

ANTI-DISCRIMINATION ACT, 1977

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 48, 1977.

An Act to render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons. [Assented to, 28th April, 1977.]

BE

Anti-Discrimination.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Anti-Discrimination Act, Short title. 1977".

2. (1) This section and section 1 shall commence on the Commence-
date of assent to this Act. ment.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. This Act is divided as follows :—

Division of
Act.

PART I.—PRELIMINARY—*ss.* 1-5.

PART II.—RACIAL DISCRIMINATION—*ss.* 6-22.

DIVISION 1.—*General*—*ss.* 6, 7.

DIVISION 2.—*Discrimination in Work*—*ss.* 8-16.

DIVISION 3.—*Discrimination in Other Areas*—*ss.*
17-20.

DIVISION 4.—*Exceptions to Part II*—*ss.* 21, 22.

PART

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PART III.—SEX DISCRIMINATION—*ss.* 23–38.DIVISION 1.—*General*—*ss.* 23, 24.DIVISION 2.—*Discrimination in Work*—*ss.* 25–31.DIVISION 3.—*Discrimination in Other Areas*—*ss.*
32–34.DIVISION 4.—*Exceptions to Part III*—*ss.* 35–38.PART IV.—DISCRIMINATION ON THE GROUND OF
MARITAL STATUS—*ss.* 39–49.DIVISION 1.—*General*—*s.* 39.DIVISION 2.—*Discrimination in Work*—*ss.* 40–46.DIVISION 3.—*Discrimination in Other Areas*—*ss.*
47, 48.DIVISION 4.—*Exception to Part IV*—*s.* 49.PART V.—OTHER UNLAWFUL ACTS—*ss.* 50–53.PART VI.—GENERAL EXCEPTIONS TO PARTS II TO IV
—*ss.* 54–59.PART VII.—THE COUNSELLOR FOR EQUAL OPPOR-
TUNITY—*ss.* 60–69.PART VIII.—THE ANTI-DISCRIMINATION BOARD—*ss.*
70–86.**PART**

Anti-Discrimination.

PART IX.—THE FUNCTIONS OF THE COUNSELLOR AND THE BOARD—ss. 87–122.

DIVISION 1.—*General—s. 87.*

DIVISION 2.—*The Functions of the Counsellor—ss. 88–94.*

DIVISION 3.—*The Functions of the Board in relation to Complaints—ss. 95–118.*

DIVISION 4.—*Other Functions of the Board—ss. 119–122.*

PART X.—MISCELLANEOUS—ss. 123–128.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires— Inter-pretation.

“accommodation” includes residential or business accommodation;

“Board” means the Anti-Discrimination Board constituted under this Act;

“commission agent” means an agent who is remunerated by commission;

“contract worker” means an employee who, under a contract of employment, performs work for an employer who has undertaken to perform that work for another person;

“corporation” has the meaning ascribed thereto in the Companies Act, 1961;

“council” has the meaning ascribed thereto in the Local Government Act, 1919, and includes a county council within the meaning of that Act;

“Counsellor” means the Counsellor for Equal Opportunity;

“educational

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“educational authority” means a person or body administering a school, college, university or other institution at which education or training is provided;

“employment” includes work under a contract for services;

“employment agency” means a person who, for profit or not, provides services for the purpose of finding work or employment for others or for supplying employers with workers or employees;

“functions” includes powers, authorities and duties;

“inquiry”, in relation to the Board, means an inquiry held under section 96;

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

- (a) single;
- (b) married;
- (c) married but living separately and apart from one’s spouse;
- (d) divorced;
- (e) widowed; or
- (f) in cohabitation, otherwise than in marriage, with a person of the opposite sex;

“near relative”, in relation to a person, means his spouse, parent, child, grandparent, grandchild, brother or sister;

“principal” means—

- (a) in relation to a commission agent, a person for whom work is done by that commission agent; or

(b)

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- (b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

“Registrar” means the Registrar of the Board;

“regulation” means a regulation made under this Act;

“services” includes—

- (a) services relating to banking, insurance and the provision of grants, loans, credit or finance;
- (b) services relating to entertainment, recreation or refreshment;
- (c) services relating to transport or travel;
- (d) services of any profession or trade; and
- (e) services provided by a council or public authority;

“trade union” means a trade union within the meaning of the Industrial Arbitration Act, 1940, or a registered organization within the meaning of the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth;

“vehicle” includes a ship, an aircraft and a hovercraft.

(2) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that duty.

5. This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities. Act binds Crown.

PART

Anti-Discrimination.

PART II.

RACIAL DISCRIMINATION.

DIVISION 1.—*General.*

Interpre-
tation:
Pt. II.

6. (1) In this Part, "race" includes colour, nationality and ethnic or national origin.

(2) For the purposes of this Part, the fact that a race may comprise two or more distinct races does not prevent it from being a race.

Racial dis-
crimination.

7. A person discriminates against another person on the ground of his race if, on the ground of—

- (a) his race;
- (b) a characteristic that appertains generally to persons of his race; or
- (c) a characteristic that is generally imputed to persons of his race,

he—

- (d) treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of a different race; or
- (e) segregates him from persons of a different race.

DIVISION 2.—*Discrimination in Work.*

Discrimina-
tion
against
applicants
and
employees.

8. (1) It is unlawful for an employer to discriminate against a person on the ground of his race—

- (a) in the arrangements he makes for the purpose of determining who should be offered employment;

(b)

Anti-Discrimination.

- (b) in determining who should be offered employment;
or
- (c) in the terms on which he offers employment.

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

- (a) in the terms or conditions of employment which he affords him;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
or
- (c) by dismissing him or subjecting him to any other detriment.

(3) Subsections (1) and (2) do not apply to employment for the purposes of a private household.

9. (1) It is unlawful for a principal to discriminate against a person on the ground of his race—

Discrimination
against
commission
agents.

- (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which he engages him as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of his race—

- (a) in the terms or conditions which he affords him as a commission agent;

(b)

Anti-Discrimination.

- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- (c) by terminating his engagement or subjecting him to any other detriment.

**Discrimination
against
contract
workers.**

10. It is unlawful for a principal to discriminate against a contract worker on the ground of his race—

- (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

**Trade
unions.**

11. (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his race—

- (a) by refusing or failing to accept his application for membership; or
- (b) in the terms on which it is prepared to admit him to membership.

(2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his race—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;

(b)

Anti-Discrimination.

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

12. It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his race—

Qualifying
bodies.

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

13. It is unlawful for an employment agency to discriminate against a person on the ground of his race—

Employ-
ment
agencies.

- (a) by refusing to provide him with any of its services;
or
- (b) in the terms on which it offers to provide him with any of its services.

