (b), (4) exp on day stated in declaration (s 30 (2), (4))

Voluntary bodies

s 31 am 1996 No 67 s 8
sub A2003-41 amdt 3.79

Religious bodies

s 32 am 2000 No 2 sch; A2003-41 amdt 3.80, amdt 3.206

Educational institutions conducted for religious purposes

s 33 am A2003-41 amdts 3.81-3.85

Exceptions about sex, relationship status, pregnancy or breastfeeding

div 4.2 hdg (prev pt 4 div 2 hdg) am 1999 No 60 s 5
renum R6 LA
sub A2003-15 s 14

Genuine occupational qualifications—sex

s 34 hdg sub A2003-41 amdt 3.86
s 34 am A2003-41 amdt 3.87, amdt 3.88, amdt 3.206, amdt 3.209

Employment of couple

s 35 sub A2003-15 s 15

Educational institutions for members of one sex

s 36 am A2003-41 amdts 3.89-3.91

Pregnancy, childbirth or breastfeeding

s 37 am 1999 No 60 s 6
sub A2003-41 amdt 3.92

Services for members of one sex

s 38 am A2003-41 amdt 3.93

Accommodation provided for employees, contract workers or students

s 39 am 1999 No 60 s 7; A2003-15 s 16; A2003-41 amdt 3.94,
amdt 3.95, amdt 3.206

Clubs for members of one sex etc

s 40 am A2003-41 amdts 3.96-3.100, amdt 3.206, amdt 3.209

Sport

s 41 am A2003-41 amdt 3.101, amdt 3.206

Genuine occupational qualifications—race

s 42 hdg sub A2003-41 amdt 3.102
s 42 am A2003-41 amdt 3.103, amdt 3.104, amdt 3.206,
amdt 3.209

Endnotes

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Clubs for members of one race etc

s 43 am A2003-41 amdt 3.105

Religious workers

s 44 am A2003-41 amdt 3.106

Political workers etc

s 45 am A2003-41 amdt 3.107

Religious educational institutions

s 46 am A2003-41 amdts 3.108-3.110

Exceptions relating to disability

div 4.5 hdg am A2003-41 amdt 3.207

Unjustifiable hardship

s 47 sub A2003-41 amdt 3.111

Genuine occupational qualifications—disability

s 48 hdg sub A2003-41 amdt 3.112

s 48 am A2003-41 amdt 3.112, amdt 3.113, amdt 3.207

Work related discrimination

s 49 am A2003-15 s 17, s 18; A2003-41 amdt 3.114, amdt 3.115, amdt 3.206, amdt 3.207

Discrimination by qualifying bodies etc

s 50 am A2003-15 s 19, s 20; A2003-41 amdt 3.116, amdt 3.207

Discrimination by educational institutions

s 51 am A2003-41 amdts 3.117-3.121, amdt 3.207, amdt 3.209

Discrimination relating to access to premises

s 52 am 1998 No 52 sch; 2001 No 44 amdt 1.1125; A2003-41 amdt 3.122, amdt 3.207; A2004-13 amdt 2.20

Discrimination in the provision of goods and services

s 53 am 1996 No 67 s 9
sub A2003-41 amdt 3.123

Discrimination relating to accommodation

s 54 am A2003-41 amdt 3.124, amdt 3.207

Discrimination by clubs

s 55 am A2003-41 amdts 3.125-3.127, amdt 3.206, amdt 3.207

Public health

s 56 am A2003-41 amdt 3.128, amdt 3.207

Sport

s 57 am A2003-41 amdt 3.128, amdt 3.129, amdt 3.206, amdt 3.207

Exceptions relating to age

div 4.6 hdg (prev pt 4 div 6 hdg) ins 1994 No 1 s 7
renum R6 LA

Genuine occupational qualifications—age

s 57A hdg sub A2003-41 amdt 3.130
s 57A ins 1994 No 1 s 7
am A2003-41 amdt 3.130, amdt 3.131

Youth wages

s 57B ins 1994 No 1 s 7
am A2003-41 amdt 3.132

Employment and work—health and safety

s 57C ins 1994 No 1 s 7
sub A2003-41 amdt 3.133

Compulsory retirement—2-year exemption

s 57D ins 1994 No 1 s 7
(1) exp 4 March 1996 (s 57D (2))
om R4 LRA

Education—minimum-age admissions

s 57E ins 1994 No 1 s 7
am A2003-41 amdts 3.134-3.136, amdt 3.209

Education—senior secondary colleges (until 1 January 1996)

s 57F ins 1994 No 1 s 7
(1) exp 1 January 1996 (s 57F (2))
om R4 LRA

Legal capacity

s 57G ins 1994 No 1 s 7
sub A2003-41 amdt 3.137

Benefits and concessions

s 57H ins 1994 No 1 s 7
sub A2003-41 amdt 3.138

Goods, services and facilities—health and safety

s 57J ins 1994 No 1 s 7
am A2003-41 amdt 3.139, amdt 3.140, amdt 3.209

Recreational tours and accommodation

s 57K ins 1994 No 1 s 7
am A2003-41 amdt 3.141

Clubs

s 57L ins 1994 No 1 s 7
sub A2003-41 amdt 3.142

Endnotes

4 Amendment history

Sport

s 57M ins 1994 No 1 s 7
sub A2003-41 amdt 3.143

Exceptions relating to profession, trade, occupation or calling

div 4.7 hdg (prev pt 4 div 6 hdg) ins 1994 No 11 s 5
renum R6 LA

Discrimination in profession, trade, occupation or calling

s 57N ins 1994 No 11 s 5
am A2003-41 amdt 3.144, amdt 3.209

Meaning of sexual harassment for pt 5

s 58 sub A2003-41 amdt 3.145

Employment etc

s 59 am 1995 No 9 s 5; A2003-41 amdt 3.206

Racial, sexuality and HIV/AIDS vilification

pt 6 hdg sub A2004-2 amdt 2.5

Definitions for pt 6

s 65 hdg sub A2003-41 amdt 3.146; A2004-2 amdt 2.5
s 65 am A2003-41 amdt 3.147
def **HIV/AIDS status** ins A2004-2 amdt 2.6

Unlawful vilification—race, sexuality etc

s 66 am A2003-41 amdt 3.148, amdt 3.206
sub A2004-2 amdt 2.7

Serious vilification offence—race, sexuality etc

s 67 am 1998 No 54 sch
sub A2004-2 amdt 2.7

Victimisation

s 68 am 2000 No 2 sch; A2003-41 amdts 3.149-3.151
sub [A2005-41 amdt 1.5](#)

