



AUSTRALIAN CAPITAL TERRITORY

Discrimination (Amendment) Act 1996

No. 67 of 1996

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AUSTRALIAN CAPITAL TERRITORY

Discrimination (Amendment) Act 1996

No. 67 of 1996

An Act to amend the *Discrimination Act 1991*

[Notified in ACT Gazette S328: 20 December 1996]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Discrimination (Amendment) Act 1996*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

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

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

Principal Act

3. In this Act, “Principal Act” means the *Discrimination Act 1991*.¹

PART II—AMENDMENTS OF PRINCIPAL ACT

Interpretation

4. Section 4 of the Principal Act is amended—
- (a) by omitting from the definition of “representative complaint” in subsection (1) “77” and substituting “78”;
 - (b) by omitting from subsection (1) the definition of “public hearing”;
and
 - (c) by inserting in subsection (1) the following definition:
“ ‘Tribunal’ means the Discrimination Tribunal established by section 110A;”.

Impairment—guide dogs etc.

5. Section 9 of the Principal Act is amended—
- (a) by inserting in subsection (1) “, assistance animal” after “hearing dog”;
 - (b) by inserting in subsection (1) “, assistance animals” after “dogs”;
 - (c) by inserting in subsection (3) “, assistance animal” after “hearing dog”; and
 - (d) by inserting in subsection (4) the following definition:
“ ‘assistance animal’ means an animal trained to assist a person to alleviate the effect of a disability;”.

Insertion

6. After section 26 of the Principal Act the following section is inserted:

Preselection by employment agencies

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

Acts done under statutory authority etc.

7. Section 30 of the Principal Act is amended by omitting paragraph (1) (d) and substituting the following paragraph:

“(d) an order made by the Tribunal under Division 4 of Part VIII.”.

Voluntary bodies

8. Section 31 of the Principal Act is amended by omitting from paragraph (b) “members of the body” and substituting “persons, whether those persons are members of the body or otherwise”.

Discrimination in the provision of goods and services

9. Section 53 of the Principal Act is amended by adding at the end the following subsection:

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

Substitution

10. Part VIII of the Principal Act is repealed and the following Part substituted:

“PART VIII—COMPLAINTS

Division 1—Preliminary

Interpretation

“70. In this Part, unless the contrary intention applies—

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

- (a) the complainant (if any);
- (b) the respondent;
- (c) in relation to a complaint before the Commissioner—any person joined by the Commissioner under section 106; and
- (d) in relation to a hearing before the Tribunal—any person joined by the Tribunal under section 106.

Reliance on exceptions and exemptions

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

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

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

Complaints about unlawful acts

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

- (a) a person aggrieved by the act; or
- (b) an agent acting on behalf of 1 or more persons aggrieved by the act.

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

- (a) authorised in writing to so act on behalf of the aggrieved person or persons concerned; or
- (b) authorised by the Commissioner to act on behalf of an aggrieved person who, in the opinion of the Commissioner based on reasonable grounds, is unable to make a complaint or authorise an agent to act.

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

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

Investigation

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

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

Notice of investigation

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

Conduct of investigations

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

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

“(3) In conducting an investigation into a complaint, the Commissioner—

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

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

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

Stale complaints

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

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

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

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

Single investigation of several complaints

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

Representative complaints

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

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

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

Ordinary complaints not precluded by representative complaints

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

Investigation without complaint

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

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

“(3) Where—

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

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

Declining complaints

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

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

- (a) the complaint is frivolous, vexatious, misconceived or lacking in substance or was not made in good faith;
- (b) a more appropriate remedy in relation to the matter complained of is reasonably available to the complainant;
- (c) the complaint relates to an act, or the last in a series of acts, that took place more than 12 months before the lodgment of the complaint;

- (d) the matter complained of is not unlawful under Part III, V or VII or section 66;
- (e) the matter complained of has already been adequately dealt with by the Commissioner or Tribunal;
- (f) the matter complained of has already been adequately dealt with otherwise than by the Commissioner or Tribunal;
- (g) the complainant does not want the complaint investigated;
- (h) having regard to the complaint and any other relevant matter before the Commissioner, in the opinion of the Commissioner it is not necessary to pursue the complaint.

