

1989-90

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Ms Follett)

**Human Rights Bill 1990**

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**A BILL**

FOR

**An Act to promote human rights in the  
Australian Capital Territory and for related  
purposes**

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

**PART I - PRELIMINARY**

**Short title**

1. This Act may be cited as the *Human Rights Act 1990*.

**Commencement**

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

14823/90—(T47/90) Cat. No. 90 4860 7

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(2) Subject to subsection (4), the remaining provisions of this Act commence on such day as is fixed by the Chief Minister by notice in the *Gazette*.

(3) If the provisions referred to in subsection (2) do not commence within the six months beginning on the day on which this Act is notified in the *Gazette*, they commence on the first day after the end of that period.

(4) Section 39 shall come into operation as follows:

- (a) on a day to be fixed by the Chief Minister by notice in the *Gazette* for the purposes of this paragraph (being a day not less than six months after the date of the notice), that section shall come into operation in respect of employer subsidised superannuation schemes established after that day; and
- (b) on a day to be fixed by the Chief Minister by notice in the *Gazette* for the purposes of this paragraph (being a day not less than two years after the date of the notice), that section shall come into operation in respect of employer subsidised superannuation schemes established before the day fixed for the purposes of paragraph (a).

### Interpretation

3.(1) In this Act, unless the contrary intention appears -

"association" includes any association, society, institution or other body of persons associated for any common purpose, whether incorporated or unincorporated;

"the Commissioner" means the person for the time being holding or acting in the office of Commissioner for Human Rights under this Act;

"detriment" includes humiliation or denigration;

"education authority" means the person or body administering any school, college, university or other institution at which education or training is provided;

"employee" -

(a) includes the holder of a public statutory office (not being a judicial or magisterial office); and

(b) includes an unpaid worker;

"employer" -

(a) in relation to the holder of a public or statutory office, - means the Territory; and

(b) in relation to an unpaid worker - means an organisation for which the unpaid worker performs services;

"employment" includes unpaid work;

"employment agency" means a person who, for fee or reward, introduces persons seeking employment to employers;

- "impairment" means intellectual impairment or physical impairment;
- "intellectual impairment" means permanent or temporary loss or imperfect development of mental faculties (except where attributable to mental illness) resulting in reduced intellectual capacity;
- "introduction agency" means a person who carries on a business of introducing persons who are seeking companionship or social contact;
- "marital status" means the status or condition of -
- (a) being single;
  - (b) being married;
  - (c) being married but living separately and apart from one's spouse;
  - (d) being divorced;
  - (e) being widowed; or
  - (f) cohabiting with a person of the opposite sex as a de facto husband or wife;
- "member" of the Tribunal includes a deputy duly acting in a member's place;
- "near relative" of a person means spouse, parent, child, grandparent, grandchild, brother or sister;
- "the panel" means the panel established under section 16 for the purposes of the constitution of the Tribunal;
- "physical impairment" means -
- (a) the total or partial loss of any function of the body;
  - (b) the total or partial loss of any part of the body;
  - (c) the malfunctioning of any part of the body;
  - (d) the malformation or disfigurement of any part of the body; whether permanent or temporary, but does not include intellectual impairment or mental illness; or
  - (e) the presence in the body of organisms causing disease;
- "race" of a person means the nationality, country of origin, colour or ancestry of the person or of any other person with whom he or she resides or associates;
- "the Registrar" means the person holding or acting in the office of Registrar of the Tribunal under this Act;
- "services to which this Act applies" means -
- (a) access to and use of any place that members of the public are permitted to enter;
  - (b) services provided by an employment agency;
  - (c) banking, the provision of credit, or insurance;
  - (d) the provision of a scholarship, prize or award;
  - (e) entertainment, recreation or refreshment;
  - (f) services provided by an introduction agency;
  - (g) the provision of coaching or umpiring in a sport;
  - (h) services connected with transportation or travel;

- (i) services of any profession or trade; or
- (j) services provided by a Government department, instrumentality or agency;

"sexuality" means heterosexuality, homosexuality, bisexuality or transsexuality;

"spouse" includes putative spouse;

"transsexual" means a person of the one sex who assumes characteristics of the other sex;

"transsexuality" means the condition of being a transsexual;

"the Tribunal" means the Human Rights Tribunal established under this Act;

"unpaid worker" means a person who performs any work for an employer for no remuneration.

(2) A reference in this Act to the provision of a service does not include, and shall be deemed never to have included, the carrying out of either of the following fertilisation procedures:

- (a) artificial insemination; or
- (b) the procedure of fertilising an ovum outside the body and transferring the fertilised ovum into the uterus or any other part of the body.

(3) For the purposes of this Act, the holder of a public or statutory office shall, in carrying out official duties, be deemed to be acting in the course of employment.

(4) For the purposes of this Act, a person acts on a particular ground referred to in this Act if the person in fact acts on a number of grounds, one of which is the ground so referred to, and that ground is a substantial reason for the act.

(5) For the purposes of this Act, a person ("the discriminator") treats another unfavourably on the basis of a particular attribute or circumstance if the discriminator treats that other person less favourably than in identical or similar circumstances the discriminator treats or would treat a person who does not have that attribute or is not affected by that circumstance.

#### **Act binds Crown**

4. This Act binds the Crown.

#### **Intergovernmental arrangements**

5.(1) The Minister may make an arrangement with a Minister of the Commonwealth for or in relation to—

- (a) the performance on a joint basis of functions relating to the promotion of the objects of this Act; or

(b) the performance by the Territory or by an authority of the Territory on behalf of the Commonwealth of functions, including functions of the Human Rights Commission established by the *Human Rights Commission Act 1981* of the Commonwealth, relating to the promotion of the objects of this Act.

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

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

(4) An arrangement under this section, or the variation or revocation of such an arrangement, shall be in writing and a copy of each instrument by which an arrangement under this section has been made, varied or revoked shall be published in the *Gazette*.

## **PART II - COMMISSIONER AND THE TRIBUNAL**

### **Division 1 - The Commissioner**

#### **Establishment and appointment**

6.(1) There is established by this subsection an office of Commissioner for Human Rights.

(2) The Executive shall by instrument appoint a person to be the Commissioner.

(3) The Commissioner shall be appointed for the period (not exceeding five years) specified in the instrument of appointment but is eligible for reappointment.

(4) The Commissioner holds office on such terms and conditions as are--  
(a) determined by the Executive; and  
(b) specified in the instrument of appointment.

#### **Commissioner's staff**

7.(1) The Commissioner will have such staff as is necessary for the administration of this Act.

(2) The Commissioner's staff will consist of public servants.

**Commissioner responsible to Minister**

8. The Commissioner is responsible to the Minister for the general administration of this Act and, in carrying out that function, is subject to the general control and direction of the Minister.

**General functions of Commissioner**

9.(1) The Commissioner shall foster and encourage amongst members of the public informed and unprejudiced attitudes with a view to eliminating discrimination on the ground of sex, sexuality, marital status, pregnancy, race, impairment or age.

(2) The Commissioner may institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination on the ground of sex, sexuality, marital status, pregnancy, race, impairment or age.

(3) The Commissioner may make recommendations to the Minister as to reforms, whether of a legislative nature or otherwise, that the Commissioner believes will further the objects of this Act.

**Advice and research by Commissioner**

10.(1) The Commissioner may furnish advice upon any matter within the purview of this Act and, if a written request for any such advice is made to the Commissioner, then, subject to subsection (2), the Commissioner shall either furnish the advice in writing to the person by whom it was requested or give written notice to that person that the advice will not be furnished.

(2) The Commissioner shall -

- (a) if requested to do so by or on behalf of a person who has an impairment -
  - (i) give information or advice on the benefits assistance or support that may be available in respect of the persons impairment;
  - (ii) assist the person to gain access to any such benefits assistance or support; or
  - (iii) assist the person to the extent the Commissioner thinks desirable to resolve any problem in relation to participation or attempts to participate in the economic or social life of the community;
- (b) publish advisory documents as to the benefits, assistance and support available to those who have impairments; and
- (c) institute, promote or assist in research and the collection of data relating to persons who have impairments.

**Annual Report**

11.(1) The Commissioner shall, not later than the thirty-first day of December in each year, report to the Minister on -

- (a) the operation and administration of this Act; and
- (b) the work undertaken by the Commissioner pursuant to sections 9 and 10,

during the previous financial year.

(2) The Minister shall cause a copy of a report furnished under subsection (1) to be laid before the Legislative Assembly within five sitting days of receipt of the report.

**Delegation of powers and functions**

12.(1) The Commissioner may, with the approval of the Minister, delegate powers and functions under this Act to any person from time to time holding or acting in a particular public service position.

(2) A delegation under this section is revocable at will and does not derogate from the power of the Commissioner to act personally in any matter.

**Commissioner not personally liable**

13.(1) No personal liability shall attach to the Commissioner for an act or omission in good faith and in the exercise, or purported exercise, or the discharge, or purported discharge, of official powers or duties.

(2) A liability that would, but for subsection (1), lie against the Commissioner shall lie against the Territory.

**Division 2 - The Human Rights Tribunal**

**Establishment**

14. There shall be a tribunal entitled the "Human Rights Tribunal".

**Presiding Officer and Deputy Presiding Officers**

15.(1) There shall be -

- (a) a Presiding officer of the Tribunal; and
- (b) not more than two Deputy Presiding Officers of the Tribunal.

(2) The Presiding Officer and Deputy Presiding Officers shall be appointed by the Executive.

