

# Anti-Discrimination Act 1977 No 48

[1977-48]



New South Wales

## Status Information

### Currency of version

Historical version for 28 February 2013 to 2 June 2013 (accessed 18 January 2025 at 8:30)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**
  - Victims Rights and Support Bill 2013*
  - Courts and Other Miscellaneous Legislation Amendment Bill 2013*
  - Government Sector Employment Bill 2013*

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 23 May 2013

# Anti-Discrimination Act 1977 No 48



New South Wales

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# Anti-Discrimination Act 1977 No 48



New South Wales

An Act to render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Anti-Discrimination Act 1977*.

### 2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (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### 3 (Repealed)

### 4 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**accommodation** includes residential or business accommodation.

**associate** of a person means:

- (a) any person with whom the person associates, whether socially or in business or commerce, or otherwise, and
- (b) any person who is wholly or mainly dependent on, or a member of the household of, the person.

**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 same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

**council** means a council or a county council within the meaning of the [Local Government Act 1993](#).

**Department** and **Department Head** have the same meanings as they have in the [Public Sector Management Act 1988](#).

**disability** means:

- (a) total or partial loss of a person's bodily or mental functions or of a part of a person's body, or
- (b) the presence in a person's body of organisms causing or capable of causing disease or illness, or
- (c) the malfunction, malformation or disfigurement of a part of a person's body, or
- (d) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction, or
- (e) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

**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.

**homosexual** means male or female homosexual.

**industrial organisation** means an industrial organisation within the meaning of the [Industrial Relations Act 1996](#) or an organisation registered under the [Industrial Relations Act 1988](#) of the Commonwealth.

**marital or domestic status** means the status or condition of being:

- (a) single, or
- (b) married, or



- (c) married but living separately and apart from one's spouse, or
- (d) divorced, or
- (e) widowed, or
- (f) in a de facto relationship.

**near relative**, in relation to a person, means the spouse, de facto partner, parent, child, grandparent, grandchild, brother or sister of the person.

**President** means the President of the Board.

**principal** means:

- (a) in relation to a commission agent, a person for whom work is done by that commission agent, or
- (b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment.

**private educational authority** means a person or body administering a school, college, university or other institution at which education or training is provided, not being:

- (a) a school, college, university or other institution established under the [Education Reform Act 1990](#) (by the Minister administering that Act), the [Technical and Further Education Commission Act 1990](#) or an Act of incorporation of a university, or
- (b) an agricultural college administered by the Minister for Agriculture.

**race** includes colour, nationality, descent and ethnic, ethno-religious or national origin.

**recognised transgender person** means a person the record of whose sex is altered under Part 5A of the [Births, Deaths and Marriages Registration Act 1995](#) or under the corresponding provisions of a law of another Australian jurisdiction.

**registered club** has the same meaning as in the [Registered Clubs Act 1976](#).

**Registrar** means the Registrar of the Tribunal.

**regulation** means a regulation made under this Act.

**relative** of a person means any person to whom the person is related by blood, marriage, affinity or adoption, or the de facto partner of the person.

**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,
- (e) services provided by a council or public authority,
- (f) services consisting of access to, and the use of any facilities in, 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.

**Tribunal** means the Administrative Decisions Tribunal established by the [Administrative Decisions Tribunal Act 1997](#).

**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, a reference to the performance of that duty.
- (3) For the purposes of this Act, the fact that a race may comprise two or more distinct races does not prevent it from being a race.
- (4) A reference in this Act to the conferring, renewing or extending of an authorisation or a qualification, in relation to 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, the carrying on of a trade or the engaging in of an occupation, includes a reference to the conferring, renewing, extending, granting, awarding, approving, issuing or accepting of a recognition, registration, enrolment, approval or certification by such an authority or such a body or to the admission of a person to membership of such an authority or such a body.
- (5) Notes included in this Act do not form part of this Act.
- (6), (7) (Repealed)

#### **4A Act done because of unlawful discrimination and for other reasons**

If:

- (a) an act is done for 2 or more reasons, and
- (b) one of the reasons consists of unlawful discrimination under this Act against a person (whether or not it is the dominant or a substantial reason for doing the act),

then, for the purposes of this Act, the act is taken to be done for that reason.

#### **4B References to certain employers**

- (1) A reference in this Act to an employer:
  - (a) in relation to employment in a Department, is a reference to the relevant Department Head, and
  - (b) in relation to employment in the NSW Police Force, is a reference to the Commissioner of Police, and
  - (c) in relation to employment in the Teaching Service, is a reference to the Director-General of the Department of Education and Training.
- (2) Anything determined or done with respect to any matter concerning any such employment by an officer or employee in any Department, in the NSW Police Force or in the Teaching Service who is authorised to determine and do things in that respect is taken to have been determined or done by the Department Head, Commissioner of Police or Director-General of the Department of Education and Training, respectively.
- (3) Subsection (2) includes anything determined or done with respect to:
  - (a) any offer of employment, or
  - (b) the terms and conditions on which employment is offered, or
  - (c) the opportunity afforded for promotion, transfer, training or other benefits associated with employment, or
  - (d) dismissal from employment.

#### **5 Act binds Crown**

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.

## **Part 2 Racial discrimination**

### **Division 1 General**

#### **6 (Repealed)**

#### **7 What constitutes discrimination on the ground of race**

- (1) A person (***the perpetrator***) discriminates against another person (***the aggrieved person***) on the ground of race if, on the ground of the aggrieved person's race or the race of a relative or associate of the aggrieved person, the perpetrator:
  - (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of a different race or who has such a relative or associate of a

different race, or

- (b) segregates the aggrieved person from persons of a different race or from persons who have such a relative or associate of a different race, or
- (c) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons not of that race, or who have such a relative or associate not of that race, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

- (2) For the purposes of subsection (1) (a) and (b), something is done on the ground of a person's race if it is done on the ground of the person's race, a characteristic that appertains generally to persons of that race or a characteristic that is generally imputed to persons of that race.

## **Division 2 Discrimination in work**

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

- (1) It is unlawful for an employer to discriminate against a person on the ground of race:
  - (a) in the arrangements the employer 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 the employer offers employment.
- (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 which the employer affords the employee,
  - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
  - (c) by dismissing the employee or subjecting the employee to any other detriment.
- (3) Subsections (1) and (2) do not apply to employment for the purposes of a private household.

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

- (1) It is unlawful for a principal to discriminate against a person on the ground of race:
  - (a) in the arrangements the principal 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 the principal engages the person as a commission agent.

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

(a) in the terms or conditions which the principal affords him or her as a commission agent,

(b) by denying him or her access, or limiting his or her access, to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent, or

(c) by terminating his or her engagement or subjecting him or her to any other detriment.

#### **10 Discrimination against contract workers**

It is unlawful for a principal to discriminate against a contract worker on the ground of race:

(a) in the terms on which the principal allows him or her to work,

(b) by not allowing him or her to work or continue to work,

(c) by denying him or her access, or limiting his or her access, to any benefit associated with the work in respect of which the contract with his or her employer is made, or

(d) by subjecting him or her to any other detriment.

#### **10A Partnerships**

(1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of race:

(a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm,

(b) in determining who should be offered a position as partner in the firm, or

(c) in the terms on which the person is offered a position as partner in the firm.

(2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of race:

(a) by denying the partner access, or limiting the partner's access, to any benefit

arising from membership of the firm,

(b) by expelling the partner from the firm, or

(c) by subjecting the partner to any other detriment.

### **10B Discrimination by local government councillors**

It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of race.

### **11 Industrial organisations**

(1) It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of race:

(a) by refusing or failing to accept the person's application for membership, or

(b) in the terms on which it is prepared to admit the person to membership.

(2) It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of race:

(a) by denying the person access, or limiting the person's access, to any benefit provided by the industrial organisation,

(b) by depriving the person of membership or varying the terms of the person's membership, or

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

### **12 Qualifying bodies**

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

(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 Employment agencies**

It is unlawful for an employment agency to discriminate against a person on the ground of

race:

- (a) by refusing to provide the person with any of its services,
- (b) in the terms on which it offers to provide the person with any of its services, or
- (c) in the manner in which it provides the person with any of its services.

#### **14 Exception—genuine occupational qualification**

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:

- (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,
- (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.

#### **15 Exception—employment intended to provide training in skills to be exercised outside New South Wales**

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 the person with training in skills to be exercised by the person wholly outside New South Wales.

#### **16 Exception—employment on ship or aircraft**

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**

#### **17 Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of race:
  - (a) by refusing or failing to accept the person's application for admission as a student,

or

(b) in the terms on which it is prepared to admit the person as a student.

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

(a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or

(b) by expelling the student or subjecting the student 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 (Repealed)**

### **19 Provision of goods and services**

It is unlawful for a person who provides (whether or not for payment) goods or services to discriminate against another person on the ground of race:

(a) by refusing to provide the person with those goods or services, or

(b) in the terms on which the other person is provided with those goods or services.

### **20 Accommodation**

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

(a) by refusing the person's application for accommodation,

(b) in the terms on which the person offers the person accommodation, or

(c) by deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation.