14. Nothing in this Division applies to or in respect of any work or employment where that work or employment involves any one or more of the following :—

Exception—
genuine
occupa-
tional
qualifica-
tion.

- (a) participation in a dramatic performance or other entertainment in a capacity for which a person of a particular race is required for reasons of authenticity;

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- (b) participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of a particular race is required for reasons of authenticity;
- (c) working in a place where food or drink is, for payment or not, provided to and consumed by persons in circumstances in which a person of a particular race is required for reasons of authenticity; or
- (d) providing persons of a particular race with services for the purpose of promoting their welfare where those services can most effectively be provided by a person of the same race.

Exception—
employ-
ment
intended
to provide
training
in skills
to be
exercised
outside
New South
Wales.

15. Nothing in this Division applies to or in respect of anything done by an employer in or in connection with the employment in New South Wales of a person not ordinarily resident in New South Wales where that employment is intended to provide him with training in skills to be exercised by him wholly outside New South Wales.

Exception—
employ-
ment on
ship or
aircraft.

16. Nothing in this Division applies to or in respect of the employment of a person on a ship or an aircraft in New South Wales if that person was engaged for that employment outside New South Wales.

DIVISION 3.—Discrimination in Other Areas.

Education. **17.** (1) It is unlawful for an educational authority to discriminate against a person on the ground of his race—

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

(2)

Anti-Discrimination.

(2) It is unlawful for an educational authority to discriminate against a student on the ground of his race—

- (a) by denying him access, or limiting his access, to any benefit provided by the educational authority; or
- (b) by expelling him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of a prescribed educational authority in relation to such circumstances, if any, as may be prescribed.

18. It is unlawful for a person to discriminate against another person on the ground of his race—

Access to
places and
vehicles.

- (a) by refusing to allow him access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;
- (b) in the terms on which he is prepared to allow him access to or the use of any such place or vehicle;
- (c) by refusing to allow him the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not;
- (d) in the terms on which he is prepared to allow him the use of any such facilities; or
- (e) by requiring him to leave or cease the use of any such place or vehicle or any such facilities.

Anti-Discrimination.

Provision
of goods
and
services.

19. It is unlawful for a person who provides, for payment or not, goods or services to the public or a section of the public to discriminate against another person on the ground of his race—

- (a) by refusing to provide him with those goods or services; or
- (b) by refusing to provide him with goods or services—
 - (i) of the like quality;
 - (ii) in the like manner; or
 - (iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those goods or services belongs to a section of the public, to that section.

Accommo-
dation.

20. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his race—

- (a) by refusing his application for accommodation;
- (b) in the terms on which he offers him accommodation;
or
- (c) by deferring his application for accommodation or according him a lower order of precedence in any list of applicants for that accommodation.

(2)

Anti-Discrimination.

(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his race—

- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
- (b) by evicting him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises 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 those premises; and
- (b) the accommodation provided in those premises is for no more than 6 persons.

DIVISION 4.—*Exceptions to Part II.*

21. Nothing in this Part applies to or in respect of any-^{Special} thing done in affording persons of a particular race access ^{needs.} to facilities or services to meet the special needs of persons of that race in relation to their education, training or welfare, or any ancillary benefits.

22. Nothing in this Part applies to or in respect of any-^{Sport.} thing done on the grounds of a person's nationality or place of birth or length of time for which he has been resident in a particular place or area—

- (a) in selecting one or more persons to represent a place or an area in any sport or game; or

(b)

Anti-Discrimination.

- (b) in pursuance of the rules of any competition in so far as they relate to eligibility to compete in any sport or game.
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PART III.

SEX DISCRIMINATION.

DIVISION 1.—*General.*

Interpre-
tation:
Pt. III.

23. In this Part—

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

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

Sex
discrimina-
tion.

24. (1) A person discriminates against another person on the ground of his sex if, on the ground of—

(a) his sex;

(b) a characteristic that appertains generally to persons of his sex; or

(c)

Anti-Discrimination.

- (c) a characteristic that is generally imputed to persons of his sex,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of the opposite sex.

(2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of the opposite sex are not materially different by reason of the fact that the persons between whom the discrimination occurs are not of the same marital status.

DIVISION 2.—*Discrimination in Work.*

25. (1) It is unlawful for an employer to discriminate against a person on the ground of his sex—

- (a) in the arrangements he makes for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment;
or
- (c) in the terms on which he offers employment.

Discrimination against applicants and employees.

(2) It is unlawful for an employer to discriminate against an employee on the ground of his sex—

- (a) in the terms or conditions of employment which he affords him;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
or
- (c) by dismissing him or subjecting him to any other detriment.

(3)

Anti-Discrimination.

(3) Subsections (1) and (2) do not apply to employment—

- (a) for the purposes of a private household; or
- (b) where the number of persons employed by the employer, disregarding any persons employed within his private household, does not exceed 5.

(4) For the purposes of subsection (3) (b), a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.

**Discrimination
against
commission
agents.**

26. (1) It is unlawful for a principal to discriminate against a person on the ground of his sex—

- (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which he engages him as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of his sex—

- (a) in the terms or conditions which he affords him as a commission agent;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- (c) by terminating his engagement or subjecting him to any other detriment.

Anti-Discrimination.

27. It is unlawful for a principal to discriminate against a contract worker on the ground of his sex—

Discrimination
against
contract
workers.

- (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

28. (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his sex—

Trade
unions.

- (a) by refusing or failing to accept his application for membership; or
- (b) in the terms on which it is prepared to admit him to membership.

(2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his sex—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;
- (b) by depriving him of membership or varying the terms of his membership; or
- (c) by subjecting him to any other detriment.

29. It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his sex—

Qualifying
bodies.

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;

(b)

Anti-Discrimination.

- (b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

Employment agencies. 30. It is unlawful for an employment agency to discriminate against a person on the ground of his sex—

- (a) by refusing to provide him with any of its services; or
- (b) in the terms on which it offers to provide him with any of its services.

Exception— 31. (1) Nothing in this Division renders unlawful discrimination against a woman on the ground of her sex where being a man is a genuine occupational qualification for the job.

(2) Being a man is a genuine occupational qualification for a job where any one or more of the following requirements is satisfied :—

- (a) the essential nature of the job calls for a man for reasons of physiology, excluding physical strength or stamina, or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman;
- (b) the job needs to be held by a man to preserve decency or privacy because it involves the fitting of men's clothing;

(c)

Anti-Discrimination.