(3) The Presiding Officer and each Deputy Presiding Officer-

- (a) shall be appointed by the Executive by instrument for the period (not exceeding three years) specified in the instrument of appointment but are eligible for reappointment;
- (b) may be removed from office by the Executive on the grounds of -
  - (i) mental or physical incapacity to satisfactorily carry out their duties;
  - (ii) neglect of duty; or
  - (iii) dishonourable conduct.

(4) The office of Presiding Officer or Deputy Presiding Officer becomes vacant if -

- (i) the appointee completes a term of office and is not reappointed;
- (ii) the appointee is removed from office; or
- (iii) the appointee resigns by notice in writing to the Minister.

(5) Upon the office of the Presiding Officer or a Deputy Presiding Officer becoming vacant, a person shall be appointed to that office in accordance with this Act.

#### **Tribunal panel**

16.(1) The Executive may establish a panel comprised of not more than twelve persons nominated by the Minister to be available for selection to sit at hearings of the Tribunal.

(2) In selecting nominees for appointment to the panel, the Executive shall ensure that each nominee has expertise that would be of value to the Tribunal in dealing with the various classes of discrimination to which this Act applies and shall have regard to -

- (a) the experience;
  - (b) the knowledge; and
  - (c) the sensitivity,
- of those who come under consideration.

(3) A member of the panel -

- (a) will be appointed for a term of office of three years; and
- (b) on the completion of a term of office will be eligible for reappointment.

(4) The Executive may remove a member of the panel from office on the grounds of -

- (a) mental or physical incapacity to carry out official duties satisfactorily;
- (b) neglect of duty; or

(c) dishonourable conduct.

(5) The office of a member of the panel becomes vacant if the member—

(a) completes a term of office and is not reappointed;

(b) is removed from office;

(c) dies; or

(d) resigns by notice in writing to the Minister.

(6) The Executive may make appointments from time to time for the purpose of maintaining or increasing the membership of the panel.

#### **Remuneration**

17. A member of the Tribunal shall be entitled to receive such allowances and expenses as the Executive may from time to time determine.

#### **Validity and liability**

18.(1) An act or proceeding of the Tribunal shall not be invalid by reason of a vacancy in its membership or in the membership of the panel, or by reason of a defect in the appointment of a person to the Tribunal or the panel.

(2) No liability shall attach to a member of the Tribunal for any act or omission by the member, or by the Tribunal, in good faith and in the exercise of official powers or functions, or in the discharge of official duties.

#### **Constitution of Tribunal**

19.(1) In relation to the hearing of proceedings, the Tribunal shall be constituted of the following members:

(a) the Presiding Officer or a Deputy Presiding Officer of the Tribunal;  
and

(b) two members of the panel selected by the Presiding Officer to sit at the hearing of those proceedings.

(2) In selecting members from the panel for the purpose of hearing proceedings, the Presiding Officer shall endeavour to select those members who have expertise that is relevant to the subject matter of the proceedings.

(3) The Tribunal, separately constituted in accordance with this section, may sit simultaneously for the purpose of hearing and determining separate proceedings.

**Proceedings of Tribunal**

20.(1) Where the Tribunal is constituted for the purpose of hearing proceedings -

- (a) the Presiding Officer or Deputy Presiding Officer, as the case may be, shall preside at the proceedings;
- (b) the Presiding Officer or Deputy Presiding Officer shall determine any question relating to the admissibility of evidence or any other question of law or procedure; and
- (c) on any other question before the Tribunal, a decision in which any two members concur shall be a decision of the Tribunal.

(2) The Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

(3) Subject to subsection (4), proceedings before the Tribunal shall be held in public.

(4) The Tribunal may, of its own motion or on the application of a party to the proceedings, direct that any proceedings or part of proceedings be held in private.

(5) Subject to this Act, the business of the Tribunal shall be conducted in such manner as the Presiding Officer determines.

**Parties to proceedings**

21.(1) The Tribunal shall give to any person who is a party to proceedings before the Tribunal -

- (a) reasonable notice of the time and place at which it intends to hear those proceedings; and
- (b) reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

(2) If a person to whom a notice has been given under subsection (1) fails to attend at the time and place specified in the notice, the Tribunal may hear the proceedings in the absence of that person.

(3) Where, in the opinion of the Tribunal, a person ought to be bound by, or have the benefit of, its determination, or is otherwise legitimately interested in proceedings before the Tribunal, it may -

- (a) direct that the person be joined as a party to the proceedings; or
- (b) grant the person leave to intervene in the proceedings.

- (4) A person appearing in proceedings before the Tribunal -
- (a) shall be entitled to appear personally or by counsel; or
  - (b) may, by leave of the Tribunal, be represented by an officer or employee of a registered industrial association or by any other person.

**Powers of Tribunal in relation to proceedings**

**22.(1)** In the exercise of its powers and functions under this Act, the Tribunal may -

- (a) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the attendance before the Tribunal of any person;
- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the production of any books, papers or documents;
- (c) inspect any books, papers or documents produced before it, retain them for such reasonable period as it thinks fit and make copies of any of them, or of any of their contents;
- (d) require any person to make oath or affirmation to answer truthfully all questions put by the Tribunal relating to any matter being inquired into by the Tribunal (which oath or affirmation may be administered by a member of the Tribunal); or
- (e) require any person appearing before the Tribunal, including the person whose conduct is subject to an inquiry (whether summoned to appear or not), to answer any relevant question put by any member of the Tribunal, or by any other person appearing before the Tribunal.

**(2)** Subject to subsection (3), if a person -

- (a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse to attend in obedience to the summons;
  - (b) who has been served with a summons to produce any books, papers or documents fails without reasonable excuse to comply with the summons;
  - (c) misbehaves before the Tribunal, wilfully insults the Tribunal or a member of the Tribunal, or interrupts the proceedings of the Tribunal; or
  - (d) refuses to be sworn or to affirm, or to answer a question, when required to do so by the Tribunal,
- the person is guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(3) A person is not obliged to answer a question or to produce a book, papers or documents if the answer or the contents of the book, papers or documents would tend to incriminate the person of an offence other than against this Act.

(4) In the course of proceedings, the Tribunal may -

- (a) receive in evidence the transcript of evidence in proceedings before a court or tribunal and draw such conclusions of fact from that evidence as it considers proper; or
- (b) adopt, as in its discretion it considers proper, any findings, decision or judgement of a court or tribunal that may be relevant to the proceedings.

#### **Costs**

23.(1) The Tribunal may make an order for costs in any proceedings in accordance with the scale prescribed for that purpose -

- (a) where in the opinion of the Tribunal the proceedings are frivolous or vexatious; or
- (b) where in the opinion of the Tribunal the proceedings have been instituted or prosecuted for the purpose of delay or obstruction.

(2) Where a party to proceedings before the Tribunal applies for an adjournment of the hearing of those proceedings, the Tribunal may grant that application upon such terms as it considers just, and may make an order for costs in accordance with a scale prescribed for the purpose against the applicant for the adjournment in favour of any other party to the proceedings.

(3) Costs awarded by the Tribunal under this section may be recovered by the person in whose favour they were awarded as a debt due from the person against whom the order was made.

#### **Conciliation**

24.(1) If, before or during the hearing of any proceedings under this Act, it appears to the Tribunal, either from the nature of the case or from the attitude of the parties, that there is a reasonable possibility of the matters in dispute between the parties being settled by conciliation, the Tribunal may, by consent of both parties, refer the matter to the Commissioner for conciliation.

(2) Where proceedings are settled under this section, the Tribunal may embody the terms of the settlement in an order.

**Division 3 - The Registrar**

**Establishment**

**25.(1)** There shall be a Registrar of the Tribunal.

**(2)** The Registrar shall be a public servant.

**PART III - PROHIBITION OF DISCRIMINATION ON  
THE GROUNDS OF  
SEX, SEXUALITY, MARITAL STATUS OR PREGNANCY**

**Division 1 - Discrimination to which this Part Applies**

**Definition**

**26.(1)** In this Part -

"discriminate" means -

- (a) discriminate on the ground of sex;
- (b) discriminate on the ground of sexuality;
- (c) discriminate on the ground of marital status;
- (d) discriminate on the ground of pregnancy,

and "discrimination" has a corresponding meaning.

**(2)** For the purposes of this Act, a person discriminates on the ground of sex -

- (a) if he or she treats another person unfavourably because of the other's sex;
- (b) if he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement and -
  - (i) the nature of the requirement is such that a substantially higher proportion of persons of the opposite sex complies, or is able to comply, with the requirement than of those of the other's sex; and
  - (ii) the requirement is not reasonable in the circumstances of the case; or
- (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other's sex, or on the basis of a presumed characteristic that is generally imputed to persons of that sex.

**(3)** Subject to subsection (4), for the purposes of this Act, a person discriminates on the ground of sexuality -

- (a) if he or she treats another person unfavourably because of the other's sexuality, or a presumed sexuality;
- (b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and -
  - (i) the nature of the requirement is such that a substantially higher proportion of persons of a different sexuality complies, or is able to comply, with the requirement than of those of the other's sexuality; and
  - (ii) the requirement is not reasonable in the circumstances of the case; or
- (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other's sexuality, or presumed sexuality, or on the basis of a presumed characteristic that is generally imputed to persons of that sexuality.