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

(a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person, or

(b) by evicting the person or subjecting the person 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.

## **20A Registered clubs**

- (1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of race:
  - (a) by refusing or failing to accept the person's application for membership, or
  - (b) in the terms on which it is prepared to admit the person to membership.
- (2) It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of race:
  - (a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club,
  - (b) by depriving the person of membership or varying the terms of the person's membership, or
  - (c) by subjecting the person to any other detriment.
- (3) Nothing in subsection (1) or (2) applies to or in respect of a registered club if the principal object of the registered club is to provide benefits for persons of a specified race defined otherwise than by reference to:
  - (a) colour, or
  - (b) a description which has the effect of excluding persons of that race who are of a different colour from those persons, or the majority of those persons, who do not come within that description.
- (4) In determining whether the principal object of a registered club is as referred to in subsection (3), regard shall be had to:
  - (a) the essential character of the registered club,
  - (b) the extent to which the affairs of the registered club are so conducted that the persons primarily enjoying the benefits of membership are of the race specified in the principal object, and
  - (c) any other relevant circumstance.

## **Division 3A Racial vilification**

### **20B Definition of "public act"**

In this Division, **public act** includes:

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material, and
- (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, and
- (c) the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.

### **20C Racial vilification unlawful**

- (1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group.
- (2) Nothing in this section renders unlawful:
  - (a) a fair report of a public act referred to in subsection (1), or
  - (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the [Defamation Act 2005](#) or otherwise) in proceedings for defamation, or
  - (c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

### **20D Offence of serious racial vilification**

- (1) A person shall not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race of the person or members of the group by means which include:
  - (a) threatening physical harm towards, or towards any property of, the person or group of persons, or
  - (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty:

In the case of an individual—50 penalty units or imprisonment for 6 months, or both.

In the case of a corporation—100 penalty units.

- (2) A person shall not be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

## **Division 4 Exceptions to Part 2**

### **21 Special needs programs and activities**

Nothing in this Part applies to or in respect of anything done in affording persons of a particular race access to facilities, services or opportunities to meet their special needs or to promote equal or improved access for them to facilities, services and opportunities.

### **22 Sport**

Nothing in this Part applies to or in respect of anything done on the grounds of a person's nationality or place of birth or length of time for which the person 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) in pursuance of the rules of any competition in so far as they relate to eligibility to compete in any sport or game.

## **Part 2A Prohibition of sexual harassment**

### **22A Meaning of "sexual harassment"**

For the purposes of this Part, a person sexually harasses another person if:

- (a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- (b) the person engages in other unwelcome conduct of a sexual nature in relation to the other person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

### **22B Harassment of employees, commission agents, contract workers, partners etc**

- (1) It is unlawful for an employer to sexually harass:
  - (a) an employee, or
  - (b) a person who is seeking employment with the employer.
- (2) It is unlawful for an employee to sexually harass a fellow employee or a person who is seeking employment with the same employer.

- (3) It is unlawful for a person to sexually harass:
- (a) a commission agent or contract worker of the person, or
  - (b) a person who is seeking to become a commission agent or contract worker of the person.
- (4) It is unlawful for a commission agent or contract worker to sexually harass a fellow commission agent or fellow contract worker.
- (5) It is unlawful for a partner in a partnership to sexually harass another partner, or a person who is seeking to become a partner, in the same partnership.
- (6) It is unlawful for a workplace participant to sexually harass another workplace participant at a place that is a workplace of both those persons.
- (7) It is unlawful for a member of either House of Parliament to sexually harass:
- (a) a workplace participant at a place that is a workplace of both the member and the workplace participant, or
  - (b) another member of Parliament at a place that is a workplace of both members.
- (8) It is unlawful for a workplace participant to sexually harass a member of either House of Parliament at a place that is the workplace of both the member and the workplace participant.
- (9) In this section:

**place** includes a ship, aircraft or vehicle.

**workplace** means a place at which a workplace participant works or otherwise attends in connection with being a workplace participant.

**workplace participant** means any of the following:

- (a) an employer or employee,
  - (b) a commission agent or contract worker,
  - (c) a partner in a partnership,
  - (d) a person who is self-employed,
  - (e) a volunteer or unpaid trainee.
- (10) Without limiting the definition of **workplace**, the workplace of a member of either House of Parliament is taken to include the following:
- (a) the whole of Parliament House,

(b) any ministerial office or electoral office of the member,

(c) any other place that the member otherwise attends in connection with his or her Ministerial, parliamentary or electoral duties.

### **22C Harassment by members of qualifying bodies**

(1) It is unlawful for a member or an employee of an authority or 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, the carrying on of a trade or the engaging in of an occupation to sexually harass a person seeking action in connection with an occupational qualification.

(2) In this section:

***action in connection with an occupational qualification*** means conferring, renewing, extending, revoking or withdrawing an authorisation or qualification.

### **22D Harassment in employment agencies**

It is unlawful for:

(a) a person who operates an employment agency, or

(b) an employee of an employment agency,

to sexually harass another person in the course of providing, or offering to provide, any of the agency's services to that other person.

### **22E Harassment at educational institutions**

(1) It is unlawful for a member of the staff of an educational institution to sexually harass:

(a) a person who is a student at the institution, or

(b) a person who is seeking to become a student at the institution.

(2) It is unlawful for a person who is an adult student at an educational institution to sexually harass:

(a) a person who is a student at the institution, or

(b) a member of the staff of the institution.

(3) If a complaint under subsection (2) is found to have been substantiated after an inquiry under Part 9, the Tribunal may make any order that it is empowered to make under section 113 (1) (b). However, if the respondent student was over the age of 16, but under the age of 18, when the unlawful conduct occurred, the Tribunal may not make an order requiring the student to pay damages under section 113 (1) (b) (i).

(4) In this section:

**adult student** means a student who has attained the age of 16 years.

**educational institution** means a school, college, university or other institution at which education or training is provided.

## **22F Provision of goods and services**

It is unlawful for a person to sexually harass another person in the course of:

- (a) receiving, or seeking to receive, goods or services from that other person, or
- (b) providing, or offering to provide, goods or services to that other person.

## **22G Provision of accommodation**

- (1) It is unlawful for a person to sexually harass another person in the course of providing, or offering to provide, (whether as principal or agent) accommodation to that other person.
- (2) This section does not apply to anything done by a person in the course of providing, or offering to provide, accommodation in a private household.

## **22H Land**

It is unlawful for a person to sexually harass another person in the course of dealing (whether as principal or agent) with that other person in connection with:

- (a) disposing of, or offering to dispose of, an estate or interest in land to the other person, or
- (b) acquiring, or offering to acquire, an estate or interest in land from the other person.

## **22I Sport**

- (1) It is unlawful for a person engaged in a sporting activity to sexually harass another person engaged in a sporting activity.
- (2) For the purposes of this section, a person is engaged in a sporting activity if:
  - (a) the person is involved in an organised sporting competition,
  - (b) the person is coaching a person or team, or is being coached, for the purposes of an organised sporting competition,
  - (c) the person is carrying out an activity relating to the administration of a sport or an organised sporting competition,
  - (d) the person is officiating at an organised sporting competition or carrying out related duties or functions,

- (e) the person is officially involved in a function relating to a sport or an organised sporting competition.

## 22J State laws and programs

- (1) It is unlawful for a person to sexually harass another person:
  - (a) in the course of performing any function under a State law or for the purposes of a State program, or
  - (b) in the course of carrying out any other responsibility for the administration of a State law or the conduct of a State program.

- (2) In this section:

**State law** means:

- (a) an Act, a statutory rule, or a determination made under or pursuant to an Act, or
- (b) an order or award made under or pursuant to such a law.

**State program** means a program conducted by or on behalf of the State Government.

## Part 3 Sex discrimination

### Division 1 General

#### 23 Definitions

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.

#### 24 What constitutes discrimination on the ground of sex

- (1) A person (**the perpetrator**) discriminates against another person (**the aggrieved person**) on the ground of sex if, on the ground of the aggrieved person's sex or the sex of a relative or associate of the aggrieved person, the perpetrator:
  - (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of the opposite sex or who does not have such a relative or associate of that sex, or
  - (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons of the opposite sex, or who do not have such a relative or associate of that sex, comply or are able to comply,

being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

- (1A) For the purposes of subsection (1) (a), something is done on the ground of a person's sex if it is done on the ground of the person's sex, a characteristic that appertains generally to persons of that sex or a characteristic that is generally imputed to persons of that sex.
- (1B) For the purposes of this section, but without limiting the generality of this section, the fact that a woman is or may become pregnant is a characteristic that appertains generally to women.
- (1C) For the purposes of this section, but without limiting the generality of this section, the fact that a woman is breastfeeding or may breastfeed is a characteristic that appertains generally to women. For the purposes of this Act, **breastfeeding** includes the act of expressing breast milk.
- (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:
- (a) are a woman who is pregnant and a man, or
  - (b) are not of the same marital or domestic status, or
  - (c) are a woman who is breastfeeding and a man.
- (3) (Repealed)

## **Division 2 Discrimination in work**

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

- (1) It is unlawful for an employer to discriminate against a person on the ground of sex:
- (a) in the arrangements the employer 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 the employer offers employment.
- (1A) Nothing in subsection (1) renders unlawful discrimination by an employer against a woman on the ground of sex if, at the date on which the woman applied to the employer for employment or, where the employer interviewed the woman in relation to her application for employment, at the date of the interview, the woman is pregnant.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of



sex:

(a) in the terms or conditions of employment which the employer affords the employee,

(b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or

(c) by dismissing the employee or subjecting the employee to any other detriment.