- (c) the job requires the holder of the job to enter a lavatory ordinarily used by men while it is used by men;
 - (d) the job requires the holder of the job to search men;
 - (e) the job requires the holder of the job to enter areas ordinarily used by men while men are in a state of undress or are bathing or showering;
 - (f) the job requires the holder of the job to live in premises provided by the employer and—
 - (i) those premises are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men; and
 - (ii) it is not reasonable to expect the employer either to equip those premises with accommodation and facilities of that kind or to provide other premises for women;
 - (g) the job requires the holder of the job to keep men in custody in a prison or other institution or in part of a prison or other institution;
 - (h) the holder of the job provides men with personal services relating to their welfare or education, or similar personal services, and they or a substantial number of them might reasonably object to its being carried out by a woman; or
 - (i) the job is one of two to be held by a married couple.
- (3) Being a man is a genuine occupational qualification for a prescribed job or a job of a prescribed class or description.

(4)

Anti-Discrimination.

(4) Nothing in subsection (2) limits the Governor's power to make a regulation for the purposes of subsection (3).

(5) Subsections (1), (2) and (3) apply to discrimination against a man on the ground of his sex in the same way as they apply to discrimination against a woman on the ground of her sex as if a reference therein—

- (a) to a man were a reference to a woman; and
- (b) to a woman were a reference to a man.

(6) Section 21 (a) of the Interpretation Act, 1897, does not apply to this section.

DIVISION 3.—*Discrimination in Other Areas.*

Access to
place where
liquor is
sold.

32. (1) It is unlawful for a person being the holder of a licence, a permit or an authority under the Liquor Act, 1912, to discriminate against another person on the ground of his sex—

- (a) by refusing to allow him access to or the use of any place where liquor is sold or supplied;
- (b) in the terms on which he is prepared to allow him access to or the use of any such place; or
- (c) by requiring him to leave or cease the use of any such place.

(2) Nothing in subsection (1) affects the operation of section 57.

Anti-Discrimination.

33. (1) It is unlawful for a person who provides, for payment or not, goods or services to the public or a section of the public to discriminate against another person on the ground of his sex—

- (a) by refusing to provide him with those goods or services; or
- (b) by refusing to provide him with goods or services—
 - (i) of the like quality;
 - (ii) in the like manner; or
 - (iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those goods or services belongs to a section of the public, to that section.

(2) Where a skill is commonly exercised in a different way in relation to men and women, a person does not contravene subsection (1) by exercising the skill in relation to men only, or women only, in accordance with his normal practice.

34. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his sex—

- (a) by refusing his application for accommodation;
- (b) in the terms on which he offers him accommodation; or
- (c) by deferring his application for accommodation or according to him a lower order of precedence in any list of applicants for that accommodation.

(2)

Anti-Discrimination.

(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his sex—

- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
- (b) by evicting him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises 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 those premises; and
- (b) the accommodation provided in those premises is for no more than 6 persons.

DIVISION 4.—*Exceptions to Part III.*

Pregnancy
or child-
birth.

35. Nothing in this Part renders unlawful discrimination by a person against a man on the ground of his sex by reason only of the fact that that person grants to a woman rights or privileges in connection with pregnancy or childbirth.

Super-
annuation,
etc.

36. Nothing in this Part renders unlawful discrimination on the ground of sex in the terms or conditions appertaining to a superannuation or provident fund or scheme.

Anti-Discrimination.

37. Nothing in this Part renders unlawful discrimination on the ground of sex with respect to the terms on which an annuity, a life assurance policy, an accident or insurance policy or other policy of insurance is offered or may be obtained where—

Insurance,
etc.

- (a) the discrimination is—
 - (i) based upon actuarial or statistical data from a source on which it is reasonable to rely; and
 - (ii) reasonable having regard to the data and any other relevant factors; and
- (b) the source on which the actuarial or statistical data referred to in paragraph (a) (i) is based is disclosed to the Board, where the Board so requires.

38. Nothing in this Part renders unlawful the exclusion of persons of the one sex from participation in any sporting activity, not being the coaching of persons engaged in any sporting activity, the administration of any sporting activity or any prescribed sporting activity.

Sport.

PART IV.

DISCRIMINATION ON THE GROUND OF MARITAL STATUS.

DIVISION 1.—*General.*

39. (1) A person discriminates against another person on the ground of his marital status if, on the ground of—

Discrimina-
tion on the
ground of
marital
status.

- (a) his marital status;
- (b) a characteristic that appertains generally to persons of his marital status; or

(c)

Anti-Discrimination.

(c) a characteristic that is generally imputed to persons of his marital status,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of a different marital status.

(2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of a different marital status are not materially different by reason of the fact that the persons between whom the discrimination occurs are not of the same sex.

DIVISION 2.—*Discrimination in Work.*

Discrimination
against
applicants
and
employees.

40. (1) It is unlawful for an employer to discriminate against a person on the ground of his marital status—

- (a) in the arrangements he makes for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment;
or
- (c) in the terms on which he offers employment.

(2) It is unlawful for an employer to discriminate against an employee on the ground of his marital status—

- (a) in the terms or conditions of employment which he affords him;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
or
- (c) by dismissing him or subjecting him to any other **detriment.**

(3)

Anti-Discrimination.

(3) Subsections (1) and (2) do not apply to employment—

- (a) for the purposes of a private household; or
- (b) where the number of persons employed by the employer, disregarding any persons employed within his private household, does not exceed 5.

(4) For the purposes of subsection (3) (b), a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.

41. (1) It is unlawful for a principal to discriminate against a person on the ground of his marital status—

- (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which he engages him as a commission agent.

Discrimination against commission agents.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of his marital status—

- (a) in the terms or conditions which he affords him as a commission agent;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- (c) by terminating his engagement or subjecting him to any other detriment.

Anti-Discrimination.

Discrimination
against
contract
workers.

42. It is unlawful for a principal to discriminate against a contract worker on the ground of his marital status—

- (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

Trade
unions.

43. (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his marital status—

- (a) by refusing or failing to accept his application for membership; or
- (b) in the terms on which it is prepared to admit him to membership.

(2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his marital status—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;
- (b) by depriving him of membership or varying the terms of his membership; or
- (c) by subjecting him to any other detriment.

Qualifying
bodies.

44. It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his marital status—

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;

(b)

Anti-Discrimination.

- (b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

45. It is unlawful for an employment agency to discriminate against a person on the ground of his marital status— Employment agencies.

- (a) by refusing to provide him with any of its services; or
- (b) in the terms on which it offers to provide him with any of its services.

46. Nothing in this Division renders unlawful discrimination against a person on the ground of his marital status in relation to a job which is one of two to be held by a married couple. Exception—employment of married couple.

DIVISION 3.—*Discrimination in Other Areas.*

47. It is unlawful for a person who provides, for payment or not, services to the public or a section of the public to discriminate against another person on the ground of his marital status— Provision of services.