(4) Where -

- (a) a person discriminates against another on the basis of appearance or dress;
- (b) that appearance or dress is characteristic of, or an expression of, that other persons' sexuality; but
- (c) the discrimination is reasonable in all the circumstances;

the discrimination will not, for the purposes of Division 2, be taken to be discrimination on the ground of sexuality.

(5) For the purposes of this Act, a person discriminates on the ground of marital status -

- (a) if he or she treats another person unfavourably because of the other's marital status;
- (b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and -
  - (i) the nature of the requirement is such that a substantially higher proportion of persons of a different marital status complies, or is able to comply, with the requirement than those of the other's marital status; and
  - (ii) the requirement is not reasonable in the circumstances of the case; or
- (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of that marital status, or on the basis of a presumed characteristic that is generally imputed to persons of that marital status.

**(6) For the purposes of this Act, a person discriminates against a pregnant woman -**

- (a) if he or she treats the woman unfavourably because of her pregnancy;
- (b) if he or she treats the woman unfavourably because she does not comply, or is not able to comply, with a particular requirement and -
  - (i) the nature of the requirement is such that a substantially higher proportion of women who are not pregnant complies, or is able to comply, with the requirement than of those who are pregnant; and
  - (ii) the requirement is not reasonable in the circumstances of the case; or
- (c) if he or she treats the woman unfavourably on the basis of a characteristic that appertains generally to pregnant women, or on the basis of a presumed characteristic that is generally imputed to pregnant women.

## **DIVISION 2 - Discrimination in Employment**

### **Discrimination against applicants and employees**

- 27.(1) It is unlawful for an employer to discriminate against a person -**
- (a) in determining, or in the course of determining, who should be offered employment; or
  - (b) 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;
  - (b) denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits connected with employment;
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.

### **Discrimination against commission agents**

**28.(1) This section applies to a principal for whom work is done by agents remunerated by commission.**

- (2) It is unlawful for the principal to discriminate against a person -**
  - (a) in determining, or in the course of determining, who should be engaged as an agent; or
  - (b) in the terms or conditions on which such an engagement is offered.
- (3) It is unlawful for the principal to discriminate against an agent -**

- (a) in the terms or conditions on which the agent is engaged;
- (b) by denying or limiting access to opportunities for promotion, transfer or training or any other benefits connected with the agents position;
- (c) by terminating the engagement; or
- (d) by subjecting the agent to any other detriment.

**Discrimination against contract workers**

**29.(1)** This section applies to a principal for whom work is done by contract workers in pursuance of a contract between the principal and the employer of those contract workers.

(2) It is unlawful for a principal to enter into any contract or arrangement with an employer of contract workers under which the employer is to discriminate against a person.

(3) It is unlawful for the principal to discriminate against a contract worker -

- (a) in the terms or conditions on which the contract worker is allowed to work;
- (b) by not allowing the contract worker to work;
- (c) by denying or limiting access to any benefit connected with employment; or
- (d) by subjecting the contract worker to any other detriment.

**Partnerships**

**30.(1)** It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person in determining, or in the course of determining, who should be offered a position as partner in the firm.

(2) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person in the terms or conditions on which that person is offered a position as partner in the firm.

(3) It is unlawful for a firm to discriminate against a partner -

- (a) in the terms or conditions of membership of the firm;
- (b) by denying or limiting access to any benefit arising from membership of the firm;
- (c) by expelling the partner from the firm; or
- (d) by subjecting the partner to any other detriment.

**Exceptions**

**31.(1)** This Division does not apply in relation to employment within a private household.

(2) This Division does not apply to discrimination on the ground of sex in relation to employment for which it is a genuine occupational requirement that a person be of a particular sex.

(3) This Division does not apply to discrimination on the ground of a woman's pregnancy if -

- (a) the discrimination is based on the fact that the woman is not, or would not be, able -
  - (i) to perform adequately, and without endangering herself, the unborn child or other persons, the work genuinely and reasonably required of her; or
  - (ii) to respond adequately to situations of emergency that should reasonably be anticipated in connection with her duties; and
- (b) in the case of discrimination arising out of dismissal from employment, there is no other work that the employer could reasonably be expected to offer the woman.

### **Division 3 - Discrimination by Other Bodies**

#### **Discrimination by associations on ground of sex**

32.(1) It is unlawful for an association that has both male and female members to discriminate -

- (a) against an applicant for membership on the ground of sex -
  - (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association;
  - (ii) in the terms on which the applicant is, or may be, admitted to membership, or a particular class of membership;
- (b) against a member of the association on the ground of sex -
  - (i) by refusing or failing to provide a particular service or benefit to that member; or
  - (ii) in the terms on which a particular service or benefit is provided to that member; or
  - (iii) by expelling that member from the association or subjecting him or her to any other detriment.

(2) This section does not apply to discrimination on the ground of sex in relation to the use or enjoyment of a service or benefit provided by an association -

- (a) where it is not practicable for the service or benefit to be used or enjoyed simultaneously by both men and women, but the same, or an equivalent, service or benefit is provided for the use or enjoyment of men and women separately from each other or at different times;

- (b) where it is not practicable for the service or benefit to be used or enjoyed to the same extent by both men and women, but both men and women are entitled to a fair and reasonable proportion of the use or enjoyment of the service or benefit.

(3) Without limiting the generality of this section, an association discriminates against a member of a particular class in the association if, upon application by that member to join a different class of membership in the association, the association accords the member a lower order of precedence on the list of applicants for that class of membership than that accorded to an applicant who is not a member of the association.

#### **Discrimination by associations on other grounds**

33.(1) It is unlawful for an association to discriminate -

- (a) against an applicant for membership on the ground of sexuality, marital status or pregnancy -
  - (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or
  - (ii) in the terms on which the applicant is, or may be, admitted to membership or a particular class of membership; or
- (b) against a member of the association on the ground of sexuality, marital status or pregnancy -
  - (i) by refusing or failing to provide a particular service or benefit to that member;
  - (ii) in the terms on which a particular service or benefit is provided to that member; or
  - (iii) by expelling the member from the association or subjecting him or her to any other detriment.

(2) Without limiting the generality of subsection (1), an association to which this section applies discriminates against a member of a particular class in the association if, on application by the member to join a different class of membership in the association, the association accords the member a lower order of precedence on the list of applicants for that class of membership than that accorded to an applicant who is not a member of the association.

#### **Authorisations and qualifications**

34. It is unlawful for an authority or body empowered to confer an authorisation or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person -

- (a) by refusing or failing to confer or renew that authorisation or qualification;

- (b) in the terms or conditions on which it confers or renews the authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification, or varying the terms or conditions upon which it is held.

#### **Division 4 - Discrimination in Education**

##### **Education**

**35.(1)** It is unlawful for an education authority to discriminate against a person -

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

**(2)** It is unlawful for an education authority to discriminate against a student -

- (a) in the terms or conditions on which it provides the student with training or education;
- (b) by denying or limiting access to any benefit provided by the authority;
- (c) by expelling the student; or
- (d) by subjecting the student to any other detriment.

**(3)** This section does not apply to discrimination on the ground of sex in respect of -

- (a) admission to a school, college, university or institution established wholly or mainly for students of the one sex;
- (b) the admission of a person to a school, college or institution (not being a tertiary level school, college or institution) where the level of education or training sought by the person is provided only for students of the one sex; or
- (c) the provision at a school, college, university or institution of boarding facilities for students of the one sex.

#### **Division 5 - Discrimination in Relation to Goods, Services and Accommodation**

##### **Goods and services**

**36.(1)** It is unlawful for a person who offers or provides -

- (a) goods; or
  - (b) services to which this Act applies,
- (whether for payment or not) to discriminate against another -

- (c) by refusing or failing to supply the goods or perform the services; or
- (d) in the terms or conditions on which or the manner in which the goods are supplied or the services are performed.

(2) Where the nature of a skill varies according to whether it is exercised in relation to men or to women, a person does not contravene this section by exercising the skill in relation to men only, or women only, in accordance with the person's normal practice.

#### **Accommodation**

**37.(1)** It is unlawful for a person to discriminate against another -

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

(2) It is unlawful for a person to discriminate against a person for whom accommodation is provided -

- (a) in the terms or conditions on which accommodation is provided;
- (b) by denying or limiting access to any benefit connected with the accommodation;
- (c) by evicting the person; or
- (d) by subjecting the person to any other detriment.

(3) This section does not apply to discrimination in relation to the provision of accommodation if -

- (a) 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 the premises; and
- (b) accommodation is provided on the premises for no more than three persons apart from that person and his or her family.

(4) This section does not apply to discrimination on the ground of sex or marital status in relation to the provision of accommodation by an organisation that does not seek to secure a pecuniary profit for its members, where the accommodation is provided only for persons of the one sex, or of a particular marital status, as the case may be.

#### **Division 6 - Discrimination in Relation to Superannuation**

##### **Definitions**

**38.** In this Division -

"de facto spouse", in relation to a member of a superannuation scheme or provident fund, means a person with whom the member is cohabiting as husband or wife de facto, but does not include a putative spouse;

"employer subsidised superannuation scheme" means a superannuation scheme or provident fund provided for employees to which the employer makes contributions.

**Employer subsidised superannuation**

39.(1) Subject to this Division, it is unlawful for a person who provides an employer subsidised superannuation scheme to discriminate against a person -

- (a) by providing a scheme or fund that discriminates or, if the other person were to become a member of the scheme, would discriminate, or require or authorise discrimination, against the other person; or
- (b) in the manner in which the scheme is administered.