(2A) Nothing in subsection (2) (c) renders unlawful discrimination by an employer against a woman on the ground of sex in respect of the dismissal by an employer of a woman who is pregnant if, at the date on which the woman applied to the employer for employment or, where the employer interviewed the woman in relation to her application for employment, at the date of the interview, the woman was pregnant, unless, at that date, the woman did not know and could not reasonably be expected to have known that she was pregnant.

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

(a) for the purposes of a private household,

(b) where the number of persons employed by the employer, disregarding any persons employed within the employer's private household, does not exceed 5, or

(c) by a private educational authority.

(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 body corporate within the meaning of the [Corporations Act 2001](#) of the Commonwealth.

## **26 Discrimination against commission agents**

(1) It is unlawful for a principal to discriminate against a person on the ground of sex:

(a) in the arrangements the principal 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 the principal engages the person as a commission agent.

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

(a) in the terms or conditions which the principal affords him or her as a commission agent,

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

## **27 Discrimination against contract workers**

It is unlawful for a principal to discriminate against a contract worker on the ground of sex:

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

## **27A Partnerships**

- (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of sex:
  - (a) in the arrangements made for the purpose of determining who should be offered a position as a partner in the firm,
  - (b) in determining who should be offered a position as partner in the firm, or
  - (c) in the terms on which the person is offered a position as partner in the firm.
- (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of sex:
  - (a) by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm,
  - (b) by expelling the partner from the firm, or
  - (c) by subjecting the partner to any other detriment.

## **27B Discrimination by local government councillors**

It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of sex.

## **28 Industrial organisations**

- (1) It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of sex:
  - (a) by refusing or failing to accept the person's application for membership, or
  - (b) in the terms on which it is prepared to admit the person to membership.
- (2) It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of sex:
  - (a) by denying the person access, or limiting the person's access, to any benefit provided by the industrial organisation,
  - (b) by depriving the person of membership or varying the terms of the person's membership, or
  - (c) by subjecting the person to any other detriment.

## **29 Qualifying bodies**

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, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of sex:

- (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.

## **30 Employment agencies**

It is unlawful for an employment agency to discriminate against a person on the ground of sex:

- (a) by refusing to provide the person with any of its services,
- (b) in the terms on which it offers to provide the person with any of its services, or
- (c) in the manner in which it provides the person with any of its services.

## **31 Exception—genuine occupational qualification**

- (1) Nothing in this Division renders unlawful discrimination against a person on the ground of the person's sex where being a person of a particular sex is a genuine

occupational qualification for the job.

- (2) Being a person of a particular sex 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 person of that sex for reasons of physiognomy or physique, 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 person of the opposite sex, or
  - (b) the job needs to be held by a person of that sex to preserve decency or privacy because it involves the fitting of a person's clothing, or
  - (c) the job requires the holder of the job to enter a lavatory ordinarily used by persons of that sex while it is used by persons of that sex, or
  - (d) the job requires the holder of the job to search persons of that sex, or
  - (e) the job requires the holder of the job to enter areas ordinarily used by persons of that sex while in a state of undress or while bathing or showering, or
  - (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 persons of the opposite sex and sanitary facilities which could be used by persons of the opposite sex in privacy from persons of that sex, 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 persons of the opposite sex, or
  - (g) the job requires the holder of the job to keep persons of that sex in custody in a prison or other institution or in part of a prison or other institution, or
  - (h) the holder of the job provides persons of that sex 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 person of the opposite sex, or
  - (i) the job is one of two to be held by a married couple.
- (3) Being a person of a particular sex is a genuine occupational qualification for a prescribed job or a job of a prescribed class or description.
- (4) Nothing in subsection (2) limits the Governor's power to make a regulation for the purposes of subsection (3).

## **Division 3 Discrimination in other areas**

### **31A Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of sex:
  - (a) by refusing or failing to accept the person's application for admission as a student, or
  - (b) in the terms on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of sex:
  - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or
  - (b) by expelling the student or subjecting the student to any other detriment.
- (3) Nothing in this section applies to or in respect of:
  - (a) a private educational authority, or
  - (b) a refusal or failure to accept a person's application for admission as a student by an educational authority where the educational authority administers a school, college, university or other institution which is conducted solely for students of the opposite sex to the sex of the applicant.
- (4) The admission into any such school, college, university or other institution of a transgender person as referred to in Part 3A who identifies with the sex of persons for whom the school, college, university or other institution is conducted does not, for the purposes of subsection (3) (b), affect its status as a school, college, university or other institution conducted solely for students of the same sex.

### **32 (Repealed)**

### **33 Provision of goods and services**

- (1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against another person on the ground of sex:
  - (a) by refusing to provide the person with those goods or services, or
  - (b) in the terms on which he or she provides the person with those goods or services.
- (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 the person's normal practice.

### **34 Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of sex:
  - (a) by refusing the person's application for accommodation,
  - (b) in the terms on which he or she offers the person accommodation, or
  - (c) by deferring the person's application for accommodation or according to the person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of sex:
  - (a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person, or
  - (b) by evicting the person or subjecting the person 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.

### **34A Registered clubs**

- (1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of sex:
  - (a) by refusing or failing to accept the person's application for membership, or
  - (b) in the terms on which it is prepared to admit the person to membership.
- (2) It is unlawful for a registered club to discriminate against a person who is a member of a registered club on the ground of sex:
  - (a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club,
  - (b) by depriving the person of membership or varying the terms of the person's membership, or
  - (c) by subjecting the person to any other detriment.

- (3) Nothing in subsection (1) or (2) renders unlawful discrimination by a registered club against a person on the ground of sex if membership of the registered club is available to persons of the opposite sex only.
- (3A) The admission into any such registered club of a transgender person as referred to in Part 3A who identifies with the sex of persons for whom membership of the registered club is available does not, for the purposes of subsection (3), affect its status as a registered club the membership of which is available to persons of the same sex only.
- (4) Nothing in subsection (1) (paragraph (a) excepted) or subsection (2) renders unlawful discrimination by a registered club against a person on the ground of sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the registered club where:
- (a) it is not practicable for the benefit to be used or enjoyed:
    - (i) simultaneously, or
    - (ii) to the same extent,by both men and women, and
  - (b) either:
    - (i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other, or
    - (ii) men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.
- (5) In determining any matter relating to the application of subsection (4), regard shall be had to:
- (a) the purposes for which the registered club is established,
  - (b) the membership of the registered club, including any class or type of membership,
  - (c) the nature of the benefits provided by the registered club,
  - (d) the opportunities for the use and enjoyment of those benefits by men and women, and
  - (e) any other relevant circumstance.

## **Division 4 Exceptions to Part 3**

### **35 Pregnancy, childbirth and breastfeeding**

Nothing in this Part renders unlawful discrimination by a person against a man on the ground of sex by reason only of the fact that that person grants to a woman rights or

privileges in connection with pregnancy, childbirth or breastfeeding.

### **36 Superannuation**

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, where:

(a) the terms or conditions:

(i) are based upon actuarial or statistical data on which it is reasonable to rely, and

(ii) are reasonable having regard to the data and any other relevant factors, or

(b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the terms or conditions are reasonable having regard to any other relevant factors,

and the source on which any data referred to in paragraph (a) is based is disclosed to the Tribunal, where the Tribunal so requires, and any other relevant factors to which regard has been had as referred to in paragraph (a) or (b) are disclosed to the Tribunal, where the Tribunal so requires.

### **37 Insurance etc**

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:

(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 Tribunal, where the Tribunal so requires.

### **38 Sport**

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.

## **Part 3A Discrimination on transgender grounds**

### **Division 1 General**



### 38A Interpretation

A reference in this Part to a person being transgender or a transgender person is a reference to a person, whether or not the person is a recognised transgender person:

- (a) who identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex, or
- (b) who has identified as a member of the opposite sex by living as a member of the opposite sex, or
- (c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex,

and includes a reference to the person being thought of as a transgender person, whether the person is, or was, in fact a transgender person.

### 38B What constitutes discrimination on transgender grounds

- (1) A person (***the perpetrator***) discriminates against another person (***the aggrieved person***) on transgender grounds if, on the ground of the aggrieved person being transgender or a relative or associate of the aggrieved person being transgender, the perpetrator:
  - (a) treats the aggrieved person less favourably than in the same circumstances (or in circumstances which are not materially different) the perpetrator treats or would treat a person who he or she did not think was a transgender person or who does not have such a relative or associate who he or she did not think was a transgender person, or
  - (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not transgender persons, or who do not have a relative or associate who is a transgender person, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply, or
  - (c) treats the aggrieved person, being a recognised transgender person, as being of the person's former sex or requires the aggrieved person, being a recognised transgender person, to comply with a requirement or condition with which a substantially higher proportion of persons of the person's former sex comply or are able to comply, being a requirement or condition which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.
- (2) For the purposes of subsection (1) (a), something is done on the ground of a person being transgender if it is done on the ground of the person being transgender, a

characteristic that appertains generally to transgender persons or a characteristic that is generally imputed to transgender persons.