General principles about unlawful acts

pt 8 hdg sub 1996 No 67 s 10; [A2005-41 amdt 1.6](#)

Preliminary

div 8.1 hdg [om A2005-41 amdt 1.6](#)

Onus of establishing exception etc

s 70 hdg sub A2003-41 amdt 3.152
s 70 sub 1996 No 67 s 10; [A2005-41 amdt 1.6](#)

Unlawful act not an offence

s 71 am 1994 No 60 sch 1
sub 1996 No 67 s 10
am A2003-41 amdt 3.153
sub [A2005-41 amdt 1.6](#)

Making, investigation, conciliation and referral of complaints

div 8.2 hdg [om A2005-41 amdt 1.6](#)

Unlawful act no basis for civil action

s 72 sub 1996 No 67 s 10
am 2001 No 44 amdt 1.1126, amdt 1.1127; A2003-41
amdt 3.154, amdt 3.206
sub A2005-41 amdt 1.6

Aiding etc unlawful acts

s 73 sub 1996 No 67 s 10
am A2003-41 amdt 3.155
sub A2005-41 amdt 1.6

Hearings before discrimination tribunal

div 8.3 hdg [om A2005-41 amdt 1.6](#)

Granting of relief by discrimination tribunal

div 8.4 hdg [om A2005-41 amdt 1.6](#)

Enforcement of orders and decisions of discrimination tribunal

div 8.5 hdg [om A2005-41 amdt 1.6](#)

Other powers of commissioner and tribunal

div 8.6 hdg [om A2005-41 amdt 1.6](#)

Miscellaneous

div 8.7 hdg [om A2005-41 amdt 1.6](#)

Hearing of complaints

pt 9 hdg [orig pt 9 hdg renum as pt 10 hdg](#)
[ins A2005-41 amdt 1.6](#)

Preliminary

div 9.1 hdg [ins A2005-41 amdt 1.6](#)

Meaning of party for pt 9

s 74 sub 1996 No 67 s 10; A2003-41 amdt 3.156; [A2005-41](#)
[amdt 1.6](#)

Reliance on exceptions and exemptions

s 75 sub 1996 No 67 s 10
am A2003-41 amdt 3.157, amdt 3.208
sub A2005-41 amdt 1.6

Complaints about unlawful discrimination

s 76 sub 1996 No 67 s 10
am A2003-41 amdt 3.208, amdt 3.209
sub A2005-41 amdt 1.6

Hearings by tribunal

div 9.2 hdg [ins A2005-41 amdt 1.6](#)

Endnotes

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Hearings by tribunal

s 77 sub 1996 No 67 s 10; [A2005-41 amdt 1.6](#)

Late application in exceptional circumstances

s 78 sub 1996 No 67 s 10
am A2003-41 amdt 3.206
[sub A2005-41 amdt 1.6](#)

Application to strike out complaint

s 79 hdg am A2003-41 amdt 3.158
s 79 sub 1996 No 67 s 10
am A2003-41 amdt 3.159
[sub A2005-41 amdt 1.6](#)

Tribunal procedure

div 9.3 hdg [ins A2005-41 amdt 1.6](#)

Tribunal to decide own procedures

s 80 am 1994 No 103 s 4
sub 1996 No 67 s 10
am A2003-41 amdt 3.160, amdt 3.208, amdt 3.209
[sub A2005-41 amdt 1.6](#)

Hearings may be closed

s 81 sub 1996 No 67 s 10
am A2003-41 amdt 3.161, amdt 3.162, amdt 3.208,
amdt 3.209
[sub A2005-41 amdt 1.6](#)

Sittings

s 82 sub 1996 No 67 s 10
am A2003-41 amdts 3.163-3.165, amdt 3.208
[sub A2005-41 amdt 1.6](#)

Joining parties

s 83 sub 1996 No 67 s 10
am A2003-41 amdt 3.166, amdt 3.208, amdt 3.209
[sub A2005-41 amdt 1.6](#)

Appearances

s 84 sub 1996 No 67 s 10; A2003-41 amdt 3.167; [A2005-41 amdt 1.6](#)

Representation

s 85 sub 1996 No 67 s 10; A2003-15 s 21; [A2005-41 amdt 1.6](#)

Witness subpoenas

s 86 sub 1996 No 67 s 10
am A2003-41 amdt 3.208, amdt 3.209
[sub A2005-41 amdt 1.6](#)
[am A2005-53 amdt 1.42](#)

Expenses of witnesses etc

s 87 sub 1996 No 67 s 10
am A2003-41 amdt 3.208, amdt 3.209
sub A2005-41 amdt 1.6

Failure to attend or produce document

s 88 am 1994 No 60 sch 1
sub 1996 No 67 s 10
am A2003-41 amdt 3.208, amdt 3.209
sub A2005-41 amdt 1.6
om A2005-53 amdt 1.43

Appearance by audiovisual or audio links

s 89 am 1994 No 60 sch 1
sub 1996 No 67 s 10; A2005-41 amdt 1.6

Taking evidence

s 90 am 1994 No 60 sch 1
sub 1996 No 67 s 10
am A2003-41 amdt 3.208
sub A2005-41 amdt 1.6; A2005-53 amdt 1.44

Refusing to take oath or make affirmation

s 91 sub 1996 No 67 s 10
am A2003-41 amdt 3.168, amdt 3.208
sub A2005-41 amdt 1.6
om A2005-53 amdt 1.44

Requiring answer or document

s 92 sub 1996 No 67 s 10
am 2001 No 44 amdt 1.1128, amdt 1.1129; A2003-41
amdt 3.169
sub A2005-41 amdt 1.6
om A2005-53 amdt 1.44

Prohibiting or controlling publication

s 93 am 1994 No 60 sch 1
sub 1996 No 67 s 10
am 2000 No 2 sch; A2003-41 amdt 3.170, amdt 3.208
sub A2005-41 amdt 1.6

Privileges against selfincrimination and exposure to civil penalty

s 94 sub 1996 No 67 s 10; A2005-41 amdt 1.6
am A2005-53 amdt 1.45, amdt 1.46

Protection of members of tribunal etc

s 95 om 1994 No 60 sch 1
ins 1996 No 67 s 10
am A2003-41 amdt 3.171
sub A2005-41 amdt 1.6

Endnotes

4 Amendment history

Contempt of tribunal

s 96 am 1995 No 46 sch
sub 1996 No 67 s 10
am A2003-41 amdt 3.208
sub A2005-41 amdt 1.6; A2005-53 amdt 1.47