(2) Subsection (1) is subject to the following qualifications:

- (a) it applies only in relation to an employer subsidised superannuation scheme under which a greater number of the members (not including members who are no longer employed by an employer who participates in the scheme) reside in this Territory than in any other single State or Territory; and
- (b) such other qualifications as may be prescribed.

(3) This section does not render unlawful discrimination on the ground of sex in the rates upon which a pension payable to a member under an employer subsidised superannuation scheme may, at the member's option, be converted to a lump sum or a lump sum payable under the scheme, may, at the member's option, be converted to a pension, where the discrimination -

- (a) is based upon actuarial or statistical data from a source upon which it is reasonable to rely; and
- (b) is reasonable having regard to that data.

(4) This section does not render unlawful discrimination on the ground of sex in the benefits payable under an employer subsidised superannuation scheme, where -

- (a) the contributions payable by both the employer and the employee are fixed by the terms of the scheme; and
- (b) the benefits that will accrue to the employee are derived from the accumulation of those contributions less any insurance premiums paid under the scheme in respect of the employee.

to the extent only that the discrimination is based upon a lawful difference in those insurance premiums.

#### **Other superannuation schemes**

40. It is unlawful for a person who provides a superannuation scheme or provident fund (not being an employer subsidised superannuation scheme) to discriminate against a person -

- (a) by providing a scheme or fund that discriminates or, if the other person were to become a member of the scheme or fund, would discriminate or require or authorise discrimination against the other person; or
- (b) in the manner in which the scheme or fund is administered, except where the discrimination -
- (c) is based upon actuarial or statistical data from a source on which it is reasonable to rely; and
- (d) is reasonable having regard to that data.

#### **Exceptions**

41.(1) For the purposes of this Division, a superannuation scheme or provident fund does not discriminate on the ground of marital status by reason only of the fact -

- (a) that it provides for the payment of benefits to the surviving spouses of members; or
- (b) that it does not provide benefits for the surviving de facto spouses of members, or provides less favourable benefits for surviving de facto spouses than it does for the surviving spouses of members.

(2) Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this Division has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.

### **Division 7 - General Exemptions from this Part**

#### **Charitable instruments**

42. This Part does not -

- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon -
  - (i) persons of the one sex;
  - (ii) persons of a particular sexuality;
  - (iii) persons of a particular marital status; or
  - (iv) pregnant women; or
- (b) render unlawful any act done to give effect to such a provision.

**Pregnancy or childbirth**

43. This Part does not render unlawful the granting to women of rights or privileges in connection with pregnancy or childbirth.

**Equal opportunity schemes**

44. This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking intended to ensure that persons of the one sex, or of a particular marital status, have equal opportunities with persons of the other sex, or of another marital status, in any of the circumstances to which this Part applies.

**Competitive sporting activities**

45. This Part does not render unlawful the exclusion of persons of the one sex from participation in a competitive sporting activity in which the strength, stamina or physique of the competitor is relevant.

**Insurance**

46. This Part does not render unlawful discrimination on the ground of sex in the terms on which an annuity, life assurance, accident insurance or any other form of insurance is offered or may be obtained, where the discrimination -

- (a) is based upon actuarial or statistical data from a source on which it is reasonable to rely; and
- (b) is reasonable having regard to that data.

**Religion**

47.(1) This Part does not render unlawful discrimination in relation to -

- (a) the ordination or appointment of priests, ministers of religion or members of a religious order;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order; or
- (c) any other practice of a body established for religious purposes that conforms with the precepts of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

(2) Where an educational or other institution is administered in accordance with the precepts of a particular religion, discrimination on the ground of sexuality that arises in the course of the administration of that institution and is founded on the precepts of that religion is not rendered unlawful by this Part.

## **PART IV - PROHIBITION OF DISCRIMINATION ON THE GROUND OF RACE**

### **Division 1 - Discrimination to which this Part Applies**

#### **Definition**

**48.** For the purposes of this Act, a person discriminates on the ground of race -

- (a) if he or she treats another person unfavourably by reason of the other's race;
- (b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and -
  - (i) the nature of the requirement is such that a substantially higher proportion of persons of a different race complies, or is able to comply, with the requirement than of those of the other's race; and
  - (ii) the requirement is not reasonable in the circumstances of the case; or
- (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other's race, or on the basis of a presumed characteristic that is generally imputed to persons of that race.

### **Division 2 - Discrimination in Employment**

#### **Discrimination against applicants and employees**

**49.(1)** It is unlawful for an employer to discriminate against a person on the ground of race -

- (a) in determining, or in the course of determining, who should be offered employment; or
- (b) in the terms or conditions on which employment is offered.

**(2)** It is unlawful for an employer to discriminate against an employee on the ground of race -

- (a) in the terms or conditions of employment;
- (b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits connected with employment;
- (c) by dismissing the employee;
- (d) by segregating the employee from persons of other races; or
- (e) by subjecting the employee to any other detriment.

**Discrimination against commission agents**

**50.(1)** This section applies to a principal for whom work is done by agents remunerated by commission.

(2) It is unlawful for the principal to discriminate against a person on the ground of race -

- (a) in determining, or in the course of determining, who should be engaged as an agent; or
- (b) in the terms or conditions on which such an engagement is offered.

(3) It is unlawful for the principal to discriminate against an agent on the ground of race -

- (a) in the terms or conditions on which the agent is engaged;
- (b) by denying or limiting access to opportunities for promotion, transfer or training or any other benefits connected with the agents position;
- (c) by terminating the engagement; or
- (d) by subjecting the agent to any other detriment.

**Discrimination against contract workers**

**51.(1)** This section applies to a principal for whom work is done by contract workers in pursuance of a contract between the principal and the employer of those contract workers.

(2) It is unlawful for a principal to enter into any contract or arrangement with an employer of contract workers under which the employer is to discriminate against a person on the ground of race.

(3) It is unlawful for the principal to discriminate against a contract worker on the ground of race -

- (a) in the terms or conditions on which the contract worker is allowed to work;
- (b) by not allowing the contract worker to work;
- (c) by denying or limiting access to any benefit connected with employment; or
- (d) by subjecting the contract worker to any other detriment.

**Partnerships**

**52.(1)** It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of race -

- (a) in determining, or in the course of determining, who should be offered a position as partner in the firm; or

- (b) in the terms or conditions on which that person is offered a position as partner in the firm.

(2) It is unlawful for a firm consisting of two or more partners to discriminate against a partner on the ground of race -

- (a) in the terms or conditions of membership of the firm;
- (b) by denying or limiting access to any benefit arising from membership of the firm;
- (c) by expelling the partner from the firm; or
- (d) by subjecting the partner to any other detriment.

#### **Exceptions**

53.(1) This Division does not apply in relation to employment within a private household.

(2) This Division does not apply to discrimination on the ground of race in relation to employment for which it is a genuine occupational requirement that a person be of a particular race.

### **Division 3 - Discrimination by Other Bodies**

#### **Associations**

54.(1) It is unlawful for an association to discriminate -

- (a) against an applicant for membership on the ground of race -
  - (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association;
  - (ii) in the terms on which the applicant is, or may be, admitted to membership, or to a particular class of membership; or
- (b) against a member of the association on the ground of race -
  - (i) by refusing or failing to provide a particular service or benefit to that member;
  - (ii) in the terms on which a particular service or benefit is provided to that member; or
  - (iii) by expelling that member from the association or subjecting him or her to any other detriment.

(2) This section does not apply to a club established principally for the purpose of promoting social intercourse between the members of particular racial or ethnic groups.

#### **Authorisations and qualifications**

55.(1) It is unlawful for an authority or body empowered to confer an authorisation or qualification that is needed for, or facilitates, the practice of

a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person on the ground of race -

- (a) by refusing or failing to confer or renew that authorisation or qualification;
- (b) in the terms or conditions on which it confers the authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification, or varying the terms or conditions upon which it is held.

(2) Without limiting the generality of subsection (1) an authority or body discriminates against a person on the ground of race if the authority or body -

- (a) fails to take reasonable steps to inform itself sufficiently on the adequacy or appropriateness of qualifications or experience gained outside of Australia by the person; and
- (b) in consequence of that failure, refuses to confer on the person an authorisation or qualification for which the person has applied.

#### **Division 4 - Discrimination in Education**

##### **Education**

56.(1) It is unlawful for an education authority to discriminate against a person on the ground of race -

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

(2) It is unlawful for an education authority to discriminate against a student on the ground of race -

- (a) in the terms or conditions on which it provides the student with education or training;
- (b) by denying or limiting access to any benefit provided by the authority;
- (c) by expelling the student; or
- (d) by subjecting the student to any other detriment.

#### **Division 5 - Discrimination in Relation to Goods, Services and Accommodation**

##### **Goods and services**

57. It is unlawful for a person who offers or provides -

- (a) goods; or

- (b) services to which this Act applies, (whether for payment or not), to discriminate against another on the ground of race -
- (c) by refusing or failing to supply the goods or perform the services; or
- (d) in the terms or conditions on which or the manner in which the goods are supplied or the services performed.

#### **Accommodation**

**58.(1)** It is unlawful for a person to discriminate against another on the ground of race -

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

**(2)** It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of race -

- (a) in the terms or conditions on which accommodation is provided;
- (b) by denying or limiting access to any benefit connected with the accommodation;
- (c) by evicting the person; or
- (d) by subjecting the person to any other detriment.