## **Division 2 Discrimination in work**

### **38C Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on transgender grounds:
  - (a) in the arrangements the employer makes for the purpose of determining who should be offered employment, or
  - (b) in determining who should be offered employment, or
  - (c) in the terms on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on transgender grounds:
  - (a) in the terms or conditions of employment that are afforded to the employee, or
  - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
  - (c) by dismissing the employee or subjecting the employee to any other detriment.
- (3) Subsections (1) and (2) do not apply to employment:
  - (a) for the purposes of a private household, or
  - (b) if the number of persons employed by the employer (disregarding any persons employed within the employer's private household) does not exceed 5, or
  - (c) by a private educational authority.
- (4) For the purposes of subsection (3) (b), a corporation is regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related body corporate within the meaning of the [Corporations Act 2001](#) of the Commonwealth.

### **38D Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a person on transgender grounds:
  - (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent, or
  - (b) in determining who should be engaged as a commission agent, or

(c) in the terms on which the principal engages the person as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on transgender grounds:

(a) in the terms or conditions that are afforded to the commission agent, or

(b) by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent, or

(c) by terminating the commission agent's engagement or subjecting the commission agent to any other detriment.

### **38E Discrimination against contract workers**

It is unlawful for a principal to discriminate against a contract worker on transgender grounds:

(a) in the terms on which the contract worker is allowed to work, or

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

(c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work performed by the contract worker, or

(d) by subjecting the contract worker to any other detriment.

### **38F Partnerships**

(1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on transgender grounds:

(a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm, or

(b) in determining who should be offered a position as partner in the firm, or

(c) in the terms on which the person is offered a position as partner in the firm.

(2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on transgender grounds:

(a) by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm, or

(b) by expelling the partner from the firm, or

(c) by subjecting the partner to any other detriment.

### **38G Discrimination by local government councillors**

It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of the member's or members' official functions to discriminate against another member of the council on transgender grounds.

### **38H Industrial organisations**

- (1) It is unlawful for an industrial organisation to discriminate on transgender grounds against a person who is not a member of the industrial organisation:
  - (a) by refusing or failing to accept the person's application for membership, or
  - (b) in the terms on which it is prepared to admit the person to membership.
- (2) It is unlawful for an industrial organisation to discriminate against a member of the organisation on transgender grounds:
  - (a) by denying the member access, or limiting the member's access, to any benefit provided by the organisation, or
  - (b) by depriving the member of membership or varying the terms of his or her membership, or
  - (c) by subjecting the member to any other detriment.

### **38I Qualifying bodies**

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, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on transgender grounds:

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification, or
- (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 on which it is held.

### **38J Employment agencies**

It is unlawful for an employment agency to discriminate against a person on transgender grounds:

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

- (c) in the manner in which it provides the person with any of its services.

### **Division 3 Discrimination in other areas**

#### **38K Education**

- (1) It is unlawful for an educational authority to discriminate against a person on transgender grounds:
- (a) by refusing or failing to accept the person's application for admission as a student, or
  - (b) in the terms on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on transgender grounds:
- (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or
  - (b) by expelling the student or subjecting the student to any other detriment.
- (3) Nothing in this section applies to or in respect of a private educational authority.

#### **38L (Repealed)**

#### **38M Provision of goods and services**

It is unlawful for a person who provides (whether or not for payment) goods or services to discriminate against another person on transgender grounds:

- (a) by refusing to provide the person with those goods or services, or
- (b) in the terms on which the other person is provided with those goods or services.

#### **38N Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on transgender grounds:
- (a) by refusing the person's application for accommodation, or
  - (b) in the terms on which he or she offers the person accommodation, or
  - (c) by deferring the person's application for accommodation or giving the person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on transgender grounds:
- (a) by denying the person access, or limiting the person's access, to any benefit

associated with accommodation occupied by the person, or

(b) by evicting the person or subjecting the person 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, in those premises, and

(b) the accommodation provided in those premises is for no more than 6 persons.

### **380 Registered clubs**

(1) It is unlawful for a registered club to discriminate on transgender grounds against a person who is not a member of the registered club:

(a) by refusing or failing to accept the person's application for membership of the club, or

(b) in the terms on which it is prepared to admit the person to membership of the club.

(2) It is unlawful for a registered club to discriminate on transgender grounds against a member of the registered club:

(a) by denying the member access, or limiting the members' access, to any benefit provided by the club, or

(b) by depriving the member of membership or varying the terms of his or her membership, or

(c) by subjecting the member to any other detriment.

## **Division 4 Exceptions to Part 3A**

### **38P Sport**

(1) Nothing in this Part renders unlawful the exclusion of a transgender person from participation in any sporting activity for members of the sex with which the transgender person identifies.

(2) Subsection (1) does not apply:

(a) to the coaching of persons engaged in any sporting activity, or

(b) to the administration of any sporting activity, or

(c) to any sporting activity prescribed by the regulations for the purposes of this

section.

### **38Q Superannuation**

A person does not discriminate against a transgender person (whether or not a recognised transgender person) on transgender grounds if, in the administration of a superannuation or provident fund or scheme, the other person treats the transgender person as being of the opposite sex to the sex with which the transgender person identifies.

## **Division 5 Transgender vilification**

### **38R Definition**

In this Division:

**public act** includes:

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material, or
- (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, or
- (c) the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of:
  - (i) a person on the ground that the person is a transgender person, or
  - (ii) a group of persons on the ground that the members of the group are transgender persons.

### **38S Transgender vilification unlawful**

- (1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of:
  - (a) a person on the ground that the person is a transgender person, or
  - (b) a group of persons on the ground that the members of the group are transgender persons.
- (2) Nothing in this section renders unlawful:
  - (a) a fair report of a public act referred to in subsection (1), or
  - (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the

*Defamation Act 2005* or otherwise) in proceedings for defamation, or

- (c) a public act, done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

### **38T Offence of serious transgender vilification**

- (1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person on the ground that the person is a transgender person, or a group of persons on the ground that the members of the group are transgender persons, by means which include:
  - (a) threatening physical harm towards, or towards any property of, the person or group of persons, or
  - (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty:

In the case of an individual—10 penalty units or imprisonment for 6 months, or both.

In the case of a corporation—100 penalty units.

- (2) A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

## **Part 4 Discrimination on the ground of marital or domestic status**

### **Division 1 General**

#### **39 What constitutes discrimination on the ground of marital or domestic status**

- (1) A person (***the perpetrator***) discriminates against another person (***the aggrieved person***) on the ground of marital or domestic status if, on the ground of the aggrieved person's marital or domestic status or the marital or domestic status of a relative or associate of the aggrieved person, the perpetrator:
  - (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person of a different marital or domestic status or who does not have such a relative or associate of that marital or domestic status, or
  - (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons of a different marital or



domestic status, or who do not have such a relative or associate of that marital or domestic status, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

- (1A) For the purposes of subsection (1) (a), something is done on the ground of a person's marital or domestic status if it is done on the ground of the person's marital or domestic status, a characteristic that appertains generally to persons of that marital or domestic status or a characteristic that is generally imputed to persons of that marital or domestic status.
- (2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of a different marital or domestic status are not materially different by reason of the fact that the persons between whom the discrimination occurs are not of the same sex.
- (3) (Repealed)

## **Division 2 Discrimination in work**

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

- (1) It is unlawful for an employer to discriminate against a person on the ground of marital or domestic status:
- (a) in the arrangements the employer makes for the purpose of determining who shall be offered employment,
  - (b) in determining who should be offered employment, or
  - (c) in the terms on which the employer offers employment.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of marital or domestic status:
- (a) in the terms or conditions of employment which the employer affords the employee,
  - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
  - (c) by dismissing the employee or subjecting the employee to any other detriment.
- (3) Subsections (1) and (2) do not apply to employment:
- (a) for the purposes of a private household,
  - (b) where the number of persons employed by the employer, disregarding any

persons employed within the employer's private household, does not exceed 5, or

(c) by a private educational authority.

- (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 body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

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

- (1) It is unlawful for a principal to discriminate against a person on the ground of marital or domestic status:
- (a) in the arrangements the principal 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 the principal engages the person as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of marital or domestic status:
- (a) in the terms or conditions which the principal affords him or her as a commission agent,
  - (b) by denying him or her access, or limiting his or her access, to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent, or
  - (c) by terminating his or her engagement or subjecting him or her to any other detriment.