- (a) by refusing to provide him with those services; or
- (b) by refusing to provide him with services—
 - (i) of the like quality;

(ii)

Anti-Discrimination.

(ii) in the like manner; or

(iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those services belongs to a section of the public, to that section.

Accommo-
dation.

48. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his marital status—

- (a) by refusing his application for accommodation;
- (b) in the terms on which he offers him accommodation;
or
- (c) by deferring his application for accommodation or according him a lower order of precedence in any list of applicants for that accommodation.

(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his marital status—

- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
- (b) by evicting him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises 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 those premises; and
- (b) the accommodation provided in those premises is for no more than 6 persons.

DIVISION

Anti-Discrimination.

DIVISION 4.—*Exception to Part IV.*

49. Nothing in this Part renders unlawful discrimination on the ground of marital status in the terms or conditions appertaining to a superannuation or provident fund or scheme. ^{Super-annuation, etc.}

PART V.

OTHER UNLAWFUL ACTS.

50. (1) It is unlawful for a person (“the discriminator”) to subject another person (“the person victimised”) to any detriment in any circumstances on the ground that the person victimised has— ^{Victimisation.}

- (a) brought proceedings against the discriminator or any other person under this Act;
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act;
- (c) alleged that the discriminator or any other person has committed an act which, whether or not the allegation so states, would amount to a contravention of this Act; or
- (d) otherwise done anything under or by reference to this Act in relation to the discriminator or any other person,

or by reason that the discriminator knows that the person victimised intends to do any of those things, or suspects that the person victimised has done, or intends to do, any of them.

(2)

Anti-Discrimination.

(2) Subsection (1) does not apply to the subjecting of a person to a detriment by reason of an allegation made by him if the allegation was false and not made in good faith.

Advertise-
ments.

51. (1) In this section, "advertisement" includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, show-cards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way and the reference to publish or display, in relation to an advertisement, shall be construed accordingly.

(2) It is unlawful for a person to lodge for publication an advertisement that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of this Act.

(3) An advertisement shall not be unlawful for the purposes of this Act only because of the classification or heading under which it is published.

Aiding
unlawful
acts.

52. Where a person causes, instructs, induces, aids or permits another person to do an act that is unlawful by reason of this Act, they both shall be subject, jointly and severally, to any liability arising under this Act in respect of the doing of that act.

Liability
of princi-
pals and
employers.

53. An act done in contravention of this Act by a person as the agent or employee of another person shall be deemed, for the purposes of this Act, to be done by his principal or employer as well as by him unless his principal or employer did not, either before or after the doing of the act, authorise him, either expressly or by implication, to do the act.

Anti-Discrimination.

PART VI.

GENERAL EXCEPTIONS TO PARTS II TO IV.

54. Nothing in this Act affects anything done by a person in compliance with—

Acts done
under
statutory
authority,
etc.

- (a) any other Act, whether passed before or after the date of assent to this Act;
- (b) an instrument made or approved under an Act referred to in paragraph (a);
- (c) an order of the Board;
- (d) an order of a court; or
- (e) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment (including the payment by an employer of a salary, wage or other remuneration in excess of the amount fixed by such a court or tribunal and whether or not the payment of such salary, wage or other remuneration, but for this provision would constitute unlawful discrimination).

55. (1) Nothing in this Act affects—

Charities.

- (a) a provision of a deed, will or other instrument, whether made before or after the day appointed and notified under section 2 (2), that confers charitable benefits or enables charitable benefits to be conferred on persons of a class identified by reference to any one or more of the grounds of discrimination referred to in this Act; or
- (b) an act which is done in order to give effect to such a provision.

(2) In this section, “charitable benefits” means benefits for purposes that are exclusively charitable according to the law in force in any part of Australia.

Anti-Discrimination.

Religious
bodies.

56. Nothing in this Act affects—

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- (c) the appointment of any other person in any capacity by a body established to propagate religion; or
- (d) any other practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

Registered
clubs and
voluntary
bodies.

57. (1) In this section, “body” means—

- (a) a club registered under Part X of the Liquor Act, 1912;
- (b) a club registered under Division 4 of Part IIIA of the Gaming and Betting Act, 1912; or
- (c) a body—
 - (i) the activities of which are carried on otherwise than for profit; and
 - (ii) which is not established by an Act.

(2)

Anti-Discrimination.

(2) Nothing in this Act affects—

- (a) any rule or practice of a body which restricts admission to membership of that body; or
- (b) the provision of benefits, facilities or services to members of that body.

58. Nothing in this Act affects—

Education
or religious
establish-
ments.

- (a) any rule or practice of an education or religious establishment which restricts admission to membership of that establishment; or
- (b) the provision of benefits, facilities or services to pupils, students, members or staff of such establishments.

59. (1) In this section, “institution” means an establishment which provides housing accommodation and ancillary services for aged persons, whether by statute or otherwise.

Establish-
ments pro-
viding
housing
accommo-
dation, etc.
for aged
persons.

(2) Nothing in this Act affects—

- (a) any rule or practice of an institution which restricts admission thereto to any class, type, sex, race or age of applicant; or
- (b) the provision of benefits, facilities or services to such persons as are admitted to such institution.

PART

Anti-Discrimination.

PART VII.

THE COUNSELLOR FOR EQUAL OPPORTUNITY.

The Counsellor. 60. There shall be a Counsellor for Equal Opportunity.

Appointment of Counsellor. 61. The Counsellor shall be appointed by the Governor, on the recommendation of the Minister, on such terms and conditions as are specified in the instrument of appointment.

Term of office. 62. Subject to this Act, the Counsellor holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment and is eligible for re-appointment.

Persons ineligible for appointment as Counsellor. 63. A person is not eligible for appointment as Counsellor if he is—

- (a) of or above the age of 65 years; or
- (b) a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth.

Vacation of office. 64. The Counsellor vacates his office—

- (a) on the day on which he attains the age of 65 years;
- (b) if he engages in any paid employment outside the duties of his office;

(c)

Anti-Discrimination.

- (c) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth;
- (d) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation; or
- (e) if he is removed from office by the Governor pursuant to section 65.

65. The Counsellor may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament. Removal from office.

66. The provisions of the Public Service Act, 1902, do not apply to the appointment of the Counsellor and the Counsellor is not subject to those provisions. Counsellor not subject to Public Service Act, 1902.

67. The Counsellor is entitled to be paid— Remuneration and allowances.

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

68. (1) The Minister may appoint an acting Counsellor during the absence of the Counsellor or during a vacancy in his office. Acting Counsellor.

(2)

Anti-Discrimination.

(2) An acting Counsellor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Counsellor to act as Counsellor.

(4) A person appointed an acting Counsellor shall, while so acting, be deemed to be the Counsellor and shall have the immunities and functions of the Counsellor.