#### **Division 6 - Discrimination in Relation to Superannuation**

##### **Superannuation schemes**

**59.(1)** It is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of race -

- (a) by providing a scheme or fund that discriminates or, if the other person were to become a member of the scheme or fund would discriminate or require or authorise discrimination, against the other person; or
- (b) in the manner in which the scheme or fund is administered.

**(2)** Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this section has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.

**Division 7 – General Exemptions from this Part**

**Charitable instruments**

**60.** This Part does not –

- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon persons of a particular race; or
- (b) render unlawful any act done to give effect to such a provision.

**Scheme to benefit persons of particular race**

**61.** This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons of a particular race.

**PART V – PROHIBITION OF DISCRIMINATION ON THE  
GROUND OF IMPAIRMENT**

**Division 1 – Discrimination to which this Part Applies**

**Definition**

**62.** For the purposes of this Act, a person discriminates on the ground of impairment –

- (a) if he or she treats another unfavourably because of the other's impairment or a past or presumed impairment;
- (b) if he or she treats another unfavourably because the other does not comply, or is not able to comply, with a particular requirement and –
  - (i) the nature of the requirement is such that a substantially higher proportion of persons who do not have such an impairment complies, or is able to comply, with the requirement than of those persons who have such an impairment; and
  - (ii) the requirement is not reasonable in the circumstances of the case;
- (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons who have such an impairment, or on the basis of a presumed characteristic that is generally imputed to persons who have such an impairment;
- (d) if, in circumstances where it is unreasonable to do so –
  - (i) he or she fails to provide special assistance or equipment required by a person in consequence of the person's impairment; or

- (ii) he or she treats another unfavourably because the other requires special assistance or equipment as a consequence of the other's impairment;
- (e) if he or she treats a person who is blind or deaf, or partially blind or deaf, unfavourably because the person possesses, or is accompanied by, a guide dog, or because of any related matter (whether or not it is his or her normal practice to treat unfavourably any person who possesses, or is accompanied by, a dog).

### **Division 2 - Discrimination in Employment**

#### **Discrimination against applicants and employees**

**63.(1)** It is unlawful for an employer to discriminate against a person on the ground of impairment -

- (a) in determining, or in the course of determining, who should be offered employment; or
- (b) in the terms or conditions on which employment is offered.

**(2)** It is unlawful for an employer to discriminate against an employee on the ground of impairment -

- (a) in the terms or conditions of employment;
- (b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits connected with employment;
- (c) by dismissing the employee; or
- (d) by subjecting the employee to any other detriment.

#### **Discrimination against commission agents**

**64.(1)** This section applies to a principal for whom work is done by agents remunerated by commission.

**(2)** It is unlawful for the principal to discriminate against a person on the ground of impairment -

- (a) in determining, or in the course of determining, who should be engaged as an agent; or
- (b) in the terms or conditions on which such an engagement is offered.

**(3)** It is unlawful for the principal to discriminate against an agent on the ground of impairment -

- (a) in the terms or conditions on which the agent is engaged;
- (b) by denying or limiting access to opportunities for promotion, transfer or training or any other benefits connected with the agents position;
- (c) by terminating the engagement; or
- (d) by subjecting the agent to any other detriment.

**Discrimination against contract workers**

**65.(1)** This section applies to a principal for whom work is done by contract workers in pursuance of a contract between the principal and the employer of those contract workers.

(2) It is unlawful for a principal to enter into any contract or arrangement with an employer of contract workers under which the employer is to discriminate against a person on the ground of impairment.

(3) It is unlawful for the principal to discriminate against a contract worker on the ground of impairment -

- (a) in the terms or conditions on which the contract worker is allowed to work;
- (b) by now allowing the contract worker to work;
- (c) by denying or limiting access to any benefit connected with employment; or
- (d) by subjecting the contract worker to any other detriment.

**Partnerships**

**66.(1)** It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of impairment -

- (a) in determining, or in the course of determining, who should be offered a position as partner in the firm; or
- (b) in the terms or conditions on which that person is offered a position as partner in the firm.

(2) It is unlawful for a firm consisting of two or more partners to discriminate against a partner on the ground of impairment -

- (a) in the terms or conditions of membership of the firm;
- (b) by denying or limiting access to any benefit arising from membership of the firm;
- (c) by expelling the partner from the firm; or
- (d) by subjecting the partner to any other detriment.

**Exceptions**

**67.(1)** This Division does not apply in relation to employment within a private household.

(2) This Division does not apply to discrimination on the ground of impairment in relation to employment if the person suffering from the impairment is not, or would not be, able -

- (a) to perform adequately, and without endangering himself or herself or other persons, the work genuinely and reasonable required for the employment or position in question; or
- (b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question.

### **Division 3 - Discrimination by Other Bodies**

#### **Associations**

**68.(1)** It is unlawful for an association to discriminate -

- (a) against an applicant for membership on the ground of impairment -
  - (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or
  - (ii) in the terms on which the applicant is, or may be, admitted to membership, or to a particular class of membership; or
- (b) against a member of the association on the ground of impairment -
  - (i) by refusing or failing to provide a particular service or benefit to that member;
  - (ii) in the terms on which a particular service or benefit is provided to that member; or
  - (iii) by expelling that member from the association or subjecting him or her to any other detriment.

#### **Authorisations and qualifications**

**69.(1)** It is unlawful for an authority or body empowered to confer an authorisation or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person on the ground of impairment -

- (a) by refusing or failing to confer or renew that authorisation or qualification;
- (b) in the terms or conditions on which it confers the authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification, or varying the terms or conditions upon which it is held.

(2) This section does not apply to discrimination against a person on the ground of impairment where, in consequence of that impairment, the person is not, or would not be, able to practise the profession, or carry on or engage in the trade or occupation, adequately or safely.

**Division 4 – Discrimination in Education**

**Education**

**70.(1)** It is unlawful for an education authority to discriminate against a person on the ground of impairment –

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

**(2)** It is unlawful for an education authority to discriminate against a student on the ground of impairment –

- (a) in the terms or conditions on which it provides the student with education or training;
- (b) by denying or limiting access to any benefit provided by the authority;
- (c) by expelling the student; or
- (d) by subjecting the student to any other detriment.

**(3)** This section does not apply to discrimination on the ground of impairment in respect of admission to a school, college or institution established wholly or mainly for students who have a particular impairment.

**Division 5 – Discrimination in Relation to Goods,  
Services and Accommodation**

**Goods and services**

**71.(1)** It is unlawful for a person who offers or provides –

- (a) goods; or
  - (b) services to which this Act applies,
- (whether for payment or not) to discriminate against another on the ground of impairment –

- (c) by refusing or failing to supply the goods or perform the services; or
- (d) in the terms or conditions on which or the manner in which the goods are supplied or the services are performed.

**(2)** Where the nature of a skill varies according to whether it is exercised in relation to persons who have a particular impairment or to those who do not have such an impairment, a person does not contravene subsection (1) by exercising the skill in relation to only those persons who have a particular impairment, or only those who do not have such an impairment, in accordance with the persons normal practice.

(3) This section does not apply to discrimination against a person on the ground of impairment in relation to the performing of a service where in consequence of the impairment, that person requires the service to be performed in a special manner and the person performing the service -

- (a) cannot reasonably be expected to perform the service in that manner; or
- (b) cannot reasonably be expected to perform the service in that manner except on more onerous terms that would otherwise apply.

#### **Accommodation**

72.(1) It is unlawful for a person to discriminate against another on the ground of impairment -

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

(2) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of impairment -

- (a) in the terms or conditions on which accommodation is provided;
- (b) by denying or limiting access to any benefit connected with the accommodation;
- (c) by evicting the person; or
- (d) by subjecting the person to any detriment.

### **Division 6 - Discrimination in Relation to Superannuation**

#### **Superannuation**

73.(1) Subject to subsection (2), it is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of impairment -

- (a) by providing a scheme or fund that discriminates, or requires or authorises discrimination, against that other person or that would, if that person were to become a member of the scheme or fund, discriminate, or require or authorise discrimination, against that person; or
- (b) in the manner in which the scheme or fund is administered, except to the extent that -
- (c) the discrimination -
  - (i) is based upon actuarial or statistical data from a source upon which it is reasonable to rely; and
  - (ii) is reasonable having regard to the data and any other relevant factors; or

(d) where no such actuarial or statistical data is available, the discrimination is reasonable having regard to any other relevant factors.

(2) Subsection (1) does not apply in relation to a superannuation scheme or provident fund provided for employees -

- (a) to which the employer makes contributions; and
- (b) under which a greater number of the members (not including members who are no longer employed by an employer who participates in the scheme or fund) reside in any one other State or Territory than reside in this Territory.

(3) Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this section has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.

### **Division 8 - General Exemptions from this Part**

#### **Rates of remuneration**

74. This Part does not render unlawful in certain circumstances not inconsistent with this Act, discriminatory rates of salary, wages or other remuneration payable to persons who have impairments.

#### **Charitable instruments**

75. This Part does not -
- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon persons who have a particular impairment; or
  - (b) render unlawful any act done to give effect to such a provision.

#### **Sporting activity**

76. This Part does not render unlawful the exclusion of a person who has an impairment from participation in a sporting activity -

- (a) if the activity requires physical or intellectual attributes that the person does not possess; or
- (b) if, in the case of a sporting activity conducted wholly or mainly for persons who have a particular impairment, the person's impairment is not of that kind.