#### **42 Discrimination against contract workers**

It is unlawful for a principal to discriminate against a contract worker on the ground of marital or domestic status:

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

#### **42A Partnerships**

- (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of marital or domestic status:
  - (a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm,
  - (b) in determining who should be offered a position as partner in the firm, or
  - (c) in the terms on which the person is offered a position as partner in the firm.
- (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of marital or domestic status:
  - (a) by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm,
  - (b) by expelling the partner from the firm, or
  - (c) by subjecting the partner to any other detriment.

#### **42B Discrimination by local government councillors**

It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of marital or domestic status.

#### **43 Industrial organisations**

- (1) It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of marital or domestic status:
  - (a) by refusing or failing to accept the person's application for membership, or
  - (b) in the terms on which it is prepared to admit the person to membership.
- (2) It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of marital or domestic status:
  - (a) by denying the person access, or limiting the person's access, to any benefit provided by the industrial organisation,
  - (b) by depriving the person of membership or varying the terms of the person's membership, or
  - (c) by subjecting the person to any other detriment.

#### **44 Qualifying bodies**

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, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of marital or domestic status:

- (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.

#### **45 Employment agencies**

It is unlawful for an employment agency to discriminate against a person on the ground of marital or domestic status:

- (a) by refusing to provide the person with any of its services,
- (b) in the terms on which it offers to provide the person with any of its services, or
- (c) in the manner in which it provides the person with any of its services.

#### **46 Exception—employment of married couple**

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

### **Division 3 Discrimination in other areas**

#### **46A Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of marital or domestic status:
  - (a) by refusing or failing to accept the person's application for admission as a student, or
  - (b) in the terms on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of marital or domestic status:
  - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or

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

(3) Nothing in this section applies to or in respect of a private educational authority.

#### **47 Provision of goods and services**

It is unlawful for a person who provides, for payment or not, goods or services to discriminate against a person on the ground of marital or domestic status:

(a) by refusing to provide the person with those goods or services, or

(b) in the terms on which he or she provides the person with those goods or services.

#### **48 Accommodation**

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

(a) by refusing the person's application for accommodation,

(b) in the terms on which he or she offers the person accommodation, or

(c) by deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation.

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

(a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person, or

(b) by evicting the person or subjecting the person 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.

#### **48A Registered clubs**

(1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of marital or domestic status:

(a) by refusing or failing to accept the person's application for membership, or

(b) in the terms on which it is prepared to admit the person to membership.

- (2) It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of marital or domestic status:
- (a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club,
  - (b) by depriving the person of membership or varying the terms of the person's membership, or
  - (c) by subjecting the person to any other detriment.

## **Division 4 Exception to Part 4**

### **49 Superannuation**

Nothing in this Part renders unlawful discrimination on the ground of marital or domestic status in the terms or conditions appertaining to a superannuation or provident fund or scheme, where:

- (a) the terms or conditions:
  - (i) are based upon actuarial or statistical data on which it is reasonable to rely, and
  - (ii) are reasonable having regard to the data and any other relevant factors, or
- (b) in a case where no such actuarial or statistical data is available and cannot reasonably be obtained—the terms or conditions are reasonable having regard to any other relevant factors,

and the source on which any data referred to in paragraph (a) is based is disclosed to the Tribunal, where the Tribunal so requires, and any other relevant factors to which regard has been had as referred to in paragraph (a) or (b) are disclosed to the Tribunal, where the Tribunal so requires.

## **Part 4A Discrimination on the ground of disability**

### **Division 1 General**

#### **49A Disability includes past, future and presumed disability**

A reference in this Part to a person's disability is a reference to a disability:

- (a) that a person has, or
- (b) that a person is thought to have (whether or not the person in fact has the disability),  
or
- (c) that a person had in the past, or is thought to have had in the past (whether or not the person in fact had the disability), or

- (d) that a person will have in the future, or that it is thought a person will have in the future (whether or not the person in fact will have the disability).

**49B What constitutes discrimination on the ground of disability**

- (1) A person (***the perpetrator***) discriminates against another person (***the aggrieved person***) on the ground of disability if, on the ground of the aggrieved person's disability or the disability of a relative or associate of the aggrieved person, the perpetrator:
- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who does not have that disability or who does not have such a relative or associate who has that disability, or
  - (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have that disability, or who do not have such a relative or associate who has that disability, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.
- (2) For the purposes of subsection (1) (a), something is done on the ground of a person's disability if it is done on the ground of the person's disability, a characteristic that appertains generally to persons who have that disability or a characteristic that is generally imputed to persons who have that disability.
- (3) For the purposes of, but without limiting, this section, the fact that a person who has a disability of or relating to vision, hearing or mobility has, or may be accompanied by, a dog which assists the person in respect of that disability, is taken to be a characteristic that appertains generally to persons who have that disability, but nothing in this Act affects the liability of any such person for any injury, loss or damage caused by the dog.
- (3A) For the purposes of, but without limiting, this section, the fact that a person who has a disability:
- (a) is accompanied by, or possesses, a palliative or therapeutic device, or other mechanical equipment, that provides assistance to the person to alleviate the effect of the disability, or
  - (b) is accompanied by an interpreter, a reader, an assistant, or a carer, who provides interpretive, reading or other services to the person because of the disability, or because of any matter related to that fact,
- is taken to be a characteristic that appertains generally to persons who have that disability.

- (4) A reference in this section to persons who have a disability (“the particular disability”) is a reference to persons who have the particular disability or who have a disability that is substantially the same as the particular disability.

#### **49C What constitutes unjustifiable hardship**

In determining what constitutes unjustifiable hardship for the purposes of this Part, all relevant circumstances of the particular case are to be taken into account including:

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

### **Division 2 Discrimination in work**

#### **49D Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of disability:
  - (a) in the arrangements the employer makes for the purpose of determining who should be offered employment, or
  - (b) in determining who should be offered employment, or
  - (c) in the terms on which the employer offers employment.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of disability:
  - (a) in the terms or conditions of employment which the employer affords the employee, or
  - (b) by denying the employee access, or limiting the employee’s access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
  - (c) by dismissing the employee, or
  - (d) by subjecting the employee to any other detriment.
- (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 the employer's private household, does not exceed 5, or

(c) by a private educational authority.

(4) Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by an employer against a person on the ground of the person's disability if taking into account the person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability:

(a) would be unable to carry out the inherent requirements of the particular employment, or

(b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the employer.

(5) For the purposes of subsection (3) (b), a corporation is taken to be the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related body corporate within the meaning of the [Corporations Act 2001](#) of the Commonwealth.

#### **49E Discrimination against commission agents**

(1) It is unlawful for a principal to discriminate against a person on the ground of disability:

(a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent, or

(b) in determining who should be engaged as a commission agent, or

(c) in the terms on which the principal engages the person as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of disability:

(a) in the terms or conditions which the principal affords him or her as a commission agent, or

(b) by denying him or her access, or limiting his or her access, to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent, or

(c) by terminating his or her engagement, or

(d) by subjecting him or her to any other detriment.

- (3) Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by a principal against a person on the ground of the person's disability if taking into account the person's past training, qualifications and experience relevant to engagement as a commission agent and, if the person is already engaged by the principal as a commission agent, the person's performance as a commission agent, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability:
- (a) would be unable to carry out the inherent requirements of a commission agent, or
  - (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the principal.

#### **49F Discrimination against contract workers**

- (1) It is unlawful for a principal to discriminate against a contract worker on the ground of disability:
- (a) in the terms on which the principal allows him or her to work, or
  - (b) by not allowing him or her to work or continue to work, or
  - (c) by denying him or her access, or limiting his or her access, to any benefit associated with the work in respect of which the contract with his or her employer is made, or
  - (d) by subjecting him or her to any other detriment.
- (2) Nothing in subsection (1) (b) renders unlawful discrimination by a principal against a contract worker on the ground of the contract worker's disability if taking into account the contract worker's past training, qualifications and experience relevant to working as a contract worker and, if the person is already working for the principal as a contract worker, the contract worker's performance as a contract worker, and all other relevant factors that it is reasonable to take into account, the contract worker because of his or her disability:
- (a) would be unable to carry out the inherent requirements of a contract worker, or
  - (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the principal.

#### **49G Partnerships**

- (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of disability:

- (a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm, or
  - (b) in determining who should be offered a position as partner in the firm, or
  - (c) in the terms on which the person is offered a position as partner in the firm.
- (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of disability:
- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm, or
  - (b) by expelling the partner from the firm, or
  - (c) by subjecting the partner to any other detriment.
- (3) Nothing in subsection (1) (b) or (2) (b) renders unlawful discrimination by a person against another person on the ground of the other person's disability if taking into account the other person's past training, qualifications and experience relevant to the proposed partnership or the partnership and, if the other person is already a partner, the other person's performance as a partner, and all other relevant factors that it is reasonable to take into account, the other person because of his or her disability:
- (a) would be unable to carry out the inherent requirements of a partner in the proposed partnership or the partnership, or
  - (b) would, in order to carry out those requirements, require services or facilities that are not required by persons without that disability and the provision of which would impose an unjustifiable hardship on the partnership.

#### **49H Discrimination by local government councillors**

It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of disability.