(5) The Minister may, for any cause which to him seems sufficient, remove an acting Counsellor from office.

Staff.

69. (1) The Governor may appoint and employ, under and subject to the Public Service Act, 1902, such officers and employees as may be necessary to enable the Counsellor to exercise his functions.

(2) A person who is employed for the purposes of subsection (1) is, while he is so employed, an officer of the Counsellor.

PART VIII.
THE ANTI-DISCRIMINATION BOARD.**Interpre-
tation:
Pt. VIII.**

70. In this Part—

“meeting”, in relation to the Board, includes an inquiry;

“member” means a member of the Board and includes the President;

“President” means the President of the Board.

**Constitution
of Board.**

71. There shall be an Anti-Discrimination Board.

72.

Anti-Discrimination.

72. The Board shall consist of one full-time member and 2 part-time members appointed by the Governor. Appointment of members.

73. A member shall, subject to this Part, hold office for a period of 3 years and is eligible for re-appointment as a member. Term of office.

74. (1) The full-time member shall be— Eligibility for appointment to Board.

- (a) a judge of the District Court of New South Wales;
- (b) a member of the Workers' Compensation Commission of New South Wales; or
- (c) a person who is qualified for appointment as a judge of the District Court of New South Wales or a member of the Workers' Compensation Commission of New South Wales.

(2) A person is not eligible for appointment as a part-time member if he is—

- (a) of or above the age of 65 years; or
- (b) a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth.

75. A member shall be deemed to have vacated his office— Vacation of office.

- (a) if he dies;
- (b) if, being the President, he engages in any paid employment outside the duties of his office;

(c)

Anti-Discrimination.

- (c) if, being the President, he absents himself from duty for a period exceeding 14 consecutive days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless his absence is occasioned by illness or other unavoidable cause;
- (d) if, being a member other than the President, he is unavailable for duty for a period exceeding 28 days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless his unavailability is occasioned by illness or other unavoidable cause;
- (e) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth;
- (f) if he resigns his office by writing under his hand addressed to the Governor; or
- (g) if, being a member other than the President, he is removed from office by the Governor pursuant to section 76.

**Removal
from
office.**

76. The Governor may for any cause which to him seems sufficient remove any part-time member from office.

**Filling
casual
vacancy.**

77. On the occurrence of a vacancy in the office of a member, otherwise than by the expiration of the term for which he was appointed, the Governor may appoint a person to hold that office for the residue of his predecessor's term of office, being, where the vacancy occurs in the office of the full-time member, a person qualified for appointment in accordance with section 74.

78.

Anti-Discrimination.

78. The provisions of the Public Service Act, 1902, shall not apply to or in respect of the appointment of a member, and a member shall not be subject to the provisions of that Act during his term of office.

Member not
subject to
Public
Service
Act, 1902.

79. A part-time member shall be entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

Remunera-
tion of
part-time
members.

80. (1) The full-time member shall be the President.

President.

(2) The President shall devote the whole of his time to the duties of his office and shall be entitled to be paid—

(a) remuneration of the same amount as is payable in accordance with the Statutory and Other Offices Remuneration Act, 1975, to a judge of the District Court, other than the Chief Judge; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

(3) Where upon the appointment of the President he is the holder of an office referred to in section 74 (1) (a) or (b), his appointment as the President, subject to subsection (2), shall not, nor shall his service as the President, affect his tenure of that office or his rank, title, status, precedence, salary or other rights or privileges as the holder of that office.

(4) The President may only be removed from office in the same manner as a judge of the District Court may be removed from office.

81. (1) The Minister may at any time appoint a person qualified for appointment as a full-time member in accordance with section 74 (1) to act as President during the absence or illness of the President.

Acting
President.

(2)

Anti-Discrimination.

(2) A person appointed under subsection (1) shall have and may exercise, while acting as President, the functions of the President.

Alternate members.

82. (1) The Minister may at any time appoint a person as an alternate member to act during the absence or illness of a part-time member.

(2) An alternate member shall have and may exercise, while acting as a member, the functions of the person for whom he is the alternate member.

Preservation of rights of full-time member holding judicial office.

83. Where the President or acting President is qualified in accordance with section 74 (1) (a) or (b), he shall retain his office as a judge of the District Court of New South Wales or a member of the Workers' Compensation Commission of New South Wales, as the case may be, and any period during which he serves as President or acting President shall be computed as part of his service as such a judge or member, as the case may be, for the purposes of the Judges' Pensions Act, 1953.

Preservation of rights of full-time member previously public servant, etc.

84. (1) In this section, "superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

(2) Subject to subsection (3) and to the terms of his appointment, where a full-time member qualified in accordance with section 74 (1) (c) was, immediately before his appointment as a full-time member—

- (a) an officer of the Public Service; or
- (b) contributor to a superannuation scheme,

he—

- (c) shall retain any rights accrued or accruing to him as such an officer or contributor;

(d)

Anti-Discrimination.

- (d) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a full-time member; and
- (e) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer or contributor during his service as a full-time member, and—

- (f) his service as a full-time member shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and
- (g) he shall be deemed to be an officer or employee, and the Board shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this subsection.

(3) A full-time member who, but for this subsection, would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme shall not be so entitled upon his becoming (whether upon his appointment as a full-time member or at any later time while he holds office as a full-time member) a contributor to any other superannuation scheme, and the provisions of subsection (2) (g) cease to apply to or in respect of him and the Board in any case where he becomes a contributor to such another superannuation scheme.

(4) Subsection (3) does not prevent the payment to a full-time member upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by way of resignation, to be an officer or employee for the purposes of that scheme.

Anti-Discrimination.

(5) A full-time member shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

**Meetings
of the
Board.**

85. (1) The procedure for the calling of meetings of the Board and for the conduct of business at those meetings, including the procedure to be followed in an inquiry, shall, subject to this Act, be as determined by the Board.

(2) The President shall preside at all meetings of the Board at which he is present.

(3) Three members shall form a quorum at any meeting of the Board and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Board.

(4) A decision of a majority of the members present at a meeting of the Board at which a quorum is present shall be the decision of the Board.

(5) The President or member presiding shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

Registrar.

86. (1) The Governor may appoint and employ, under and subject to the Public Service Act, 1902, a Registrar of the Board and such officers and employees as may be necessary to enable the Board and the Registrar to exercise their functions.

(2) The office of Registrar may be held in conjunction with any other office in the Public Service.

PART

Anti-Discrimination.

PART IX.

THE FUNCTIONS OF THE COUNSELLOR AND THE BOARD.

DIVISION 1.—*General.*

87. In this Part—

“complainant”, in relation to a complaint, means the person or each of the persons by whom that complaint is lodged;

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tation:
Pt. IX.