#### **Scheme to benefit persons with particular impairment**

77. This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons who have a particular impairment.

**Inaccessible premises**

78. This Part does not render unlawful discrimination against a person on the ground of physical impairment where the discrimination arises out of the fact -

- (a) that premises, or a part of premises, is so constructed as to be inaccessible to that person; or
- (b) that the owner or occupier of premises fails to ensure that every part, or a particular part, of the premises is accessible to that person.

**Insurance**

79. This Part does not render unlawful discrimination on the ground of impairment in the terms on which an annuity, life assurance, accident insurance or any other form of insurance is offered or may be obtained, where -

- (a) the discrimination -
  - (i) is based upon actuarial or statistical data from a source on which it is reasonable to rely; and
  - (ii) is reasonable having regard to that data and any other relevant factors; or
- (b) where no such actuarial or statistical data is available, the discrimination is reasonable having regard to any other relevant factors.

**PART VI - PROHIBITION OF DISCRIMINATION ON THE GROUND OF AGE****Division 1 - Discrimination to which this Part Applies****Definition**

80. For the purposes of this Act, a person discriminates on the ground of age -

- (a) if he or she treats another person unfavourably because of the other's age;
- (b) if he or she treats another person unfavourably because the other does not comply, or is not able to comply, with a particular requirement and -
  - (i) the nature of the requirement is such that a substantially higher proportion of persons of a different age or age group complies, or is able to comply, with the requirement than of those of the other's age or age group; and
  - (ii) the requirement is not reasonable in the circumstances of the case; or
- (c) if he or she treats another person unfavourably on the basis of a characteristic that appertains generally to persons of the other's age

or age group, or on the basis of a presumed characteristic that is generally imputed to persons of that age or age group.

## **Division 2 – Discrimination in Employment**

### **Discrimination against applicants and employees**

**81.(1)** It is unlawful for an employer to discriminate against a person on the ground of age –

- (a) in determining, or in the course of determining, who should be offered employment; or
- (b) in the terms or conditions on which employment is offered.

(2) It is unlawful for an employer to discriminate against an employee on the ground of age –

- (a) in the terms or conditions of employment;
- (b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits connected with employment;
- (c) by dismissing the employee; or
- (d) by subjecting the employee to any other detriment.

### **Discrimination against commission agents**

**82.(1)** This section applies to a principal for whom work is done by agents remunerated by commission.

(2) It is unlawful for the principal to discriminate against a person on the ground of age –

- (a) in determining, or in the course of determining, who should be engaged as an agent; or
- (b) in the terms or conditions on which such an engagement is offered.

(3) It is unlawful for the principal to discriminate against an agent on the ground of age –

- (a) in the terms or conditions on which the agent is engaged;
- (b) by denying or limiting access to opportunities for promotion, transfer or training or any other benefits connected with the agent's position;
- (c) by terminating the engagement; or
- (d) by subjecting the agent to any other detriment.

### **Discrimination against contract workers**

**83.(1)** This section applies to a principal for whom work is done by contract workers in pursuance of a contract between the principal and the employer of those contract workers.

(2) It is unlawful for a principal to enter into any contract or arrangement with an employer of contract workers under which the employer is to discriminate against a person on the ground of age.

(3) It is unlawful for the principal to discriminate against a contract worker on the ground of age -

- (a) in the terms or conditions on which the contract worker is allowed to work;
- (b) by not allowing the contract worker to work;
- (c) by denying or limiting access to any benefit connected with employment; or
- (d) by subjecting the contract worker to any other detriment.

#### **Partnerships**

84.(1) It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of age -

- (a) in determining, or in the course of determining, who should be offered a position as partner in the firm; or
- (b) in the terms or conditions on which that person is offered a position as partner in the firm.

(2) It is unlawful for a firm consisting of two or more partners to discriminate against a partner on the ground of age -

- (a) in the terms or conditions of membership of the firm;
- (b) by denying or limiting access to any benefit arising from membership of the firm;
- (c) by expelling the partner from the firm; or
- (d) by subjecting the partner to any other detriment.

#### **Exceptions**

85.(1) This Division does not apply in relation to employment within a private household.

(2) This Division does not apply to discrimination on the ground of age in relation to employment for which there is a genuine occupational requirement that a person be of a particular age, or age group.

(3) This Division does not apply to discrimination on the ground of age in relation to the employment of a person if the person is not, or would not be, able -

- (a) to perform adequately, and without endangering himself or herself or other persons, the work genuinely and reasonably required for the employment or position in question; or

(b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question.

(4) This Division does not render unlawful an act done in order to comply with the requirements of an award or industrial agreement made or approved under the Industrial Relations Act 1988 of the Commonwealth.

(5) This Division does not render unlawful the imposition by a particular employer of a standard retiring age in respect of employment of a particular kind.

### **Division 3 - Discrimination by Other Bodies**

#### **Associations**

86.(1) After the expiration of one year from the commencement of this Part, it will be unlawful for an association to discriminate -

- (a) against an applicant for membership on the ground of age -
  - (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or
  - (ii) in the terms on which the applicant is, or may be, admitted to membership, or a particular class of membership; or
- (b) against a member of the association on the ground of age -
  - (i) by refusing or failing to provide a particular service or benefit to that member;
  - (ii) in the terms on which a particular service or benefit is provided to that member; or
  - (iii) by expelling that member from the association or subjecting the member to any other detriment.

(2) Paragraph (1)(a) does not apply to discrimination on the ground of age where the association has, on a genuine and reasonable basis, established different classes of membership for persons of different ages, or age groups.

(3) Subparagraphs (1)(b)(i) and (ii) do not apply to discrimination on the ground of age where it is reasonable that the association discriminate in relation to the provision of a particular service or benefit to members of a particular age, or age group.

(4) This section does not apply to an association established wholly or mainly for -

- (a) the promotion of the interests of persons of a particular age group;

- (b) the organisation or provision of services for persons of a particular age group; or
- (c) the organisation or provision of activities for persons of a particular age group.

#### **Authorisations and qualifications**

**87.(1)** It is unlawful for an authority or body empowered to confer an authorisation or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person on the ground of age -

- (a) by refusing or failing to confer or renew that authorisation or qualification; or
- (b) by withdrawing the authorisation or qualification.

**(2)** This section does not apply to discrimination on the ground of age -

- (a) by or on account of the imposition of a reasonable and appropriate minimum age under which an authorisation or qualification will not be conferred; or
- (b) in respect of the terms or conditions on which an authority or body confers or renews an authorisation or qualification.

**(3)** This section does not apply to discrimination against a person on the ground of age where, in consequence of his or her age, the person is not, or would not be, able to practise the profession, or carry on or engage in the trade or occupation, adequately or safely.

### **Division 4 - Discrimination in Education**

#### **Education**

**88.(1)** It is unlawful for an education authority to discriminate against a person on the ground of age -

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

**(2)** It is unlawful for an education authority to discriminate against a student on the ground of age -

- (a) in the terms or conditions on which it provides the student with training or education;
- (b) by denying or limiting access to any benefit provided by the authority;
- (c) by expelling the student; or
- (d) by subjecting the student to any other detriment.

(3) This section does not apply to discrimination on the ground of age in respect of the admission of a person to a school, college or institution where the level of education or training sought by the person is provided only for students above a particular age.

**Division 5 - Discrimination in Relation to  
Goods, Services and Accommodation**

**Goods and services**

89.(1) It is unlawful for a person who offers or provides -

- (a) goods; or
- (b) services to which this Act applies,

(whether for payment or not) to discriminate against another on the ground of age -

- (c) by refusing or failing to supply the goods or to perform the services; or
- (d) in the terms or conditions on which or the manner of which the goods are supplied or the services are performed.

(2) It is unlawful for a person who offers or provides -

- (a) goods; or
- (b) services to which this Act applies,

(whether for payment or not) to refuse or fail to supply the goods or to perform the services to another on the ground that the other person is accompanied by a child.

(3) This section does not apply to discrimination on the ground of age in relation to -

- (a) the charging of a fee or fare; or
- (b) the terms or conditions on which -
  - (i) a ticket is issued; or
  - (ii) admission is allowed to any place,

where those terms or conditions are imposed on a genuine and reasonable basis.

**Accommodation**

90.(1) It is unlawful for a person to discriminate against another on the ground of age -

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

(2) It is unlawful for a person -  
(a) to refuse an application for accommodation; or  
(b) to defer such an application or accord the applicant a lower order of precedence on any list of applicants for that accommodation,  
on the ground that the applicant intends to share that accommodation with a child.

(3) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of age -

- (a) in the terms or conditions on which accommodation is provided;
- (b) by denying or limiting access to any benefit connected with the accommodation;
- (c) by evicting the person; or
- (d) by subjecting the person to any detriment.

(4) This section does not apply to discrimination on the ground of age in relation to the provision of accommodation by an organisation that does not seek to secure a pecuniary profit for its members, where the accommodation is provided only for persons of a particular age group.

(5) This section does not apply -

- (a) in relation to the provision of accommodation for recreational purposes where the use of that accommodation is limited, on a genuine and reasonable basis, to persons of a particular age group;
- (b) in relation to the provision of accommodation in the principal place of residence of the owner of the accommodation; or
- (c) in relation to the provision of accommodation in premises that adjoin premises where the owner of the accommodation or any person appointed to manage the accommodation resides.

#### **Division 4 - General Exemptions from this Part**

##### **Legal status of children**

**91.** Nothing in this Part derogates from the operation of a law that relates to the juristic capacity of children.

##### **Charitable instruments**

**92.** This Part does not -

- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly on persons of a particular age, or age group; or
- (b) render unlawful any act done to give effect to such a provision.