#### **49I Industrial organisations**

- (1) It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of disability:
- (a) by refusing or failing to accept his or her application for membership, or
  - (b) in the terms on which it is prepared to admit him or her to membership.
- (2) It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of disability:
- (a) by denying him or her access, or limiting his or her access, to any benefit provided

by the industrial organisation, or

(b) by depriving him or her of membership or varying the terms of his or her membership, or

(c) by subjecting him or her to any other detriment.

(3) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot be provided in that manner by the industrial organisation without unjustifiable hardship to it.

#### **49J Qualifying bodies**

(1) It is unlawful for an authority or 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, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of disability:

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

(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.

(2) Nothing in subsection (1) (a) or (c) renders unlawful discrimination by an authority or body against a person on the ground of the person's disability if taking into account the person's past training, qualifications and experience relevant to the particular profession, trade or occupation and, if the person is already a member of the profession, carrying on the trade or engaged in the occupation, the person's performance in the profession trade or occupation, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability would be unable to carry out the inherent requirements of the profession, trade or occupation.

#### **49K Employment agencies**

(1) It is unlawful for an employment agency to discriminate against a person on the ground of disability:

(a) by refusing to provide him or her with any of its services, or

(b) in the terms on which it offers to provide him or her with any of its services, or

(c) in the manner in which it provides him or her with any of its services.

- (2) Nothing in this section renders unlawful discrimination by an employment agency against a person on the ground of the person's disability if taking into account the person's past training, qualifications and experience relevant to the work sought, and all other relevant factors that it is reasonable to take into account, the person because of his or her disability would be unable to carry out the inherent requirements of the work sought.

### **Division 3 Discrimination in other areas**

#### **49L Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of disability:
- (a) by refusing or failing to accept his or her application for admission as a student, or
  - (b) in the terms on which it is prepared to admit him or her as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of disability:
- (a) by denying him or her access, or limiting his or her access, to any benefit provided by the educational authority, or
  - (b) by expelling him or her, or
  - (c) by subjecting him or her to any other detriment.
- (3) Nothing in this section applies to or in respect of:
- (a) a private educational authority, or
  - (b) a refusal or failure to accept a person's application for admission as a student by an educational authority where the educational authority administers a school, college, university or other institution which is conducted solely for students who have a disability which is not the same as that of the applicant.
- (4) Nothing in subsection (1) (a) or (2) (b) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires services or facilities that are not required by students who do not have a disability and the provision of which would impose unjustifiable hardship on the educational authority.
- (5) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the educational authority.

#### **49LA (Repealed)**

#### **49M Provision of goods and services**

- (1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against a person on the ground of disability:
  - (a) by refusing to provide the person with those goods or services, or
  - (b) in the terms on which he or she provides the person with those goods or services.
- (2) Nothing in this section renders it unlawful to discriminate against a person on the ground of the person's disability if the provision of the goods or services would impose unjustifiable hardship on the person who provides the goods or services.

#### **49N Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against a person on the ground of disability:
  - (a) by refusing the person's application for accommodation, or
  - (b) in the terms on which the person is offered accommodation, or
  - (c) by deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against a person on the ground of disability:
  - (a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person, or
  - (b) by evicting the person, or
  - (c) by subjecting the person 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.
- (4) Nothing in this section applies to the provision of accommodation in premises where special services or facilities would be required by the person with a disability and the provision of such special services or facilities would impose unjustifiable hardship on the person providing or proposing to provide the accommodation whether as principal or agent.

- (5) Nothing in this section applies to the provision of accommodation to persons who have a particular disability by a charitable body or other body that does not distribute its profits to members.
- (6) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the person who provides the accommodation.

#### **490 Registered clubs**

- (1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of disability:
  - (a) by refusing or failing to accept the person's application for membership, or
  - (b) in the terms on which it is prepared to admit the person to membership.
- (2) It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of disability:
  - (a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club, or
  - (b) by depriving the person of membership or varying the terms of the person's membership, or
  - (c) by subjecting the person to any other detriment.
- (3) Nothing in subsection (1) or (2) applies to or in respect of a registered club if the principal object of the registered club is to provide benefits only for persons who have a particular disability specified in the principal object.
- (4) In determining whether the principal object of a registered club is as referred to in subsection (3), regard is to be had to:
  - (a) the essential character of the registered club, and
  - (b) the extent to which the affairs of the registered club are so conducted that the persons primarily enjoying the benefits of membership are persons who have the particular disability specified in the principal object, and
  - (c) any other relevant circumstance.
- (5) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of disability where, because of the person's disability, the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the registered club.

## Division 4 Exceptions to Part 4A

### 49P Public health

Nothing in this Part renders unlawful discrimination against a person on the ground of disability if the disability concerned is an infectious disease and the discrimination is reasonably necessary to protect public health.

### 49PA Persons addicted to prohibited drugs

- (1) This section applies to the provisions of Division 2 (Discrimination in work), other than sections 49H, 49I and 49J.
- (2) Nothing in those provisions renders unlawful discrimination against a person on the ground of disability if:
  - (a) the disability relates to the person's addiction to a prohibited drug, and
  - (b) the person is actually addicted to a prohibited drug at the time of the discrimination.
- (3) However, nothing in this section makes it lawful to discriminate against a person on the ground of the person having hepatitis C, HIV infection or any medical condition other than addiction to a prohibited drug.
- (4) In this section:

**prohibited drug** means a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, but does not include:

- (a) methadone or buprenorphine, or
- (b) any other drug that is declared by the regulations not to be a prohibited drug for the purposes of this section.

### 49Q Superannuation, insurance

Nothing in this Part renders unlawful discrimination against a person on the ground of disability in the terms or conditions appertaining to a superannuation or provident fund or scheme or 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:

- (a) the terms or conditions:
  - (i) are based upon actuarial or statistical data on which it is reasonable to rely, and
  - (ii) are reasonable having regard to the data and any other relevant factors, or
- (b) in a case where no such actuarial or statistical data is available and cannot



reasonably be obtained—the terms or conditions are reasonable having regard to any other relevant factors,

and the source on which any data referred to in paragraph (a) is based is disclosed to the Tribunal, where the Tribunal so requires, and any other relevant factors to which regard has been had as referred to in paragraph (a) or (b) are disclosed to the Tribunal, where the Tribunal so requires.

#### **49R Sport**

Nothing in this Part renders unlawful discrimination against a person on the ground of disability, being discrimination consisting of the exclusion of the person from a sporting activity:

- (a) if the person is not reasonably capable of performing the actions reasonably required in relation to the sporting activity, or
- (b) if the persons who participate or are to participate in the sporting activity are selected by a method which is reasonable on the basis of their skills and abilities relevant to the sporting activity and relative to each other, or
- (c) if the sporting activity is conducted only for persons who have a particular disability and the person does not have that disability.

### **Part 4B Discrimination on the ground of a person’s responsibilities as a carer**

#### **Division 1 General**

##### **49S Meaning of “responsibilities as a carer”**

- (1) A reference in this Part to a person’s **responsibilities as a carer** is a reference to the person’s responsibilities to care for or support:
  - (a) any child or step-child of the person (whether or not under the age of 18 years) who is:
    - (i) wholly or substantially dependent on the person, or
    - (ii) in need of care or support, or
  - (b) any child or adult who is in need of care or support and:
    - (i) of whom the person is guardian, or
    - (ii) for whom the person has parental responsibility under a law of the Commonwealth or this State, or
    - (iii) in relation to whom the person is an authorised carer within the meaning of

the *Children and Young Persons (Care and Protection) Act 1998*, or

- (c) any immediate family member of the person who is in need of care or support, being one of the following:
- (i) a spouse or former spouse of the person or of a spouse or former spouse of the person,
  - (ii) a grandchild or step-grandchild of the person or of a spouse or former spouse of the person,
  - (iii) a parent or step-parent of the person or of a spouse or former spouse of the person,
  - (iv) a grandparent or step-grandparent of the person or of a spouse or former spouse of the person,
  - (v) a brother or sister, or step-brother or sister, of the person or of a spouse or former spouse of the person.

(2) A reference in this Part to a person's responsibilities is a reference to responsibilities:

- (a) that the person has, or
- (b) that the person is thought to have (whether or not the person in fact has the responsibilities), or
- (c) that the person had in the past, or is thought to have had in the past (whether or not the person in fact had the responsibilities), or
- (d) that the person will have in the future, or that it is thought a person will have in the future (whether or not the person in fact will have the responsibilities).

(3) In this section:

**spouse** of a person means:

- (a) the husband or wife of a person, or
- (b) the de facto partner of a person.

**Note—**

"De facto partner" is defined in section 21C of the *Interpretation Act 1987*.

**step-child** or **step-grandchild** of a person means:

- (a) a child or grandchild of the spouse or former spouse of the person, or
- (b) a step-child or step-grandchild of the spouse or former spouse of the person (being a child or grandchild of the spouse's former spouse).

- (4) A reference in this section to a child, step-child, grandchild, step-grandchild, parent, step-parent, grandparent, step-grandparent, brother, sister, step-brother or step-sister of a person or of a spouse or former spouse of a person:
- (a) includes a reference to persons whose relationship arises because of adoption, guardianship or fostering or because of the allocation of parental responsibility under a law of the Commonwealth or this State, and
  - (b) includes a reference to persons whose relationship arises because of the birth of a child whose parents are not married to each other and are not parties to a de facto relationship with each other, and
  - (c) in relation a reference to a brother or sister, includes a reference to a half-brother or half-sister.