“complaint” means—

(a) a complaint, not being a representative complaint, lodged under section 88 (1) or (2); and

(b) a matter referred to the Board for inquiry as a complaint pursuant to section 95,

and includes a representative complaint;

“Court” means the Supreme Court of New South Wales;

“representative complaint” means a complaint lodged under section 88 (1) by a person on behalf of himself and other persons, or two or more persons on behalf of themselves and other persons, and which is treated by the Board as a representative complaint;

“respondent”, in relation to a complaint, means the person or each of the persons against whom that complaint is lodged.

DIVISION 2.—*The Functions of the Counsellor.*

88. (1) A person on his own behalf or on behalf of himself and other persons, or two or more persons on their own behalf or on behalf of themselves and other persons, may lodge a complaint in writing with the Counsellor or the Registrar in respect of any contravention of this Act or the

regulations

Anti-Discrimination.

regulations which is alleged to have been committed by any other person or persons, other than a contravention in respect of which a specific penalty is imposed.

(2) A person may lodge a complaint in writing with the Counsellor or the Registrar in respect of any refusal, neglect or failure to obey or comply with an order or interim order of the Board.

(3) A complaint shall be lodged within 6 months after the date on which the contravention of this Act or the regulations which is the subject of that complaint is alleged to have been committed.

(4) Notwithstanding subsection (3), the Counsellor or the Registrar, on good cause being shown, may accept a complaint which is lodged more than 6 months after the date referred to in that subsection.

(5) Where a complaint is lodged with the Registrar, the Registrar shall forthwith refer that complaint to the Counsellor.

Investiga-
tion of
complaints
by the
Counsellor.

89. The Counsellor shall investigate each complaint lodged with him under section 88 (1) or (2) or referred to him by the Registrar under section 88 (5).

Counsellor
may
decline to
entertain
complaint.

90. (1) Where, at any stage of his investigation of a complaint, the Counsellor is satisfied that the complaint is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the complaint should not be entertained, he may, by notification in writing addressed to the complainant, decline to entertain the complaint.

(2)

Anti-Discrimination.

(2) The Counsellor shall, in a notification under subsection (1), advise the complainant of—

- (a) the reason for declining to entertain the complaint;
and
- (b) the rights of the complainant under section 91 (1).

91. (1) Where the Counsellor has given a complainant a notification under section 90 (1), the complainant may, within 21 days after the date of that notification, by notice in writing served on the Counsellor, require the Counsellor to refer the complaint to the Board.

Reference of complaint to Board at requirement of complainant.

(2) On receipt of a notice under subsection (1), the Counsellor shall refer the complaint to the Board together with a report relating to any inquiries made by him into the complaint.

92. (1) Where the Counsellor is of the opinion that a complaint, other than a complaint that he has declined to entertain under section 90 (1), may be resolved by conciliation, he shall endeavour to resolve the complaint by conciliation.

Resolution of complaint by conciliation.

(2) The Counsellor may, by notice in writing, require the complainant and the respondent, or either of them, to appear before him, either separately or together, for the purpose of endeavouring to resolve the complaint by conciliation.

(3) A person shall not fail to comply with the terms of a notice under subsection (2).

Penalty : \$500.

93. A complainant or respondent in conciliation proceedings before the Counsellor shall not be represented by any other person except by leave of the Counsellor.

No right to representation.

94.

Anti-Discrimination.

Reference
of com-
plaints
to the
Board.

- 94.** (1) Where the Counsellor—
- (a) is of the opinion that a complaint cannot be resolved by conciliation;
 - (b) has endeavoured to resolve a complaint by conciliation but has not been successful in his endeavours; or
 - (c) is of the opinion that the nature of a complaint is such that it should be referred to the Board,

he shall refer the complaint to the Board together with a report relating to any inquiries made by him into the complaint.

(2) Evidence of anything said or done in the course of conciliation proceedings under section 92 shall not be admissible in subsequent proceedings under this Part relating to the complaint.

DIVISION 3.—*The Functions of the Board in relation to Complaints.*

Reference
of matter
to the
Board by
the Minister.

95. The Minister may refer any matter to the Board for inquiry as a complaint under this Part.

Inquiries
into
complaints.

96. The Board shall hold an inquiry into each complaint or matter referred to it under section 91 (2), 94 (1) or 95.

Single
inquiry in
relation
to several
complaints.

97. Where the Board is of the opinion that two or more complaints arise out of the same or substantially the same circumstances or subject-matter, it may hold a single inquiry in relation to those complaints.

98.

Anti-Discrimination.

98. Where, before the holding of an inquiry, or at any stage during the holding of an inquiry, the Board is of the opinion that a person ought to be joined as a party to the inquiry, it may, by notice in writing given to that person, join that person as a party to the inquiry.

Joinder of parties by the Board.

99. (1) The Board—

- (a) shall give a party to an inquiry, other than a person to whom the Board grants leave to appear as a party to the inquiry, such notice in such manner as the Board determines of the time and place at which it intends to hold the inquiry; and
- (b) shall give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Board.

Notice of inquiry and rights of parties at inquiry.

(2) If a party to an inquiry to whom notice has been given under subsection (1) (a) fails to attend at the time and place specified for the inquiry, the Board may hold the inquiry in the absence of that party.

100. The parties to an inquiry shall be the Counsellor, the complainant, the respondent, any person joined by the Board as a party to the inquiry and any person to whom the Board grants leave to appear as a party to the inquiry.

Parties to an inquiry.

101. (1) A party to an inquiry—

- (a) is entitled to appear personally or by his solicitor or counsel; and
- (b) may, by leave of the Board, be represented by a person other than a solicitor or counsel.

Right of appearance and to representation.

(2)

Anti-Discrimination.

(2) No person, other than a solicitor or counsel, is entitled to demand or receive any fee or reward for representing a party to an inquiry.

Determina-
tion of
representa-
tive com-
plaints.

102. At an inquiry held in respect of a representative complaint, the Board shall determine, as a preliminary matter, whether that complaint should be dealt with as a representative complaint.

Matters to
be consid-
ered in
determina-
tion of
representa-
tive com-
plaints.

103. (1) The Board shall not permit a complaint to be dealt with as a representative complaint unless it is satisfied that the complaint is made bona fide and in good faith as a representative complaint.

(2) In considering whether a complaint is made bona fide and in good faith as a representative complaint, the Board shall satisfy itself—

(a) that—

- (i) the complainant is a member of a class of persons, the members of which class have been affected, or may reasonably be likely to be affected, by the conduct of the respondent;
- (ii) the complainant has in fact been affected by the conduct of the respondent;
- (iii) the class is so numerous that joinder of all its members is impracticable;
- (iv) there are questions of law or fact common to all members of the class;
- (v) the claims of the complainant are typical of the claims of the class;

(vi)

Anti-Discrimination.