Application of Criminal Code, ch 7

s 96A ins 1999 No 22 s 12
am 2000 No 17 sch 1; A2003-41 amdt 3.208, amdt 3.209;
A2003-48 amdt 2.6
om A2005-41 amdt 1.6
ins A2005-53 amdt 1.47

Granting of relief by tribunal

div 9.4 hdg ins A2005-41 amdt 1.6

Interim orders—complaint before HRC

s 97 sub 1996 No 67 s 10; A2005-41 amdt 1.6

Interim orders—complaint before tribunal

s 98 sub 1996 No 67 s 10
am 1998 No 54 sch
sub A2005-41 amdt 1.6

Decisions following hearing

s 99 sub 1996 No 67 s 10
am 2001 No 44 amdts 1.1130-1.1132; A2003-41 amdt 3.208,
amdt 3.209
sub A2005-41 amdt 1.6
(9), (10) exp 1 month after commencement (s 99 (10))

Enforcement of orders and decisions of tribunal

div 9.5 hdg ins A2005-41 amdt 1.6

Failure to comply with tribunal order

s 100 sub 1996 No 67 s 10
am 2001 No 44 amdts 1.1133-1.1135; A2003-41 amdt 3.208,
amdt 3.209
sub A2005-41 amdt 1.6

Enforcement of tribunal orders

s 101 sub 1996 No 67 s 10
am A2003-41 amdt 3.208, amdt 3.209
sub A2005-41 amdt 1.6

Miscellaneous

div 9.6 hdg ins A2005-41 amdt 1.6

Statement of reasons

s 102 sub 1996 No 67 s 10
am A2003-41 amdt 3.172, amdt 3.208, amdt 3.209
sub A2005-41 amdt 1.6

Referral of questions of law to Supreme Court

s 103 sub 1996 No 67 s 10
am 1998 No 54 sch
sub A2005-41 amdt 1.6

Appeals from tribunal decisions

s 104 sub 1996 No 67 s 10; A2005-41 amdt 1.6
(5), (6) exp 10 January 2006 (s 104 (6))

Effect of Division

s 105 sub 1996 No 67 s 10
am A2003-41 amdt 3.173
om A2005-41 amdt 1.6

Joining parties

s 106 sub 1996 No 67 s 10
am A2003-41 amdt 3.174, amdt 3.209
om A2005-41 amdt 1.6

Requiring answer or document

s 107 sub 1996 No 67 s 10
am 1998 No 54 sch
om A2005-41 amdt 1.6

Prohibiting or controlling publication

s 108 sub 1996 No 67 s 10
am 2001 No 44 amdts 1.1136-1.1138; A2003-41 amdt 3.175,
amdt 3.208
om A2005-41 amdt 1.6

Review of directions by commissioner

s 108A ins 1996 No 67 s 10
om A2005-41 amdt 1.6

Prohibited publications

s 108B ins 1996 No 67 s 10
am 1998 No 54 sch
om A2005-41 amdt 1.6

Obtaining information and documents

s 108C ins 1996 No 67 s 10
am A2003-41 amdt 3.176, amdt 3.208, amdt 3.209
om A2005-41 amdt 1.6

Endnotes

4 Amendment history

Statement of reasons

s 108D ins 1996 No 67 s 10
am A2003-41 amdt 3.208
sub A2004-60 amdt 1.141
om A2005-41 amdt 1.6

Referral of questions of law to Supreme Court

s 108DA ins A2004-60 amdt 1.141
om A2005-41 amdt 1.6

Appeals from tribunal decisions

s 108DB ins A2004-60 amdt 1.141
(5), (6) exp 10 January 2006 (s 108DB (6))
om A2005-41 amdt 1.6

Selfincrimination etc

s 108E ins 1996 No 67 s 10
am 2002 No 11 amdts 2.31-2.33; 2002 No 51 amdt 1.18;
A2004-15 amdt 2.54
om A2005-41 amdt 1.6

Unlawful act not an offence

s 108F ins 1996 No 67 s 10
om A2005-41 amdt 1.6

Unlawful act no basis for civil action

s 108G ins 1996 No 67 s 10
am A2003-41 amdt 3.177
om A2005-41 amdt 1.6

Aiding etc unlawful acts

s 108H ins 1996 No 67 s 10
am A2003-41 amdt 3.178
om A2005-41 amdt 1.6

Acts and omissions of representatives

s 108I ins 1996 No 67 s 10
sub A2004-15 amdt 1.9
om A2005-41 amdt 1.6

Protection from civil proceedings

s 108J ins 1996 No 67 s 10
om A2005-41 amdt 1.6

Expenses of witnesses etc

s 108K ins 1996 No 67 s 10
am A2003-41 amdt 3.179
om A2005-41 amdt 1.6

Failure to attend before commissioner or tribunal

s 108L ins 1996 No 67 s 10
am 1998 No 54 sch
om A2005-41 amdt 1.6

Failure to give information etc

s 108M ins 1996 No 67 s 10
am 1998 No 54 sch
om A2005-41 amdt 1.6

Disrupting proceedings before commissioner or tribunal

s 108N hdg sub A2004-15 amdt 2.55
s 108N ins 1996 No 67 s 10
am 1998 No 54 sch
am 2000 No 2 sch; A2004-15 amdt 2.56
om A2005-41 amdt 1.6

False information

s 108O ins 1996 No 67 s 10
am 1998 No 54 sch
om A2004-15 amdt 2.57

Discrimination tribunal

pt 9A hdg renum as pt 11 hdg

Establishment, functions and powers

div 9A.1 hdg renum as div 11.1 hdg

Tribunal members

div 9A.2 hdg renum as div 11.2 hdg

Registrar and deputy registrars

div 9A.3 hdg renum as div 11.3 hdg

Other provisions

div 9A.4 hdg renum as div 11.4 hdg

Exemptions

pt 10 hdg orig pt 10 hdg om A2005-41 amdt 1.12
(prev pt 9 hdg) renum A2005-41 amdt 1.8

Grant of exemptions

s 109 am 1994 No 60 sch 1
am 2001 No 44 amdts 1.1139-1.1142; A2003-41 amdt 3.208,
amdt 3.209; A2005-41 amdt 1.7

Establishment

s 110 am A2005-41 amdt 1.7

Establishment

s 110A renum as s 111

Endnotes

4 Amendment history

Functions and powers

s 110B ins 1996 No 67 s 11
sub 2000 No 2 sch
om A2003-41 amdt 3.181

Membership of tribunal

s 110C [renum as s 112](#)