**49T What constitutes discrimination on the ground of a person's responsibilities as a carer**

- (1) A person (***the perpetrator***) discriminates against another person (***the aggrieved person***) on the ground of the aggrieved person's responsibilities as a carer if, on the ground of the aggrieved person having responsibilities as a carer, the perpetrator:
- (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who does not have those responsibilities, or
  - (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who do not have such responsibilities comply or are able to comply, being a requirement that is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.
- (2) For the purposes of subsection (1) (a), something is done on the ground of a person's responsibilities as a carer if it is done on the ground of the person having responsibilities as a carer, a characteristic that appertains generally to persons who have responsibilities as a carer or a characteristic that is generally imputed to persons who have responsibilities as a carer.

**49U What constitutes unjustifiable hardship**

In determining what constitutes unjustifiable hardship for the purposes of this Part, all relevant circumstances of the particular case are to be taken into account, including:

- (a) the nature of the benefit or detriment likely to accrue to or be suffered by any persons concerned, and
- (b) the effect of the relevant responsibilities as a carer of a person concerned, and

- (c) the financial circumstances of and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.

## **Division 2 Discrimination in work**

### **49V Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person's responsibilities as a carer:
  - (a) in the arrangements the employer makes for the purpose of determining who should be offered employment, or
  - (b) in determining who should be offered employment, or
  - (c) in the terms on which the employer offers employment.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's responsibilities as a carer:
  - (a) in the terms or conditions of employment that the employer affords the employee, or
  - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
  - (c) by dismissing the employee, or
  - (d) by subjecting the employee to any other detriment.
- (3) Subsections (1) and (2) do not apply to employment:
  - (a) for the purposes of a private household, or
  - (b) if the number of persons employed by the employer, disregarding any persons employed within the employer's private household, does not exceed 5.
- (4) Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by an employer against a person on the ground of the person's responsibilities as a carer if taking into account the person's past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of his or her responsibilities as a carer:
  - (a) would be unable to carry out the inherent requirements of the particular employment, or

(b) would, in order to carry out those requirements, require arrangements that are not required by persons without those responsibilities as a carer and the making of which would impose an unjustifiable hardship on the employer.

(5) For the purposes of subsection (3) (b), a corporation is regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

#### **49W Discrimination against commission agents**

(1) It is unlawful for a principal to discriminate against a person on the ground of the person's responsibilities as a carer:

(a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent, or

(b) in determining who should be engaged as a commission agent, or

(c) in the terms on which the principal engages the person as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of his or her responsibilities as a carer:

(a) in the terms or conditions that the principal affords him or her as a commission agent, or

(b) by denying the commission agent access, or limiting the commission agent's access, to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent, or

(c) by terminating the commission agent's engagement, or

(d) by subjecting the commission agent to any other detriment.

(3) Nothing in subsection (1) (b) or (2) (c) renders unlawful discrimination by a principal against a person on the ground of the person's responsibilities as a carer if taking into account the person's past training, qualifications and experience relevant to engagement as a commission agent and, if the person is already engaged by the principal as a commission agent, the person's performance as a commission agent, and all other relevant factors that it is reasonable to take into account, the person because of his or her responsibilities as a carer:

(a) would be unable to carry out the inherent requirements of a commission agent, or

(b) would, in order to carry out those requirements, require arrangements that are not required by persons without those responsibilities as a carer and the making of which would impose an unjustifiable hardship on the principal.

#### **49X Discrimination against contract workers**

- (1) It is unlawful for a principal to discriminate against a contract worker on the ground of his or her responsibilities as a carer:
  - (a) in the terms on which the principal allows the contract worker to work, or
  - (b) by not allowing the contract worker to work or continue to work, or
  - (c) by denying the contract worker access, or limiting the contract worker's access, to any benefit associated with the work in respect of which the contract with his or her employer is made, or
  - (d) by subjecting the contract worker to any other detriment.
- (2) Nothing in subsection (1) (b) renders unlawful discrimination by a principal against a contract worker on the ground of the contract worker's responsibilities as a carer if taking into account the contract worker's past training, qualifications and experience relevant to working as a contract worker and, if the contract worker is already working for the principal as a contract worker, the worker's performance as a contract worker, and all other relevant factors that it is reasonable to take into account, the contract worker because of his or her responsibilities as a carer:
  - (a) would be unable to carry out the inherent requirements of a contract worker, or
  - (b) would, in order to carry out those requirements, require arrangements that are not required by persons without those responsibilities as a carer and the making of which would impose an unjustifiable hardship on the principal.

#### **49Y Partnerships**

- (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of his or her responsibilities as a carer:
  - (a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm, or
  - (b) in determining who should be offered a position as partner in the firm, or
  - (c) in the terms on which the person is offered a position as partner in the firm.
- (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of his or her responsibilities as a carer:
  - (a) by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm, or
  - (b) by expelling the partner from the firm, or

(c) by subjecting the partner to any other detriment.

(3) Nothing in subsection (1) (b) or (2) (b) renders unlawful discrimination by one person against another person on the ground of the person's responsibilities as a carer if taking into account the person's past training, qualifications and experience relevant to the proposed partnership or the partnership and, if the other person is already a partner, the other person's performance as a partner, and all other relevant factors that it is reasonable to take into account, the other person because of his or her responsibilities as a carer:

(a) would be unable to carry out the inherent requirements of a partner in the proposed partnership or the partnership, or

(b) would, in order to carry out those requirements, require arrangements that are not required by persons without those responsibilities as a carer and the making of which would impose an unjustifiable hardship on the other partners.

#### **49Z Discrimination by local government councillors**

It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of his or her responsibilities as a carer.

#### **49ZA Industrial organisations**

(1) It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of his or her responsibilities as a carer:

(a) by refusing or failing to accept the person's application for membership, or

(b) in the terms on which it is prepared to admit the person to membership.

(2) It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of his or her responsibilities as a carer:

(a) by denying the person access, or limiting the person's access, to any benefit provided by the organisation, or

(b) by depriving the person of membership or varying the terms of the person's membership, or

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

(3) Nothing in subsection (2) (a) renders it unlawful to discriminate against a person on the ground of the person's responsibilities as a carer where, because of the person's

responsibilities as a carer, the person requires the benefit to be provided in a special manner and the benefit cannot be provided in that manner by the industrial organisation without unjustifiable hardship to it.

#### **49ZB Qualifying bodies**

- (1) 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, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of his or her responsibilities as a carer:
  - (a) by refusing or failing to confer, renew or extend the authorisation or qualification, or
  - (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 on which it is held.
- (2) Nothing in subsection (1) (a) or (c) renders unlawful discrimination by an authority or body against a person on the ground of the person's responsibilities as a carer if taking into account:
  - (a) the person's past training, qualifications and experience relevant to the particular profession, trade or occupation, and
  - (b) if the person is already a member of the profession, carrying on the trade or engaged in the occupation, the person's performance in the profession, trade or occupation, and
  - (c) all other relevant factors that it is reasonable to take into account,the person because of his or her responsibilities as a carer would be unable to carry out the inherent requirements of the profession, trade or occupation.

#### **49ZC Employment agencies**

- (1) It is unlawful for an employment agency to discriminate against a person on the ground of his or her responsibilities as a carer:
  - (a) by refusing to provide the person with any of its services, or
  - (b) in the terms on which it offers to provide the person with any of its services, or
  - (c) in the manner in which it provides the person with any of its services.
- (2) Nothing in this section renders unlawful discrimination by an employment agency against a person on the ground of the person's responsibilities as a carer if, taking into



account the person's past training, qualifications and experience relevant to the particular work sought, and all other relevant factors that it is reasonable to take into account, the person because of his or her responsibilities as a carer would be unable to carry out the inherent requirements of the work sought.

**49ZD, 49ZE (Repealed)**

**Part 4C Discrimination on the ground of homosexuality**

**Division 1 General**

**49ZF Interpretation**

A reference in this Part to a person's homosexuality includes a reference to the person's being thought to be a homosexual person, whether he or she is in fact a homosexual person or not.

**49ZG What constitutes discrimination on the ground of homosexuality**

- (1) A person (***the perpetrator***) discriminates against another person (***the aggrieved person***) on the ground of homosexuality if, on the ground of the aggrieved person's homosexuality or the homosexuality of a relative or associate of the aggrieved person, the perpetrator:
  - (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who he or she did not think was a homosexual person or who does not have such a relative or associate who he or she thinks was a homosexual person, or
  - (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not homosexual persons, or who do not have such a relative or associate who is a homosexual person, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.
- (2) For the purposes of subsection (1) (a), something is done on the ground of a person's homosexuality if it is done on the ground of the person's homosexuality, a characteristic that appertains generally to homosexual persons or a characteristic that is generally imputed to homosexual persons.