- (vi) multiple complaints would be likely to produce varying determinations which could have incompatible or inconsistent results for the individual members of the class; and
 - (vii) the respondent has acted on grounds apparently applying to the class as a whole, thereby making relief appropriate for the class as a whole; or
- (b) that notwithstanding that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint.

104. Where the Board is satisfied—

- (a) that the complaint could be dealt with as a representative complaint if the class of persons on whose behalf that complaint is lodged is increased, reduced or otherwise altered, the Board may amend the complaint so that the complaint can be dealt with as a representative complaint; or
- (b) that the complaint has been wrongly made as a representative complaint, the Board may amend the complaint by removing the names of the persons or the class of persons on whose behalf that complaint was lodged so that the complaint can be dealt with as a complaint other than a representative complaint.

Amendment
of represen-
tative
complaints.

105. Nothing in this Part shall prevent a person from lodging a complaint, other than a representative complaint, under section 88 (1) or (2), notwithstanding that the conduct in respect of which the complaint is lodged has also been the conduct in respect of which a representative complaint has been lodged.

Ordinary
complaints
not
precluded
by
representa-
tive
complaints.

106.

Anti-Discrimination.

Resolution
of complaint
by
conciliation.

106. The Board—

- (a) may endeavour, by all such means as to it seem reasonable, to resolve a complaint the subject of an inquiry by conciliation; and
- (b) shall take all such steps as to it seem reasonable to effect an amicable settlement of a complaint the subject of an inquiry and for this purpose may adjourn an inquiry at any stage to enable the parties to negotiate with a view to settlement of the complaint by amicable arrangements.

Evidence
and findings
in other
proceedings.

107. In the course of an inquiry, the Board may, in its discretion—

- (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal and draw any conclusions of fact therefrom that it considers proper;
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the inquiry; and
- (c) receive in evidence any report of the Counsellor that may be relevant to the inquiry if a copy of that report has been made available to every other party to the inquiry.

Application
of rules of
evidence,
etc.

108. (1) For the purposes of any inquiry, the Board—

- (a) shall not be bound by the rules of evidence and may inform itself on any matter it thinks fit;
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and

(c)

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(c) may give directions relating to procedure that, in its opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties.

(2) The President shall determine any question relating to the admissibility of evidence and any other question of law or procedure.

109. Where by any provision of this Act or the regulations, conduct is excepted from conduct that is unlawful under this Act or the regulations or that is a contravention of this Act or the regulations, the onus of proving the exception in any inquiry lies upon the respondent. Proof of exceptions.

110. Subject to this Part, the Board shall, for the purposes of an inquiry held by it, have the powers, authorities, protections and immunities conferred by the Royal Commissions Act, 1923, on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part II of that Act, and that Act, Division 2 of Part II excepted, shall apply to any witness summoned by or appearing before the Board in the same way as it applies to any witness summoned by or appearing before a commission. Application of Royal Commissions Act, 1923, to inquiries held by the Board.

111. (1) Where, at any stage of an inquiry, the Board is satisfied that a complaint is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the complaint should not be entertained, it may dismiss the complaint. Board may dismiss frivolous, etc., complaints.

(2) Where the Board dismisses a complaint under subsection (1), it may order the complainant to pay the costs of the inquiry.

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Making of
interim
orders.

112. The Board may, on the application of a party to an inquiry at any time after the lodgment of the complaint into which that inquiry is held, make an interim order to preserve—

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

pending determination of the matter the subject of the complaint.

Order or
other
decision of
the Board.

113. After holding an inquiry, the Board may—

- (a) dismiss the complaint the subject of that inquiry;
or
- (b) find the complaint substantiated and do any one or more of the following :—

- (i) except in respect of a representative complaint or a matter referred to the Board for inquiry as a complaint pursuant to section 95, order the respondent to pay to the complainant damages not exceeding \$20,000 by way of compensation for any loss or damage suffered by reason of the respondent's conduct;
- (ii) make an order enjoining the respondent from continuing or repeating any conduct rendered unlawful by this Act or the regulations;
- (iii) except in respect of a representative complaint or a matter referred to the Board for inquiry as a complaint pursuant to section 95, order the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;

(iv)

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- (iv) make an order declaring void in whole or in part and either ab initio or from such other time as is specified in the order any contract or agreement made in contravention of this Act or the regulations; or
- (v) decline to take any further action in the matter.

114. (1) Except as provided by section 111 (2) and subsection (2), each party to an inquiry shall pay his own costs.

(2) Where the Board is of the opinion in a particular case that there are circumstances that justify it doing so, it may make such order as to costs and security for costs, whether by way of interim order or otherwise, as it thinks fit.

115. Any amount ordered to be paid by the Board under this Part may be registered as a judgment debt in a court of competent jurisdiction.

Recovery of amounts payable under an order of the Board.

116. A person shall not refuse, neglect or for any reason fail to obey or comply with an order referred to in section 113 (b) (ii) or (iii), or an interim order, of the Board.

Compliance with order of the Board.

Penalty : \$1,000.

117. (1) Where the Board does not state its reasons for any decision or order made in relation to an inquiry, a party to the inquiry may, by notice in writing served on the Board within 7 days after the date of that decision or order, require the Board to state its reasons.

Reasons for decision or order.

(2) The Board shall, within 14 days after the service of a notice under subsection (1), state its reasons for the decision or order referred to in the notice.

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Appeals. **118.** (1) A party aggrieved by a decision or an order of the Board may appeal to the Court—

- (a) except as provided in paragraph (b), within 21 days after the date of that decision or order; or
- (b) where a notice has been served on the Board under section 117 (1), within 21 days after the date on which the Board states its reasons for that decision or order under section 117 (2).

(2) The Court, on the hearing of an appeal, shall have the same functions as the Board in hearing and determining the complaint the subject of the appeal.

(3) The Court may, on the hearing of the appeal—

- (a) confirm, vary or quash the decision or order appealed from, or substitute, or make in addition, any decision or order that might have been made by the Board under this Part;
- (b) remit the matter to the Board for re-inquiry or further inquiry; or
- (c) make such order as to costs as it determines.

(4) For the purposes of section 116, an order of the Court of the nature referred to in section 113 (b) (ii) or (iii) shall be deemed to be an order referred to in section 113 (b) (ii) or (iii), as the case may be, of the Board.