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

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

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

Compulsory conferences

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

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

to attend a conference presided over by the Commissioner.

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

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

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

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

- (a) a natural person is not entitled to be represented at a conference by another person; and

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

Conciliation

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

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

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

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

Conduct of conciliation

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

Conciliated agreements

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

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

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

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

Conciliation unlikely

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

“(2) Where—

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

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

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

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

Referral of complaint

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

Dismissal of complaint

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

Application to strike out complaint

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

Withdrawal of complaint

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

Division 3—Hearings before Discrimination Tribunal

Hearings

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

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

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

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

Procedure

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

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

Sittings

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

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

Appearances

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

Representation

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

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

“(3) In this section—

‘party’ includes an unincorporated association.

Witnesses

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

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

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

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

“(4) A summons shall be—

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

Taking evidence

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

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

Refusing to take oath or make affirmation

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

Penalty: 20 penalty units.

Division 4—Granting of relief by Discrimination Tribunal

Interim orders—complaint before Commissioner

“99. (1) Where—

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

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

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

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

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

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

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

Interim orders—complaint before Tribunal

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

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

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

“(2) An interim order remains in force until—

- (a) the Tribunal orders otherwise; or

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

whichever is earlier.

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

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

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

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

Remittal of complaint

“101. Where—

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

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

Decisions following hearing

“102. (1) In this section—

‘unlawful conduct’ means conduct that is unlawful under Part III, V or VII or section 66.

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

- (a) dismiss any complaint that the Tribunal is satisfied—
 - (i) is frivolous, vexatious or not made in good faith; or
 - (ii) has not otherwise been substantiated; or
- (b) if satisfied that the respondent has engaged in unlawful conduct—
 - (i) order the respondent not to repeat or continue the unlawful conduct;
 - (ii) order the respondent to perform any reasonable act or acts to redress any loss or damage suffered by a person as a result of the unlawful conduct by the respondent; or

- (iii) except where the complaint has been dealt with as a representative complaint—order the respondent to pay to a person a specified amount by way of compensation for any loss or damage suffered by the person as a result of the unlawful conduct by the respondent.

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

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

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

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

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

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

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

Division 5—Enforcement of orders and decisions of Discrimination Tribunal

Failure to comply

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

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

Powers of enforcement

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

Division 6—Other powers of Commissioner and Tribunal

Effect of Division

“105. Nothing in this Division permits—

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

Joining parties

“106. Where—

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

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

Requiring answer or document

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

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

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

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

Prohibiting or controlling publication

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

- (a) any evidence given before the Commissioner or Tribunal;
- (b) the contents of any document produced to the Commissioner or Tribunal; or

- (c) any information that might enable a person who has appeared before the Commissioner or Tribunal to be identified;

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

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

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

“(4) A direction given by the Commissioner under this section shall include a statement to the effect that application may, within 28 days after the date of the direction, be made by an interested person to the Tribunal for review of the direction.

“(5) A direction takes effect—

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

Review of directions by Commissioner

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

Prohibited publications

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

Penalty: 50 penalty units.

Obtaining information and documents

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

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

“(2) The notice shall state—

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

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

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

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

Division 7—Miscellaneous

Appeal from decisions of Tribunal

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

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

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

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

Self incrimination etc.

“108E. (1) A person is not excused from providing information, producing a document or answering a question when required to do so under section 107 or 108C on the ground that the information, document or answer might tend to incriminate the person, but—

- (a) any information, document or answer so provided; and

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

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

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

“(2) In subsection (1)—

‘Crimes Act’ means the *Crimes Act 1900*.

Unlawful act not an offence

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

Unlawful act no basis for civil action

“108G. Except as expressly provided by this Act, nothing in this Act confers on a person any right of action in respect of the doing of an act that is unlawful under Part III, V or VII or section 66.

Aiding etc. unlawful acts

“108H. A person who causes, instructs, induces, aids or permits another person to do an act that is unlawful under Part III, V or VII or section 66 shall, for the purposes of this Act, be taken also to have done the act.