Eligibility for appointment

s 110D [renum as s 113](#)

Conditions of appointment generally

s 110E [renum as s 114](#)

Matters to be included in instrument of appointment etc

s 110F [renum as s 115](#)

Duration of appointment

s 110G [renum as s 116](#)

Registrar and deputy registrars

s 110H [renum as s 117](#)

Constitution of tribunal

s 110I [renum as s 118](#)

Role of president

s 110J [renum as s 119](#)

Approved forms—registrar

s 110K [renum as s 120](#)

Discrimination tribunal

pt 11 hdg [orig pt 11 hdg renum as pt 12 hdg](#)
[\(prev pt 9A hdg\) ins 1996 No 67 s 11](#)
[renum A2005-41 amdt 1.9](#)

Establishment, functions and powers

[div 11.1 hdg](#) (prev pt 9A div 1 hdg and then div 9A.1 hdg) ins 2000 No 2
sch
renum R6 LA; [A2005-41 amdt 1.10](#)

Establishment

s 111 hdg [orig s 111 hdg sub A2003-41 amdt 3.191](#)
[om A2005-41 amdt 1.12](#)
s 111 [orig s 111 am 2000 No 2 sch; A2003-41 amdt 3.192-3.194](#)
s 111 (a)-(h) [renum as s 112](#)
[prev s 111 ins A2003-41 amdt 3.191](#)
[om A2005-41 amdt 1.12](#)
[\(prev s 110A\) ins 1996 No 67 s 11](#)
am A2003-41 amdt 3.180
[renum A2005-41 amdt 1.11](#)

Tribunal members

div 11.2 hdg (prev pt 9A div 2 hdg and then div 9A.2 hdg) ins 2000 No 2 sch
renum R6 LA; A2005-41 amdt 1.10

Membership of tribunal

s 112 hdg orig s 112 hdg sub A2003-41 amdt 3.191
om A2005-41 amdt 1.12
s 112 orig s 112 om A2003-41 amdt 3.195
prev s 112 (prev s 111 (a)-(h)) renum A2003-41 amdt 3.191
am A2003-41 amdts 3.192-3.194; A2004-5 amdt 2.5
om A2005-41 amdt 1.12
(prev s 110C) ins 1996 No 67 s 11
sub 2000 No 2 sch
am A2003-41 amdt 3.182
renum A2005-41 amdt 1.11

Eligibility for appointment

s 113 orig s 113 om 1997 No 41 sch 1
prev s 113 ins A2003-41 amdt 3.195
om A2005-41 amdt 1.12
(prev s 110D) ins 1996 No 67 s 11
sub 2000 No 2 sch
renum A2005-41 amdt 1.11

Conditions of appointment generally

s 114 hdg (prev s 110E hdg) sub A2003-41 amdt 3.183
renum A2005-41 amdt 1.11
s 114 orig s 114 sub A2003-41 amdt 3.195
om A2005-41 amdt 1.12
(prev s 110E) ins 1996 No 67 s 11
sub 2000 No 2 sch
am A2003-41 amdt 3.184
renum A2005-41 amdt 1.11

Matters to be included in instrument of appointment etc

s 115 orig s 115 sub A2003-41 amdt 3.196
om A2005-41 amdt 1.12
(prev s 110F) ins 1996 No 67 s 11
sub 1999 No 66 sch 3
sub 2000 No 2 sch
am A2003-41 amdt 3.185, amdt 3.186
renum A2005-41 amdt 1.11

Endnotes

4 Amendment history

Duration of appointment

s 116 [orig s 116](#) sub A2003-41 amdt 3.196
[om A2005-41 amdt 1.12](#)
[\(prev s 110G\)](#) ins 2000 No 2 sch
am A2003-41 amdt 3.187
[renum A2005-41 amdt 1.11](#)

Registrar and deputy registrars

[div 11.3 hdg](#) (prev pt 9A div 3 hdg and then div 9A.3 hdg) ins 2000 No 2
sch
renum R6 LA; [A2005-41 amdt 1.10](#)

Registrar and deputy registrars

s 117 [orig s 117](#) om A2003-41 amdt 3.196
[\(prev s 110H\)](#) ins 2000 No 2 sch
am A2003-41 amdt 3.188, amdt 3.189
[renum A2005-41 amdt 1.11](#)

Other provisions

[div 11.4 hdg](#) (prev pt 9A div 4 hdg and then div 9A.4 hdg) ins 2000 No 2
sch
renum R6 LA; [A2005-41 amdt 1.10](#)

Constitution of tribunal

s 118 [orig s 118](#) sub 1994 No 38 sch 1 pt 28
am A2003-41 amdt 3.208
[om A2005-41 amdt 1.12](#)
[\(prev s 110I\)](#) ins 2000 No 2 sch
[renum A2005-41 amdt 1.11](#)

Role of president

s 119 [orig s 119](#) om 1995 No 25 sch
[prev s 119](#) ins 1996 No 67 s 12
am 2000 No 2 s 3 sch
[om A2005-41 amdt 1.12](#)
[\(prev s 110J\)](#) ins 2000 No 2 sch
[renum A2005-41 amdt 1.11](#)

Approved forms—registrar

s 120 [orig s 120](#) am 1996 No 67 s 13
sub A2003-41 amdt 3.197
[om A2005-41 amdt 1.12](#)
[\(prev s 110K\)](#) ins 2001 No 44 amdt 1.1143
am A2003-41 amdt 3.190
[renum A2005-41 amdt 1.11](#)

Miscellaneous

[pt 12 hdg](#) [\(prev pt 11 hdg\)](#) renum A2005-41 amdt 1.13

Secrecy

s 121 sub 1996 No 67 s 14
 am 2000 No 2 s 3 sch; A2003-41 amdt 3.198, amdt 3.199
 sub A2005-41 amdt 1.13
(6), (7) exp 1 month after commencement (s 121 (7))

Relationship to other laws

s 122 am 1996 No 67 s 15
 am 1998 No 54 s 3 sch
 am 2000 No 2 s 3 sch; A2003-41 amdt 3.200, amdt 3.201,
 amdt 3.209
 sub A2005-41 amdt 1.13

Regulation-making power

s 123 om 1997 No 41 sch 1
 ins A2005-41 amdt 1.13

Intergovernmental arrangements

s 124 am 2000 No 2 s 3 sch; 2001 No 44 amdt 1.1144; A2003-41
 amdt 3.202, amdt 3.208
 om A2005-41 amdt 1.13