DIVISION 4.—*Other Functions of the Board.*

General functions of the Board. **119.** For the purpose of eliminating discrimination and promoting equality and equal treatment of all human beings, the Board may—

- (a) carry out investigations, research and inquiries relating to discrimination and in particular discrimination against a person or persons on the ground of—
 - (i) age;

(ii)

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- (ii) a characteristic that appertains generally to persons of a particular age;
 - (iii) a characteristic that is generally imputed to persons of a particular age;
 - (iv) religious or political conviction;
 - (v) a characteristic that appertains generally to persons of a particular religious or political conviction;
 - (vi) a characteristic that is generally imputed to persons of a particular religious or political conviction;
 - (vii) physical handicap or condition or mental disability;
 - (viii) a characteristic that appertains generally to persons having that physical handicap or condition or that mental disability;
 - (ix) a characteristic that is generally imputed to persons having that physical handicap or condition or that mental disability;
 - (x) homosexuality;
 - (xi) a characteristic that appertains generally to homosexuals;
 - (xii) a characteristic that is generally imputed to homosexuals;
 - (xiii) membership or non-membership of a trade union; or
 - (xiv) a characteristic that appertains generally to membership or non-membership of a trade union or a characteristic that is generally imputed to members or non-members of a trade union;
- (b) acquire and disseminate knowledge on all matters relating to the elimination of discrimination and the achievement of equal rights;

(c)

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- (c) arrange and co-ordinate consultations, discussions, seminars and conferences;
- (d) review, from time to time, the laws of the State;
- (e) consult with governmental, business, industrial and community groups and organisations in order to ascertain means of improving services and conditions affecting minority groups and other groups which are the subject of discrimination and inequality;
- (f) hold public inquiries; and
- (g) develop human rights programmes and policies.

Reference of
certain
matters to
the Board
by the
Minister.

120. (1) The Minister may refer to the Board for report any matter relating to—

- (a) a law or a proposed law; or
- (b) a practice, an alleged practice or a proposed practice of any person or class of persons,

which conflicts with or may give rise to conflict with this Act or the regulations.

(2) The Board shall conduct an examination into any matter referred to it by the Minister under subsection (1) and report to the Minister its findings and conclusions.

Review of
legislation,
etc.

121. The Board shall, as soon as possible after the day appointed and notified under section 2 (2), undertake a review of—

- (a) the legislation of the State;
- (b) governmental policies and practices; and
- (c) the policies and practices of all superannuation funds and pension schemes whether governmental or otherwise,

with

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with a view to identifying circumstances where discrimination on a ground referred to in this Act occurs, in substance or effect, against any person or class of persons and shall furnish a report of its findings to the Minister within 12 months after that date.

122. (1) The Board shall, on or before the thirtieth day of September each year, prepare and present to the Minister a report on—

- (a) the administration of this Act and the regulations during the period of 12 months ending on the preceding thirtieth day of June; and
- (b) the research undertaken by the Board during that period and any recommendations that the Board considers appropriate for the elimination or modification of legislative provisions that discriminate on a ground referred to in this Act against any person or class of persons.

(2) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after its receipt by him.

PART X.

MISCELLANEOUS.

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

Effect of
contraven-
tion
of Act.

(2) Nothing in subsection (1) prevents an action for defamation.

124.

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Obstruction. **124.** A person shall not, without lawful excuse, wilfully obstruct, hinder or resist the Counsellor, an officer of the Counsellor, the Registrar or a member of the Board in the exercise of his functions under this Act or the regulations.

Penalty : \$1,000.

Recovery of penalties. **125.** Any penalty imposed by this Act or the regulations may be recovered in a court of petty sessions held before a stipendiary magistrate sitting alone.

Granting of exemptions by the Minister. **126.** (1) The Minister on the recommendation of the Board, may, by order published in the Gazette, grant an exemption from this Act or the regulations or such parts of this Act or the regulations as are specified in the order in respect of—

- (a) a person or class of persons;
- (b) an activity or class of activity; or
- (c) any other matter or circumstance specified in the order.

(2) An exemption granted under subsection (1) shall remain in force for such period, not exceeding 5 years, as is specified in the order and may, by order made in the manner referred to in subsection (1), be extended for a further period not exceeding 5 years.

(3) The power conferred by subsection (1) to make an order includes power, exercisable in the same manner and subject to the same conditions, to vary or revoke any order so made.

Regulations. **127.** (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2)

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(2) Before making a recommendation to the Governor for the making of any regulation, the Minister shall take into consideration any recommendation of the Board with respect to the subject-matter of the proposed regulation.

(3) A regulation shall, unless disallowed by either House of Parliament, take effect upon—

- (a) the expiration of a period of 14 sitting days after the day or the later day it is laid before either such House; or
- (b) a date specified in the regulation which is later than the period determined under paragraph (a).

(4) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) the forms to be used for the purposes of this Act or the regulations;
- (b) the fees to be paid in respect of the lodging of any complaint under Part IX;
- (c) the manner of serving any notice or other document;
- (d) the procedure of the Board at any inquiry; and
- (e) exempting—
 - (i) any person or class of persons;
 - (ii) any activity or class of activity; or
 - (iii) any other matter or circumstance,

specified in the regulations from this Act or such parts of this Act as may be so specified.

(5) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(6) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.

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Amendment of Act No. 4, 1976. Schedule 1. **128.** (1) The Statutory and Other Offices Remuneration Act, 1975, is amended by inserting at the end of Schedule 1 the words "Counsellor for Equal Opportunity".

Amendment of Act No. 18, 1974. (2) The Defamation Act, 1974, is amended—

Sec. 17D. (a) by inserting before section 18 the following section :—

Matters arising under Anti-Discrimination Act, 1977.

17D. (1) There is a defence of absolute privilege for a publication to or by the Counsellor for Equal Opportunity appointed under the Anti-Discrimination Act, 1977, to a member of the Anti-Discrimination Board constituted under that Act, to any officer of that Counsellor, to the Registrar of that Board or to any officer of the Public Service appointed or employed to assist in the execution or administration of that Act, if the publication is made for the purpose of the execution or administration of that Act.

(2) There is a defence of absolute privilege for the publication of a report—

(a) referred to in section 91 (2) or 94 (1) of the Anti-Discrimination Act, 1977, of the Counsellor for Equal Opportunity appointed under that Act made to the Anti-Discrimination Board constituted under that Act; or

(b) referred to in section 120 (2), 121 or 122 (1) of that Act to the Minister administering that Act.

(b)

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- (b) (i) by omitting from clause 2 (10) of Schedule 2 **Sch. 2.** the word "or";
- (ii) by omitting from clause 2 (11) of Schedule 2 the word "Act." where secondly occurring and by inserting instead the following matter and subclause :—
- Act; or
- (12) proceedings at an inquiry conducted by the Anti-Discrimination Board constituted under the Anti-Discrimination Act, 1977.
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