**Testamentary dispositions or gifts**

93. This Part does not apply to the disposal of an interest in land or goods, or the provision of services, by way of, or pursuant to, a testamentary disposition or gift.

**Scheme for benefit of persons of particular age**

94. This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons of a particular age or age group in order to meet a need that arises out of, or that is related to, the age or ages of those persons.

**Competitive sporting activity**

95. This Part does not render unlawful the exclusion of persons of particular age groups from participation in a competitive sporting activity.

**Insurance and superannuation**

96.(1) This Part does not render unlawful discrimination on the ground of age -

- (a) in the terms on which an annuity or life insurance is offered or may be obtained; or
- (b) -
  - (i) in the terms on which a person may become a member of a superannuation scheme or provident fund; or
  - (ii) in the manner in which a superannuation scheme or provident fund may be administered.

(2) This Part does not render unlawful discrimination on the ground of age in the terms on which accident insurance or any other form of insurance (other than life insurance) is offered or may be obtained where the discrimination -

- (a) is based on actuarial or statistical data from a source on which it is reasonable to rely; and
- (b) is reasonable having regard to the data.

**Report by Minister**

97.(1) The Minister must, within two years after the commencement of this Part, prepare a report on those Acts of the Territory that provide for discrimination on the ground of age.

(2) The report under subsection (1) must include recommendations from the Minister, and from relevant government agencies and instrumentalities, as to whether or not the Acts referred to in the report should be amended or repealed.

(3) The Minister must, within six sitting days after the report is completed, cause copies of the report to be laid before the Legislative Assembly.

## **PART VI - OTHER UNLAWFUL ACTS**

### **Victimisation**

98.(1) It is unlawful for a person to commit an act of victimisation.

(2) For the purposes of this section, a person commits an act of victimisation against another person ("the victim") if he or she treats the victim unfavourably on the ground that the victim has -

- (a) brought proceedings under this Act against any person;
  - (b) given evidence or information in any proceedings under this Act;
  - (c) made allegations that the victim or some other person has been the subject of an act that contravenes this Act;
  - (d) reasonably asserted the victim's right or the right of some other person to lodge a complaint or take any other proceedings under this Act; or
  - (e) otherwise done anything under or by reference to this Act,
- or on the ground that he or she knows that the victim intends to do any of those things, or suspects that the victim has done, or intends to do, any of those things.

(3) Unfavourable treatment on the ground that a person -

- (a) has made a false allegation; or
- (b) has not acted in good faith,

does not constitute an act of victimisation.

### **Sexual harassment**

99.(1) It is unlawful for an employer (being a natural person) 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 an employee of an education authority to subject a student, or a person applying to become a student, to sexual harassment.

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

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

(6) It is unlawful for a person to subject another to sexual harassment in the course of -

- (a) offering or supplying goods to that other person;
- (b) offering or performing services to which this Act applies for that other person; or
- (c) offering or providing accommodation to that other person.

(7) It is unlawful for an employer to fail to take such steps as may be reasonably practicable to prevent an employee from subjecting a fellow employee, or a person seeking employment, to sexual harassment.

(8) It is unlawful for an education authority to fail to take such steps as may be reasonably necessary to ensure as far as practicable that none of its employees subjects a student to sexual harassment.

(9) It is unlawful for a person who offers or provides goods or services to which this Act applies to fail to take such steps as may be reasonably necessary to ensure as far as practicable that none of that persons agents or employees subjects a person to whom those goods or services are offered or provided to sexual harassment.

(10) Damages shall not be awarded in respect of a failure to take steps to prevent sexual harassment (being a failure that is unlawful by virtue of subsection (7), (8) or (9)), unless it is established that the person guilty of that failure instructed, authorised or connived at the sexual harassment.

(11) For the purposes of this section, a person subjects another person to sexual harassment if he or she does any of the following acts in such a manner or in such circumstances that the other person feels offended, humiliated or intimidated -

- (a) he or she subjects the other to an unsolicited and intentional act of physical intimacy;
  - (b) he or she demands or requests (directly or by implication) sexual favours from the other;
  - (c) he or she makes, on more than one occasion, a remark with sexual connotations relating to the other,
- and it is reasonable in all the circumstances that the other person should feel offended, humiliated or intimidated by that conduct.

**Separation of person from guide dog****100. Subject to this Act -**

- (a) it is unlawful to impose any condition or requirement that would result in a person who is blind or deaf, or partially blind or deaf, being separated from his or her guide dog; and
- (b) a person who imposes any such condition or requirement shall, in addition to any civil liability that might be incurred under this Act, be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

**Notification of discrimination based on actuarial or statistical data**

**101.** Where a person, in offering or providing insurance or a superannuation scheme or provident fund, proposes to discriminate against another person on a ground referred to in this Act on the basis of actuarial or statistical data and this Act provides that such discrimination is not unlawful, it is unlawful for the person -

- (a) to fail to notify the other person of the discrimination and of the fact that he or she may request to be given a summary of the actuarial or statistical data on which it is based; and
- (b) if such a request is made, to fail to comply with the request.

**Joint liability**

**102.** Where a person causes, instructs, induces or aids another to act in contravention of this Act, both shall be jointly and severally liable to any criminal or civil liability arising under this Act in respect of the contravention.

**Vicarious liability**

**103.(1)** Subject to this section, a person is, for the purposes of this Act, vicariously liable for the acts or defaults of agents or employees while acting in the course of their agency or employment.

(2) A person is not vicariously liable for an act of sexual harassment committed by an agent or employee, unless the person instructed, authorised or connived at that act.

(3) In any proceedings brought under this Act against a person in respect of an act alleged to have been committed by an agent or employee acting in the course of the agency or employment, it shall be a defence to prove that the person exercised all reasonable diligence to ensure that the agent or employee would not act in contravention of this Act.

(4) Where a person would, but for the existence of a defence under subsection (3), be liable under this Act to any criminal or civil liability

arising out of the act or default of an agent or employee, the agent or employee is liable to that criminal or civil liability.

## **PART VII - GRANTS OF EXEMPTIONS**

### **Tribunal may grant exemptions**

**104.(1)** The Tribunal may, upon application under this section, grant exemptions from any of the provisions of this Act in relation to -

- (a) a person, or class of persons;
  - (b) an activity, or class of activity; or
  - (c) any circumstances of a specified nature.
- (2) An exemption under this section -
- (a) may be granted unconditionally or upon conditions;
  - (b) may be revoked by the Tribunal upon breach of a condition; and
  - (c) subject to revocation, shall remain in force for a period, not exceeding three years, determined by the Tribunal, but may be renewed from time to time for a further period, not exceeding three years, determined by the Tribunal.
- (3) An application for the grant, renewal or revocation of an exemption may be made to the Tribunal by the Commissioner or any other person.
- (4) The following persons shall be entitled to appear and be heard by the Tribunal upon an application under this section -
- (a) the applicant;
  - (b) where the Commissioner is not the applicant - the Commissioner;
  - (c) any person in whose favour the exemption in question is sought, or has been granted.
- (5) A person referred to in subsection (4) may call or give evidence in support of, or against, the application.
- (6) In determining an application under this section, the Tribunal may -
- (a) have regard (where relevant) to the desirability of certain discriminatory actions being permitted for the purpose of redressing the effect of past discrimination; and
  - (b) have regard to any other factors that the Tribunal considers relevant.
- (7) Notice of the grant, renewal or revocation of an exemption under this section shall be published in the Gazette.

(8) Notice of the grant or renewal of an exemption under this section must state -

- (a) the period for which the exemption has been granted or renewed;
- (b) the conditions (if any) to which the exemption is subject.

## **PART VIII - ENFORCEMENT OF THIS ACT**

### **Division 1 - Complaints and Inquiries**

#### **Complaints**

105.(1) A complaint alleging that a person has acted in contravention of this Act may be made -

- (a) by any person aggrieved by the act;
- (b) by any person aggrieved by the act, on behalf of himself or herself and any other person aggrieved by the act;
- (c) where a person aggrieved by the act has an intellectual impairment - by a person who is, in the opinion of the Commissioner, a suitable representative of the interests of the aggrieved person.

(2) A person cannot make a complaint pursuant to paragraph (1)(b) on behalf of some other person unless that other person has consented in writing to the making of the complaint.

(3) A person who consents to a complaint being made on his or her behalf is bound by any decision or order made on the complaint.

(4) A complaint -

- (a) must be in writing and set out the details of the alleged contravention; and
- (b) must be lodged with the Commissioner.

(5) A complaint must be lodged -

- (a) when the alleged contravention is constituted of a series of acts - within twelve months of the last of those acts;
- (b) in any other case - within six months of the date on which the contravention is alleged to have been committed.

(6) The Commissioner may on good cause being shown and in the Commissioner's absolute discretion, extend the period referred to in (5)(a) and (b).

#### **Tribunal may refer matter for investigation**

106.(1) Where it appears to the Tribunal, on application made by the Commissioner with the approval of the Minister, that a person may have

acted in contravention of this Act, the Tribunal may refer the matter to the Commissioner for investigation.

(2) The person the subject of an application under this section is a party to the application and the Commissioner must, on lodging the application with the Tribunal, furnish the person with a copy of the application.

#### **Investigation by Commissioner**

107.(1) On a complaint being lodged, or a matter being referred, the Commissioner may conduct an investigation into the alleged contravention.