Exercise of functions under intergovernmental arrangement

s 125 hdg am 2000 No 2 s 3 sch
 s 125 am A2003-41 amdt 3.203
 om A2005-41 amdt 1.13

Approved forms—commissioner

s 126A ins 2001 No 44 amdt 1.1145
 am A2003-41 amdt 3.204
 om A2005-41 amdt 1.13

Regulation-making power

s 127 sub 2000 No 2 s 3 sch
 am 2001 No 44 amdt 1.1146, amdt 1.1147; A2003-41
 amdt 3.206
 om A2005-41 amdt 1.13

Transitional provisions about tribunal members

s 128 ins 2000 No 2 sch
 exp 9 June 2000 (s 128 (3))

Dictionary

dict ins A2003-41 amdt 3.205
 def **accommodation** reloc from s 4 A2003-41 amdt 3.32
 def **carer** reloc from s 4 A2003-41 amdt 3.32
 def **club** reloc from s 4 A2003-41 amdt 3.32
 def **commission agent** reloc from s 4 A2003-41 amdt 3.32
 def **commissioner** sub A2003-41 amdt 3.25
 reloc from s 4 A2003-41 amdt 3.32
 om A2005-41 amdt 1.14

Endnotes

4 Amendment history

- def **committee of management** am A2003-41 amdt 3.206
reloc from s 4 A2003-41 amdt 3.32
- def **Commonwealth commission** reloc from s 4 A2003-41
amdt 3.32
om A2005-41 amdt 1.14
- def **complainant** ins A2003-41 amdt 3.205
sub A2005-41 amdt 1.15
- def **complaint** reloc from s 4 A2003-41 amdt 3.32
sub A2005-41 amdt 1.16
- def **complaint about unlawful discrimination** ins A2005-41
amdt 1.17
- def **compulsory conference** reloc from s 4 A2003-41
amdt 3.32
- def **contract worker** sub A2003-41 amdt 3.26
reloc from s 4 A2003-41 amdt 3.32
- def **deputy president** ins 2000 No 2 sch
reloc from s 4 A2003-41 amdt 3.32
- def **disability** ins A2003-41 amdt 3.27
reloc from s 4 A2003-41 amdt 3.32
- def **discriminate** reloc from s 4 A2003-41 amdt 3.32
- def **doing** ins A2003-41 amdt 3.205
- def **educational authority** reloc from s 4 A2003-41 amdt 3.32
- def **educational institution** reloc from s 4 A2003-41
amdt 3.32
- def **employer** reloc from s 4 A2003-41 amdt 3.32
- def **employment** reloc from s 4 A2003-41 amdt 3.32
- def **employment agency** am A2003-41 amdt 3.206
reloc from s 4 A2003-41 amdt 3.32
- def **HIV/AIDS status** ins A2004-2 amdt 2.8
- def **HRC** ins A2005-41 amdt 1.17
- def **HRC Act** ins A2005-41 amdt 1.17
- def **investigation** reloc from s 4 A2003-41 amdt 3.32
om A2005-41 amdt 1.18
- def **man** reloc from s 4 A2003-41 amdt 3.32
- def **member** ins 2000 No 2 sch
reloc from s 4 A2003-41 amdt 3.32
- def **party** ins A2003-41 amdt 3.205
sub A2005-41 amdt 1.19
- def **potential pregnancy** ins 2002 No 19 s 4
reloc from s 4 A2003-41 amdt 3.32
- def **pregnancy** ins 2002 No 19 s 4
reloc from s 4 A2003-41 amdt 3.32
- def **premises** reloc from s 4 A2003-41 amdt 3.32
- def **president** ins 2000 No 2 sch
reloc from s 4 A2003-41 amdt 3.32
- def **principal** sub A2003-41 amdt 3.29
reloc from s 4 A2003-41 amdt 3.32

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- def **public act** ins A2003-41 amdt 3.205
sub A2004-2 amdt 2.9
- def **race** reloc from s 4 A2003-41 amdt 3.32
- def **relationship status** ins A2003-15 s 7
reloc from s 4 A2003-41 amdt 3.32
- def **relative** sub A2003-15 s 8
reloc from s 4 A2003-41 amdt 3.32
- def **relevant class of persons** sub A2003-41 amdt 3.30
reloc from s 4 A2003-41 amdt 3.32
- def **representative complaint** am 1996 No 67 s 4
reloc from s 4 A2003-41 amdt 3.32
om A2005-41 amdt 1.20
- def **respondent** ins A2003-41 amdt 3.205
sub A2005-41 amdt 1.21
- def **services** am A2003-41 amdt 3.31
reloc from s 4 A2003-41 amdt 3.32
- def **sexual harassment** ins A2003-41 amdt 3.205
- def **sexuality** reloc from s 4 A2003-41 amdt 3.32
- def **staff** reloc from s 4 A2003-41 amdt 3.32
om A2005-41 amdt 1.22
- def **Territory employee** sub 1994 No 38 sch 1 pt 28
reloc from s 4 A2003-41 amdt 3.32
- def **transsexual** reloc from s 4 A2003-41 amdt 3.32
- def **tribunal** ins 1996 No 67 s 4
reloc from s 4 A2003-41 amdt 3.32
sub A2005-41 amdt 1.23
- def **unpaid worker** reloc from s 4 A2003-41 amdt 3.32
- def **voluntary body** reloc from s 4 A2003-41 amdt 3.32
- def **woman** reloc from s 4 A2003-41 amdt 3.32

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1994 No 11	31 May 1994
2	Act 1995 No 46	1 January 1996
3	Act 1996 No 67	31 January 1997
4	Act 1998 No 54	31 January 1999
5	Act 2000 No 17	15 June 2000
6	Act 2001 No 44	12 September 2001
7	Act 2002 No 11	31 May 2002
8	Act 2002 No 19	14 June 2002
9	Act 2002 No 19	11 July 2002
10	Act 2002 No 51	1 January 2003
10 (RI)	Act 2002 No 51 ‡	10 February 2003
11	A2003-15	28 March 2003
12	A2003-41	9 October 2003
13	<u>A2004-5</u>	22 March 2004
14	A2004-15	9 April 2004
15	A2004-15	30 April 2004
16	A2004-15	1 July 2004
17	A2004-51	12 August 2004
18*	A2004-51	1 September 2004

Republication No	Amendments to	Republication date
19	A2004-60	10 January 2005

‡ includes retrospective amendments by A2002-49

6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

Human Rights Commission Legislation Amendment Act 2005 A2005-41 sch 1 pt 1.2

Part 1.2 Discrimination Act 1991

[1.3] Section 5

omit

[1.4] Section 6A, note 1

substitute

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

[1.5] Section 68

substitute

68 Victimisation

- (1) It is unlawful for a person (the *first person*) to subject someone else (the *other person*) to any detriment because—

72 Unlawful act no basis for civil action

This Act does not give a person any right of action in relation to the doing of an act that is unlawful under part 3, part 5, section 66 or part 7.