Conduct of directors, servants and agents

“108I. (1) Where, for the purposes of this Act, it is necessary to establish the state of mind of a body politic or corporate or a natural person in relation to particular conduct, it is sufficient to show—

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

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

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

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

“(4) Where—

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

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

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

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

Protection from civil proceedings

“108J. Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person as a result of any of the following acts done in good faith:

- (a) the making of a complaint;
- (b) the making of a statement to, or the giving of a document or information to, the Commissioner, the Tribunal or a member of the staff of the Commissioner or Tribunal, for the purposes of this Act, whether or not the statement was made, or the document or information was given, pursuant to a requirement under section 107 or 108C.

Expenses of witnesses etc.

“108K. A person attending before the Commissioner pursuant to a requirement under section 82 or before the Commissioner or Tribunal pursuant to a requirement under section 108C is entitled to be paid by the Territory in respect of the expenses reasonably incurred by the person in connection with the attendance—

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

Failure to attend before Commissioner or Tribunal

“108L. A person who is required under section 82 to attend before the Commissioner or under section 108C to attend before the Commissioner or Tribunal shall not, without reasonable excuse—

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

Penalty: 20 penalty units.

Failure to furnish information etc.

“108M. A person shall not, without reasonable excuse, fail to—

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

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

Penalty: 20 penalty units.

Obstructing Commissioner, Tribunal etc.

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

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

Penalty: 20 penalty units.

False information

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

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

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

Insertion

11. After Part IX of the Principal Act the following Part is inserted:

“PART IXA—DISCRIMINATION TRIBUNAL

Establishment

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

Constitution

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

President of Tribunal

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

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

Acting President of Tribunal

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

“(2) The Acting President shall act as President—

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

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

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

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

Powers of Tribunal

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

Registrar

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

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

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

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

Insertion

12. After section 118 of the Principal Act the following section is inserted:

Authorisation by Commissioner

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

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

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

Delegation by Commissioner

13. Section 120 of the Principal Act is amended by omitting “72, 73, 81” and substituting “80”.

Substitution

14. Section 121 of the Principal Act is repealed and the following section substituted:

Immunity from suit

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

- (a) the President of the Tribunal or an Acting President;
 - (b) the Commissioner;
 - (c) the Registrar;
 - (d) a member of the staff of the President, Tribunal or Commissioner;
- or

- (e) a person acting under the direction or authority of the President, Tribunal or Commissioner or a member of the staff of the President, Tribunal or Commissioner;

in relation to—

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

Secrecy

15. Section 122 of the Principal Act is amended by omitting the definition of “person to whom this section applies” from subsection (1) and substituting the following definition:

- “ ‘person to whom this sections applies’ means a person who is, or has been—
- (a) the President of the Tribunal or an Acting President;
 - (b) the Commissioner;
 - (c) the Registrar;
 - (d) a member of the staff of the President, Tribunal or Commissioner; or
 - (e) a person authorised to exercise a power or perform a duty or function under or in relation to this Act;”.

PART III—TRANSITIONAL

Interpretation

16. In this Part—

“commencement date” means the date on which section 10 commences.

Complaints not heard or conciliated

17. (1) Any complaint made to the Commissioner which had not commenced to be heard by way of public hearing or in relation to which conciliation had not commenced immediately before the commencement date shall be dealt with in accordance with the Principal Act as amended by this Act.

(2) Where a complaint is dealt with in accordance with subsection (1), the date of lodgment of the complaint shall be taken to be—

- (a) if the complaint contains the information required by a form approved for the purposes of subsection 72 (4) of the Principal Act as amended by this Act—the commencement date; or
- (b) in any other case—the date on which the required information is lodged.

Complaints where conciliation commenced

18. (1) Where, immediately before the commencement date, conciliation had commenced in relation to a complaint, the conciliation shall continue until such time as—

- (a) agreement is reached between the parties; or
- (b) the Commissioner decides that resolution of the complaint by conciliation is not reasonably likely.