(2) For the purposes of an investigation, the Commissioner may, by notice in writing given personally or by post to the person who is alleged to have acted in contravention of this Act, require that person to produce to the Commissioner such books, papers or other documents as may be specified in the notice.

(3) Subject to subsection (4), a person to whom a notice is given pursuant to subsection (2) shall not refuse or fail to comply with the notice.

Penalty: Two thousand dollars.

(4) A person is not obliged to produce any books, papers or documents pursuant to this section if their contents would tend to incriminate the person of an offence other than an offence against this Act.

(5) The Commissioner may retain any books, papers or documents produced pursuant to this section only for so long as is reasonably necessary to peruse their contents and take copies of them.

(6) Nothing in this section empowers the Commissioner to require that a book, paper or document that is required for the day to day operation of a business be produced at any place other than the premises from which the business is operated.

#### **Handling of complaints**

108.(1) Where, in the opinion of the Commissioner, a complaint that has been lodged is frivolous, vexatious, misconceived or lacking in substance, the Commissioner may, by notice in writing addressed to the complainant, decline to recognise the complaint as one upon which action should be taken by the Commissioner.

(2) A decision by the Commissioner not to recognise a complaint as one upon which action should be taken under this section may be made at any time, notwithstanding that to some extent action under this section has already been taken on the complaint.

(3) Where the Commissioner is of the opinion that a matter (not being the subject of a complaint to which subsection (1) applies) may be resolved by conciliation, the Commissioner shall make all reasonable endeavours to resolve the matter by conciliation.

(4) The Commissioner may, by notice in writing given personally or by post to the person who is alleged to have contravened this Act, require that person to attend at a time and place specified in the notice for the purpose of conciliation.

(5) A person who refuses or fails to comply with a requirement of the Commissioner under this section shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(6) A party to proceedings is not entitled to be represented, or assisted, by a legal practitioner in conciliation proceedings under this section except with the authority of the Commissioner.

(7) Evidence of anything said or done in the course of conciliation proceedings under this section shall not be admissible in any proceedings under this Act or any other Act or law.

(8) -

(a) Where a matter referred to the Commissioner for investigation is to be referred to the Tribunal for hearing and determination, the Commissioner will lodge a complaint with the Tribunal in respect of the matter.

(b) Where the Commissioner -

(i) is of the opinion that a matter cannot be resolved by conciliation;

(ii) has attempted to resolve the matter by conciliation but has not been successful in that attempt; or

(iii) has declined to recognise a complaint as one upon which action should be taken under this section and the complainant has, within three months of being notified of the Commissioner's decision, by notice in writing, required the Commissioner to refer the matter,

the Commissioner shall refer the complaint to the Tribunal for hearing and determination.

(9) Where a complaint is referred to the Tribunal (except pursuant to subparagraph (8)(b)(iii) the Commissioner must, on the request of the complainant assist the complainant, personally or by Counsel or other representative in the presentation of the complainants case to the Tribunal.

#### **Orders of Tribunal**

109.(1) The Tribunal may, on determining that the respondent in proceedings under this Part has acted in contravention of this Act, make any one or more of the following orders:

- (a) an order requiring the respondent to pay compensation (of such amount as the Tribunal thinks fit) to any person for loss or damage arising from the contravention;
- (b) an order requiring the respondent to refrain from any further contravention of the Act;
- (c) an order requiring the respondent or any other party to the proceedings to perform specified acts with a view to redressing loss or damage arising from the contravention;
- (d) an order dismissing the matter.

(2) The Tribunal may at any stage of proceedings under this Part -

- (a) make an interim order to prevent prejudice to any person affected by the proceedings; and
- (b) make an order dismissing the proceedings.

(3) The damage for which a person may be compensated under subsection (1) includes injury to his or her feelings.

(4) A person who contravenes or fails to comply with an order under this section shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(5) Any amount that a person is ordered to pay under this section may be recovered from the person as a debt in a court of competent jurisdiction.

### **Division 2 - Appeals**

#### **Reasons for decision**

110. The Tribunal shall, if so required by a party to proceedings under this Part, state in writing its reasons for any decision or order, together with any findings of fact, that it makes in those proceedings.

#### **Appeals to Supreme Court**

111.(1) A right of appeal shall lie to the Supreme Court against -

- (a) a decision by the Tribunal upon an application for the grant, renewal or revocation of an exemption; or
  - (b) a decision or order made by the Tribunal in proceedings under this Part.
- (2) An appeal under this section may be made by any party to the proceedings and must be instituted within one month of the making of the decision or order appealed against.
- (3) If the reasons of the Tribunal are not given in writing at the time of the making of a decision or order and the appellant then requested the Tribunal to state its reasons in writing, the time for instituting the appeal shall run from the time when the written statement of those reasons is given to the appellant.
- (4) An appeal under this section shall be conducted as a review of the decision or order of the Tribunal.
- (5) The Supreme Court may, on the hearing of an appeal, exercise one or more of the following powers:
- (a) affirm, vary or quash the decision or order appealed against, or substitute, or make in addition, any decision or order that should have been made in the first instance;
  - (b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for rehearing;
  - (c) make any order as to costs or any other matter that the justice of the case requires.

## **PART IX - MISCELLANEOUS**

### **Effect of contravention of Act**

112. A contravention of this Act shall attract no sanction or consequence (whether criminal or civil) except to the extent expressly provided by this Act.

### **Proceedings under Commonwealth Industrial Relations Act**

113.(1) Nothing in this Act prevents a person who has been dismissed from his or her employment from bringing proceedings in respect of that dismissal under the Industrial Relations Act 1988 of the Commonwealth.

(2) Where a person brings proceedings under the Industrial Relations Act 1988 of the Commonwealth in respect of dismissal from employment, and those proceedings are determined, the person shall not institute or prosecute proceedings under this Act in respect of the dismissal.

(3) Subsection (2) does not apply where the proceedings under the Industrial Relations Act 1988 of the Commonwealth, are dismissed on a ground that does not relate to the sex, sexuality, marital status, pregnancy, race, impairment or age of the person.

(4) Where a person brings proceedings under this Act in respect of dismissal from employment, and those proceedings are determined, the person shall not institute or prosecute proceedings under the Industrial Relations Act 1988 of the Commonwealth, in respect of the dismissal.

(5) Subsection (4) does not apply where the proceedings under this Act are dismissed and the proceedings under the Industrial Relations Act 1988 of the Commonwealth, do not relate to the sex, sexuality, marital status, pregnancy, race, impairment or age of the person.

**Actions in accordance with Commissioner's advice**

114.(1) Subject to this section, it shall be a defence in any proceedings under this Act (whether or a civil or criminal nature) for the defendant to prove -

- (a) that the act or omission forming the subject matter of the charge, complaint, claim or inquiry was done, or made, in accordance with written advice furnished to the defendant by the Commissioner; and
- (b) that the Commissioner had not, by notice in writing served personally or by post on the defendant, retracted that advice before the date of the act or omission in question.

(2) A person proposing to act, on the advice of the Commissioner, to the detriment of another must, at least seven days before doing so, give notice to the other of the proposed action together with -

- (a) a copy of that advice; and
- (b) a statement in the prescribed form of the other's rights under subsection (3),

and, in case of failure to do so, the defence under subsection (1) will not apply.

(3) A person may, within seven days after receiving a notification under subsection (2), apply to the Tribunal for a declaration as to whether the advice of the Commissioner is correct.

(4) The period limited by subsection (3) for the making of an application for a declaration is not capable of extension under the provisions of any other Act.

(5) The Registrar shall cause a copy of an application under subsection (3) to be served personally or by post upon the Commissioner and the person to whom the advice was furnished.

(6) Where a person to whom advice is furnished by the Commissioner acts upon that advice before an application for a declaration under this section in relation to the advice is determined, the defence provided by subsection (1) shall be available to that person in any proceedings under this Act in respect of his or her action, if the Tribunal declares that the advice is correct or if the application is withdrawn or dismissed, but shall not be available in any such proceedings if the Tribunal declares that the advice is incorrect.

(7) Where in any proceedings under this section the Tribunal declares that advice furnished by the Commissioner is incorrect, the advice shall, for the purposes of subsection (1), be deemed to have been retracted on the date of the commencement of those proceedings.

#### **Obstruction**

115. A person shall not molest, wilfully insult, hinder or obstruct the Commissioner, or an officer assisting the Commissioner, in the exercise or discharge by the Commissioner or the officer of official powers or duties.

Penalty: Two thousand dollars.

#### **Advertisement of unlawful acts**

116.(1) A person shall not publish or cause to be published an advertisement that indicates an intention to do an act that is unlawful by virtue of this Act.

Penalty: One thousand dollars.

(2) In the proceedings for an offence against subsection (1) it is a defence to prove that the defendant believed on reasonable grounds that the publication of this advertisement would not contravene that subsection.

#### **Summary proceedings**

117. Proceedings for an offence against this Act shall be disposed of summarily.

#### **Rules of Tribunal**

118. The Presiding Officer of the Tribunal may make rules regulating the practice and procedure of the Tribunal.

**Regulations**

**119.(1)** The Executive may make such regulations as are necessary or expedient for the purposes of this Act.

**(2)** Without limiting the generality of subsection (1), those regulations may -

- (a)** prescribe any form for the purposes of this Act;
- (b)** exempt, conditionally or unconditionally, specified persons, or persons of a specified class, from any provision of this Act; or
- (c)** prescribe a penalty not exceeding two hundred dollars for breach of, or non-compliance with, any regulation.