73 Aiding etc unlawful acts

A person who aids, abets, counsels or procures someone else to do an act that is unlawful under part 3, part 5, section 66 or part 7 is taken, for this Act, also to have done the act.

Part 9 Hearing of complaints**Division 9.1 Preliminary****74 Meaning of *party* for pt 9**

In this part:

party, in relation to the hearing of a complaint, means—

- (a) the complainant; and
- (b) the respondent; and
- (c) anyone joined by the tribunal under section 83.

75 Reliance on exceptions and exemptions

In considering whether an act is unlawful under part 3, part 5, section 66 or part 7, the tribunal need not consider any exception in part 4 or exemption in part 10, unless the tribunal has information suggesting the exception or exemption applies to the act.

76 Complaints about unlawful discrimination

For this Act, a complaint claiming that a person has done an act that is unlawful under part 3, part 5, section 66 or part 7 is a *complaint about unlawful discrimination*.

Note Complaints about unlawful discrimination are made under the HRC Act (see s 42).

Division 9.2 Hearings by tribunal

77 Hearings by tribunal

- (1) The tribunal is to hear the following matters:
 - (a) a complaint referred to it by HRC under the HRC Act, section 53;
 - (b) an application under section 78 for a complaint to be heard;
 - (c) a complaint in relation to which an application under section 78 is made if the application is granted;
 - (d) an application under section 79 to strike out a complaint;
 - (e) an application for an interim order under section 97 or section 98.
- (2) At least 7 days before a hearing mentioned in subsection (1) (d) and 14 days before any other hearing mentioned in subsection (1), the registrar must give written notice to the parties of the time, date and place of the hearing.
- (3) The tribunal must begin hearing a matter mentioned in subsection (1) (d) within 14 days after the day the application is made.

78 Late application in exceptional circumstances

- (1) This section applies if—

- (a) a complainant has been given a statement under the HRC Act, section 45 (2) (d), section 63 or section 81; and
 - (b) the complainant has not required the commission to refer the complaint to the tribunal within 60 days after the day the statement is given to the complainant.
- (2) The complainant may apply to the tribunal for the complaint to be heard by the tribunal.
- (3) The tribunal may grant the application only if satisfied that exceptional circumstances prevented the complainant from requiring the complaint to be referred to the tribunal within the 60 days.

79 Application to strike out complaint

The person against whom a complaint is made may, at any time after the complaint is referred to the tribunal and before the tribunal begins hearing the complaint (other than a time when the complaint is being conciliated under the HRC Act), apply to the tribunal to strike out the complaint on any of the following grounds:

- (a) the complaint is frivolous, vexatious or not made honestly;
- (b) the complaint lacks substance.

Division 9.3 Tribunal procedure

80 Tribunal to decide own procedures

The tribunal may decide its own procedure in relation to a particular matter in a hearing or a step in a proceeding if no procedure is prescribed under this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

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6 Uncommenced amendments

81 Hearings may be closed

The tribunal may, on application or on its own initiative, direct that a hearing or part of a hearing be closed to the public and give directions about the people who may be present.

82 Sittings

- (1) The tribunal may sit in the places in the ACT that the president decides.
- (2) However, the tribunal must 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.

83 Joining parties

If the tribunal considers a person ought to be joined as a party to the hearing of a complaint by the tribunal, the tribunal may, by written notice given to the person, join the person as a party.

84 Appearances

A party to a tribunal hearing may appear at the hearing.

85 Representation

- (1) A party is not entitled to be represented at a hearing unless the tribunal consents to the representation.
- (2) Subsection (1) does not prevent the representation of a party that is a body by a member, officer or employee of the party.
- (3) In this section:

party includes an unincorporated association.

86 Witness subpoenas

- (1) For the purposes of a tribunal hearing, the tribunal may subpoena a person to appear as a witness before it—

-
- (a) to give evidence; or
 - (b) to produce any document or other thing, stated in the subpoena, in the possession, custody or control of the person; or
 - (c) to give evidence and produce any document or other thing, stated in the subpoena, in the possession, custody or control of the person.
- (2) The tribunal may give a party leave to inspect a document or other thing produced under a subpoena.
 - (3) A person is taken to have complied with a subpoena under subsection (1) (b) if the person gives the document or other thing to the registrar before the date stated in the subpoena for the production of the document or other thing.
 - (4) A subpoena must be—
 - (a) in writing; and
 - (b) served on the person named in the subpoena.

87 Expenses of witnesses etc

- (1) This section applies to a person attending before the tribunal under a subpoena under section 86.
- (2) The person is entitled to be paid by the Territory for expenses reasonably incurred by the person for the attendance an amount authorised by the tribunal in accordance with the scale and conditions applying to people who attend as witnesses before the Magistrates Court.

Note For the amounts paid to witnesses in the Magistrates Court, see the *Magistrates Court (Civil Jurisdiction) Rules 2004*, s 269.

88 Failure to attend or produce document

- (1) A person commits an offence if—

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6 Uncommenced amendments

- (a) the person is required by a subpoena under section 86 to appear as a witness before the tribunal; and
- (b) the person—
 - (i) fails to appear as required by the subpoena; or
 - (ii) fails to continue to attend as reasonably required by the tribunal until excused from further attendance.

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

- (2) A person commits an offence if—
 - (a) the person is required by a subpoena under section 86 to produce a document or thing stated in the subpoena to the tribunal; and
 - (b) the person fails to produce the document or thing as required by the subpoena.

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

- (3) This section does not apply if the person has a reasonable excuse.

89 Appearance by audiovisual or audio links

- (1) This section applies if, in relation to a hearing or a part of a hearing (the *relevant hearing*), the tribunal has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 20 (Territory courts may take evidence and submissions from outside ACT) or section 32 (Use of link in proceedings).
- (2) A person may appear in the relevant hearing, and take part or give evidence, in accordance with the direction, if the person—
 - (a) is required or entitled to appear personally, whether as a party or as a witness; or
 - (b) is entitled to appear for someone else.