(2) Where an agreement referred to in paragraph (1) (a) is reached, the Commissioner shall assist the parties to record in writing the agreement they have reached, the record shall be taken to have been prepared in accordance with subsection 85 (1) and the complaint shall be further dealt with in accordance with the Principal Act as amended by this Act.

(3) Where the Commissioner makes a decision referred to in paragraph (1) (b), the Commissioner shall give the parties involved in the conciliation notice of that decision in accordance with subsection 86 (2), the Commissioner shall be taken to have given the notice under that section and the complaint shall be further dealt with in accordance with the Principal Act as amended by this Act.

Complaints where notice of hearing sent

19. If, immediately before the commencement date—

- (a) the Commissioner had not commenced a public hearing in relation to a complaint; and
- (b) a notice in accordance with section 84 of the Principal Act as in force immediately before the commencement date had been sent to the parties to the complaint;

then—

- (c) the Registrar shall, as soon as practicable after the commencement date, advise the parties that the hearing by the Commissioner will not take place; and
- (d) the complaint shall be heard by the Tribunal as if it had been referred to the Tribunal by the Commissioner.

Complaints where hearing commenced

20. (1) Notwithstanding the amendments of the Principal Act effected by this Act, the Principal Act as in force immediately before the commencement date continues to apply in relation to a complaint in respect of which the Commissioner had commenced a public hearing but had not given a direction or dismissed the complaint under section 90 of the Principal Act before the commencement date.

(2) For the purpose of subsection (1), the person who holds office as Commissioner on 30 December 1996 shall be taken to continue to hold that office.

Expenses

21. (1) Notwithstanding the amendments of the Principal Act effected by this Act but subject to subsection (2), section 93 of the Principal Act as in force immediately before the commencement date continues to apply in relation to a complaint dismissed (whether before or after the commencement date) under the Principal Act as in force immediately before the commencement date.

(2) Any direction given by the Commissioner by virtue of the operation of subsection (1) is enforceable as if it were an order made by the Tribunal under the Principal Act as amended by this Act.

(3) In this section—

“Commissioner” means the person who holds office as Commissioner on 30 December 1996.

Appeals to Administrative Appeals Tribunal

22. Notwithstanding the amendments of the Principal Act effected by this Act, section 94 of the Principal Act as in force immediately before the commencement date continues to apply in relation to directions or other decisions referred to in that section.

Remittal of complaints

23. (1) Where—

- (a)** the Administrative Appeals Tribunal hears an appeal in relation to a decision made under the Principal Act as in force immediately before the commencement date; and
- (b)** the Administrative Appeals Tribunal remits the complaint to the Commissioner for reconsideration;

the complaint shall, subject to subsection (2), be dealt with under the Principal Act as amended by this Act as if it were a complaint lodged with the Commissioner on the day on which it was remitted to the Commissioner.

(2) Where a complaint is remitted to the Commissioner under subsection (1), a notice under section 74 in relation to the complaint shall contain a statement explaining the effect of the remittal and subsection (1).

Interim directions by Commissioner

24. (1) In this section—

“direction” means a direction given by the Commissioner under subsection 89 (1) of the Principal Act that was in force immediately before the commencement date.

(2) Where, immediately before the commencement date, there was a direction in relation to a complaint referred to in section 17 or paragraph 18 (1) (b), the direction shall be taken to have been an order made by the Tribunal under subsection 99 (1) of the Principal Act as amended by this Act.

(3) Where, immediately before the commencement date, there was a direction in relation to a complaint referred to in section 19, the direction shall be taken to have been an order made by the Tribunal under subsection 100 (1) of the Principal Act as amended by this Act.

Final directions by Commissioner

25. Where—

- (a) immediately before the commencement date, the Commissioner had given a direction under section 90 of the Principal Act and that direction was in force; or
- (b) on or after the commencement date the Commissioner gives a direction under section 90 of the Principal Act as in force immediately before the commencement date by virtue of section 20 of this Act;

the direction is enforceable as if it were an order made by the Tribunal under the Principal Act as amended by this Act.

NOTES

Principal Act

1. Reprinted as at 1 January 1996.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 21 November 1996]

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