- (3) A person who appears in the relevant hearing under this section is taken to be before the tribunal.

90 Taking evidence

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 the person.

91 Refusing to take oath or make affirmation

- (1) A person must not fail to take an oath or make an affirmation when required to do so under section 90 (a).

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

- (2) This section does not apply if the person has a reasonable excuse.

92 Requiring answer or document

- (1) The tribunal may require a person appearing before the tribunal—

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

- (2) A person must not fail to comply with a requirement made of the person under subsection (1).

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

- (3) This section does not apply if the person has a reasonable excuse.

93 Prohibiting or controlling publication

- (1) This section applies to the following material (*protected material*):
 - (a) any evidence given before the tribunal;
 - (b) the contents of any document produced to the tribunal;
 - (c) any information that might allow a person who has appeared before the tribunal to be identified.
- (2) The tribunal may, in writing, direct that protected material must not be—
 - (a) published; or
 - (b) published except in the way, or to the people, stated by the tribunal.
- (3) A direction to a particular person must be given to the person.
- (4) A direction to people generally is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.
- (5) A direction takes effect—
 - (a) if it is given to a person—on the day it is given to the person; or
 - (b) if it is notified—on the day after the day it is notified; or
 - (c) in any case if a later date of effect is stated in the direction—on the later date.
- (6) A person commits an offence if—
 - (a) the person publishes anything; and

(b) the publication contravenes a direction under this section.

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

94 Privileges against selfincrimination and exposure to civil penalty

- (1) This section applies if—
- (a) a person is required by a subpoena under section 86 to produce a document or other thing; or
 - (b) a person is required under section 92 to answer a question or to produce a document or other thing.
- (2) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question.

Note The Legislation Act, s 171 deals with client legal privilege.

- (3) However, any information, document or other thing obtained, directly or indirectly, because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
- (a) an offence against this division; or
 - (b) any other offence in relation to the falsity of the document, other thing or answer.

95 Protection of members of tribunal etc

- (1) A member of the tribunal has, in the exercise of his or her functions as a member, the same protection and immunity as a judge.

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6 Uncommenced amendments

- (2) A lawyer appearing for a party to a hearing before the tribunal has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the Supreme Court.

Note Section 85 deals with the representation of parties at a hearing.

- (3) A person appearing as a witness before the tribunal—
- (a) has the same protection as a witness in a proceeding in the Supreme Court; and
- (b) in addition to the penalties provided by this Act, is subject to the same liabilities as a witness in a proceeding in the Supreme Court.

96 Contempt of tribunal etc

- (1) A person commits an offence if the person does something in the face of, or within the hearing of, the tribunal that would, if the tribunal were a court of record, be contempt of court.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) A person commits an offence if the person—
- (a) intentionally obstructs or hinders the tribunal in the exercise of its functions; or
- (b) intentionally causes a substantial disruption to a proceeding before the tribunal.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Division 9.4 Granting of relief by tribunal

97 Interim orders—complaint before HRC

- (1) If a complaint has been given to HRC under the *Human Rights Commission Act 2005* (the *HRC Act*) but has not been referred to

the tribunal by HRC, the complainant or respondent may apply to the tribunal for an interim order under this section.

Note If a form is approved under s 120 for an application, the form must be used.

- (2) If the tribunal is satisfied that an interim order under this section is necessary to preserve the rights of, or state of affairs between, the parties, the tribunal may make the interim order it considers appropriate.
- (3) An interim order remains in force until—
 - (a) the commission makes a decision—
 - (i) to refer the complaint for conciliation under the HRC Act, section 51; or
 - (ii) to close the complaint under the HRC Act, section 77; or
 - (b) the president of HRC makes a decision under the HRC Act, section 65 (1) (d) that the conciliation of the complaint is unlikely to be successful.
- (4) If a person against whom an interim order is made is not present when the order is made, the registrar must serve a copy of the order on the person as soon as practicable after the order is made.

98 Interim orders—complaint before tribunal

- (1) A party to a hearing before the tribunal may apply to the tribunal for an interim order under this section, at any time before or during the hearing.

Note If a form is approved under s 120 for an application, the form must be used.

- (2) If the tribunal is satisfied that an interim order under this section is necessary to preserve the rights of, or state of affairs between, the parties, the tribunal may make the interim order it considers appropriate.

Endnotes

- (3) An interim order remains in force until the earlier of the following:
 - (a) the tribunal revokes the order;
 - (b) the tribunal dismisses the complaint, or makes an order, under section 99 after hearing the complaint.
- (4) If an interim order is in force, the tribunal may amend or revoke the order on application by a party.
- (5) If a person against whom an interim order is made is not present when the order is made, the registrar must serve a copy of the order on the person as soon as practicable after the order is made.

99 Decisions following hearing

- (1) This section applies after the tribunal has heard a complaint.
- (2) If the tribunal is satisfied the complaint is frivolous or vexatious, is not made honestly, or lacks substance, the tribunal must dismiss the complaint.
- (3) If the tribunal is satisfied that the respondent has engaged in unlawful conduct, the tribunal must make 1 or more of the following orders:
 - (a) that the respondent not repeat or continue the unlawful conduct;
 - (b) that the respondent perform a stated reasonable act to redress any loss or damage suffered by a person because of the unlawful conduct;
 - (c) except if the complaint has been dealt with as a representative complaint—that the respondent pay to a person a stated amount by way of compensation for any loss or damage suffered by the person because of the unlawful conduct.
- (4) If the tribunal dismisses the complaint because it is satisfied that the complaint is frivolous or vexatious, or is not made honestly, the tribunal may, by written notice given to the complainant, order the

complainant to pay the respondent a stated amount in relation to the expenses reasonably incurred by the respondent in relation to the hearing.

- (5) An amount ordered to be paid to a person under subsection (3) (c) may include an amount in relation to the expenses reasonably incurred by the person in relation to the hearing.
- (6) An amount mentioned in subsection (4) or (5) must be fixed in accordance with the scale of costs applying to a civil proceeding in the Magistrates Court.

Note For the scale of costs in the Magistrates Court, see the *Magistrates Court (Civil Jurisdiction) Rules 2004*, s 259.

- (7) If, under this section, the tribunal dismisses the complaint or makes an order in relation to the complaint, the tribunal must, within 28 days after the day it makes the decision, give the parties to the hearing written notice of the decision and the terms of any order.
- (8) In this section:

unlawful conduct means conduct that is unlawful under part 3, part 5, section 66 or part 7.

representative complaint means a complaint that is dealt with by HRC as a representative complaint under the HRC Act, section 71.

- (9) In subsection (8):

representative complaint includes a complaint that has been dealt with as a representative complaint by the discrimination commissioner under section 78 at any time before the commencement of the HRC Act.

- (10) Subsection (9) and this subsection expire 1 month after the day they commence.

Division 9.5 Enforcement of orders and decisions of tribunal

100 Failure to comply with tribunal order

A party to a hearing commits an offence if the party fails to take all reasonable steps to comply with an order of the tribunal.

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

101 Enforcement of tribunal orders

An order of the tribunal is enforceable as if it were a judgment given by the Magistrates Court in a personal action at law that the court has jurisdiction to hear and decide under the *Magistrates Court Act 1930*, chapter 4 (Civil proceedings).

Division 9.6 Miscellaneous

102 Statement of reasons

- (1) This section applies if—
 - (a) the tribunal makes a decision in hearing a complaint; and
 - (b) a party to the hearing asks for a statement of reasons for the decision within 14 days after the day the decision is made.
- (2) The tribunal must give the party a written statement of reasons.

Note The Legislation Act, s 179 deals with what must be included in a statement of reasons.

103 Referral of questions of law to Supreme Court

- (1) If the tribunal considers that a question of law raises an issue of public importance, the tribunal may refer the question to the Supreme Court.

- (2) The tribunal may act under subsection (1) on its own initiative or on application by a party.

104 Appeals from tribunal decisions

- (1) A party to a tribunal hearing may, with the Supreme Court's leave, appeal to the court on a question of law from a decision of the tribunal in the hearing.
- (2) An appeal by a person under subsection (1) must be begun within—
- (a) 28 days after the day the person is given written notice of the tribunal's decision under section 99 (7); or
 - (b) any further time the Supreme Court allows (whether before or after the end of the 28-day period).
- (3) The Supreme Court must decide the appeal, and may make any of the following orders:
- (a) an order confirming 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 court's directions;
 - (c) an order for costs.
- (4) The Supreme Court may also make any other order the court considers appropriate.

[1.7] Sections 109 and 110

omit

commissioner

substitute

HRC

Endnotes

6 Uncommenced amendments

[1.8] Part 9
renumber as part 10

[1.9] Part 9A
renumber as part 11

[1.10] Divisions 9A.1, 9A.2, 9A.3 and 9A.4
renumber as divisions 11.1, 11.2, 11.3 and 11.4

[1.11] Sections 110A to 110K
renumber as sections 111 to 120

[1.12] Part 10
omit

[1.13] Part 11
substitute

Part 12 Miscellaneous

121 Secrecy

(1) In this section:

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

divulge includes communicate.

person to whom this section applies means a person who—

- (a) is or has been—
 - (i) a member of the tribunal; or
 - (ii) the registrar of the tribunal; or
 - (iii) a member of the staff of the tribunal; or

(b) exercises, or has exercised, a function under this Act.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

- (2) A person to whom this section applies commits an offence if—
- (a) the person—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about someone else; or
 - (b) the person—
 - (i) does something that divulges protected information about someone else; and
 - (ii) is reckless about whether—
 - (A) the information is protected information about someone else; and
 - (B) doing the thing would result in the information being divulged to someone else.

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

- (3) Subsection (2) does not apply if the record is made, or the information is divulged—
- (a) under this or any other Act; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.

Endnotes

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- (4) Subsection (2) does not apply to the divulging of protected information about someone with the person's consent.
- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.
- (6) In subsection (1):
person to whom this section applies includes a person who was the discrimination commissioner under this Act, or a member of the staff of the commission, at any time before the commencement of the HRC Act.
- (7) Subsection (6) and this subsection expire 1 month after the day they commence.

122 Relationship to other laws

This Act is additional to any other territory law that provides for the protection of a person from conduct that is or would be unlawful under this Act.

123 Regulation-making power

- (1) The Executive may make regulations for this Act.
Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (2) The regulations may except people, activities or other things from the operation of particular provisions of part 3, part 5 or part 7.

[1.14] Dictionary, definitions of commissioner and Commonwealth commission

omit

[1.15] Dictionary, definition of complainant

substitute

complainant, in relation to a complaint, means the person who made the complaint.

[1.16] Dictionary, definition of complaint

substitute

complaint means a complaint about unlawful discrimination that may be made under the HRC Act.

[1.17] Dictionary, new definitions

insert

complaint about unlawful discrimination—see section 76.

HRC means the human rights commission.

HRC Act means the *Human Rights Commission Act 2005*.

[1.18] Dictionary, definition of investigation

omit

[1.19] Dictionary, definition of party

substitute

party, for part 9 (Hearing of complaints)—see section 74.

[1.20] Dictionary, definition of representative complaint

omit

[1.21] Dictionary, definition of respondent

substitute

respondent, in relation to a complaint, means the person against whom the complaint is made.

Endnotes

6 Uncommenced amendments

[1.22] Dictionary, definition of staff

omit

[1.23] Dictionary, definition of tribunal

substitute

tribunal means the Discrimination Tribunal established by section 111.

Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.8
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Part 1.8 Discrimination Act 1991

[1.42] Section 86 (1)

substitute

- (1) The tribunal may, by written notice given to a person (a **subpoena**), require the person to appear before the tribunal at a hearing, at a stated time and place, to do either or both of the following:
 - (a) to give evidence;
 - (b) to produce a stated document or other thing relevant to the hearing.

[1.43] Section 88

omit

[1.44] Sections 90 to 92

substitute

90 Power to require witness to take oath etc

The tribunal may require a witness appearing before the tribunal at a hearing to give evidence to do 1 or more of the following:

- (a) to take an oath;
- (b) to answer a question relevant to the hearing;
- (c) to produce a stated document or other thing relevant to the hearing.

Note **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

[1.45] Section 94 (1) (b)

omit

section 92

substitute

section 90

[1.46] Section 94 (3) (a) and (b)

substitute

- (a) an offence in relation to the falsity or the misleading nature of the document, other thing or answer; or
- (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).

[1.47] Section 96

substitute

Endnotes

6 Uncommenced amendments

96 Contempt of tribunal

A person commits an offence if the person does something in the face, or within the hearing, of the tribunal that would be contempt of court if the tribunal were a court of record.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

96A Application of Criminal Code, ch 7

A proceeding before the tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

Note That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

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