**Division 2 Discrimination in work**

**49ZH Discrimination against applicants and employees**

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

homosexuality:

- (a) in the arrangements the employer 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 the employer offers employment.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of homosexuality:
- (a) in the terms or conditions of employment which the employer affords the employee,
  - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
  - (c) by dismissing the employee or subjecting the employee to any other detriment.
- (3) Subsections (1) and (2) do not apply to employment:
- (a) for the purposes of a private household,
  - (b) where the number of persons employed by the employer, disregarding any persons employed within the employer's private household, does not exceed 5, or
  - (c) by a private educational authority.
- (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 body corporate within the meaning of the [Corporations Act 2001](#) of the Commonwealth.

#### **49ZI Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a person on the ground of homosexuality:
- (a) in the arrangements the principal 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 the principal engages the person as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of homosexuality:

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

#### **49ZJ Discrimination against contract workers**

It is unlawful for a principal to discriminate against a contract worker on the ground of homosexuality:

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

#### **49ZK Partnerships**

- (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of homosexuality:
  - (a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm,
  - (b) in determining who should be offered a position as partner in the firm, or
  - (c) in the terms on which the person is offered a position as partner in the firm.
- (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of homosexuality:
  - (a) by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm,
  - (b) by expelling the partner from the firm, or
  - (c) by subjecting the partner to any other detriment.

#### **49ZKA Discrimination by local government councillors**

It is unlawful for any member or members of a council of a local government area when acting (whether alone or together) in the course of his, her or their official functions to discriminate against another member of the council on the ground of homosexuality.

#### **49ZL Industrial organisations**

(1) It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of homosexuality:

- (a) by refusing or failing to accept the person's application for membership, or
- (b) in the terms on which it is prepared to admit the person to membership.

(2) It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of homosexuality:

- (a) by denying the person access, or limiting the person's access, to any benefit provided by the industrial organisation,
- (b) by depriving the person of membership or varying the terms of the person's membership, or
- (c) by subjecting the person to any other detriment.

#### **49ZM Qualifying bodies**

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, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of homosexuality:

- (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,
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

#### **49ZN Employment agencies**

It is unlawful for an employment agency to discriminate against a person on the ground of homosexuality:

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

- (c) in the manner in which it provides the person with any of its services.

### **Division 3 Discrimination in other areas**

#### **49ZO Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of homosexuality:
- (a) by refusing or failing to accept the person's application for admission as a student, or
  - (b) in the terms on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of homosexuality:
- (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority, or
  - (b) by expelling the student or subjecting the student to any other detriment.
- (3) Nothing in this section applies to or in respect of a private educational authority.

#### **49ZP Provision of goods and services**

It is unlawful for a person who provides, for payment or not, goods or services to discriminate against another person on the ground of homosexuality:

- (a) by refusing to provide the person with those goods or services, or
- (b) in the terms on which he or she provides the person with those goods or services.

#### **49ZQ Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of homosexuality:
- (a) by refusing the person's application for accommodation,
  - (b) in the terms on which he or she offers the person accommodation, or
  - (c) by deferring the person's application for accommodation or according the person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of homosexuality:
- (a) by denying the person access, or limiting the person's access, to any benefit associated with accommodation occupied by the person, or

(b) by evicting the person or subjecting the person 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.

#### **49ZR Registered clubs**

(1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of homosexuality:

(a) by refusing or failing to accept the person's application for membership, or

(b) in the terms on which it is prepared to admit the person to membership.

(2) It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of homosexuality:

(a) by denying the person access, or limiting the person's access, to any benefit provided by the registered club,

(b) by depriving the person of membership or varying the terms of the person's membership, or

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

### **Division 4 Homosexual vilification**

#### **49ZS Definition**

In this Division:

**public act** includes:

(a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material, and

(b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, and

(c) the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the homosexuality of the person or

members of the group.

**49ZT Homosexual vilification unlawful**

- (1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the homosexuality of the person or members of the group.
- (2) Nothing in this section renders unlawful:
  - (a) a fair report of a public act referred to in subsection (1), or
  - (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the [Defamation Act 2005](#) or otherwise) in proceedings for defamation, or
  - (c) a public act, done reasonably and in good faith, for academic, artistic, religious instruction, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

**49ZTA Offence of serious homosexual vilification**

- (1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the homosexuality of the person or members of the group by means which include:
  - (a) threatening physical harm towards, or towards any property of, the person or group of persons, or
  - (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty:

In the case of an individual—10 penalty units or imprisonment for 6 months, or both.

In the case of a corporation—100 penalty units.

- (2) A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

**Part 4E Compulsory retirement from employment on the ground of age**

**49ZU Application of Part**

- (1) This Part applies to and for the benefit of employees specified in the following paragraphs on and from the dates specified:

- (a) 1 January 1991—persons who are employed in the public sector, other than persons specified in paragraph (c),
  - (b) 1 January 1992—employees of a council,
  - (c) 1 January 1993—persons who are employed in the public sector in fire fighting or fire prevention,
  - (d) 1 January 1993—all other employees in New South Wales whether or not employed subject to an award or agreement.
- (2) This Part applies despite any compulsory retirement age fixed by an award or agreement made before, on or after 1 January 1991. Section 54 does not affect the operation of this subsection.

(3) In this Part:

**award or agreement** means an award or enterprise agreement within the meaning of the [Industrial Relations Act 1996](#).

**employed in the public sector** means:

- (a) employed in the Public Service or the Teaching Service, or
- (b) employed in the NSW Police Force otherwise than as a police officer, or
- (c) employed in the service of a public authority, or
- (d) holding a statutory office.

**employee** includes a commission agent and a contract worker.

(4) In the operation of this Part in relation to the retirement of an employee or class of employees, the meaning of retirement may vary according to the particular circumstances. However, the regulations may make provision for or with respect to circumstances which are to constitute retirement for the purposes of this Part or circumstances which are not to constitute retirement for such purposes or both.

#### **49ZV Compulsory retirement unlawful**

It is unlawful for a person:

- (a) to retire an employee from employment, or
- (b) to require an employee to retire from employment, or
- (c) to threaten to retire an employee from employment, or
- (d) to engage in conduct with a view to causing an employee to retire from employment,



on the ground of the employee's age.

#### **49ZW Provision requiring retirement on basis of age of no effect**

- (1) A provision of an Act or statutory instrument which:
  - (a) relates to a person employed in the public sector, and
  - (b) requires the person to retire from, or to vacate, office on or after reaching a specified age,is of no effect if, under this Part, it is unlawful for the person to be retired from employment.
- (2) This section applies except to the extent, if any, prescribed by regulation made under this Act.
- (3) Section 54 does not affect the operation of this section.

#### **49ZX Exceptions to this Part**

This Part does not apply to the retirement of the following persons:

- (a) a judicial officer within the meaning of the [Judicial Officers Act 1986](#),
- (b) Director of Public Prosecutions, Deputy Director of Public Prosecutions, Solicitor for Public Prosecutions, Crown Prosecutor, Senior Crown Prosecutor, Deputy Senior Crown Prosecutor, Public Defender, Senior Public Defender, Deputy Senior Public Defender, Solicitor General,
- (c) an officer who cannot be removed from office except following an address, declaration, resolution or other involvement of either or both of the Houses of Parliament and who is not appointed for a term,
- (d) a person or the holder of an office prescribed by regulation made under this Act.

### **Part 4F HIV/AIDS vilification**

#### **49ZXA Definitions**

In this Part:

**HIV/AIDS infected** means infected by the Human Immunodeficiency Virus or having the medical condition known as Acquired Immunodeficiency Syndrome.

**public act** includes:

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, broadcasting, telecasting, screening and playing of tapes or other recorded material, and

- (b) any conduct (not being a form of communication referred to in paragraph (a)) observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia, and
- (c) the distribution or dissemination of any matter to the public with knowledge that the matter promotes or expresses hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected).

**49ZXB HIV/AIDS vilification unlawful**

- (1) It is unlawful for a person, by a public act, to incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected).
- (2) Nothing in this section renders unlawful:
  - (a) a fair report of a public act referred to in subsection (1), or
  - (b) a communication or the distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the [Defamation Act 2005](#) or otherwise) in proceedings for defamation, or
  - (c) a public act, done reasonably and in good faith, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

**49ZXC Offence of serious HIV/AIDS vilification**

- (1) A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the ground that the person is or members of the group are HIV/AIDS infected or thought to be HIV/AIDS infected (whether or not actually HIV/AIDS infected) by means which include:
  - (a) threatening physical harm towards, or towards any property of, the person or group of persons, or
  - (b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

Maximum penalty: In the case of an individual—50 penalty units or imprisonment for 6 months, or both. In the case of a corporation—100 penalty units.

- (2) A person is not to be prosecuted for an offence under this section unless the Attorney General has consented to the prosecution.

## **Part 4G Age discrimination**

### **Division 1 General**

#### **49ZYA What constitutes discrimination on the ground of age**

- (1) A person (***the perpetrator***) discriminates against another person (***the aggrieved person***) on the ground of age if, on the ground of the aggrieved person's age or the age of a relative or associate of the aggrieved person, the perpetrator:
  - (a) treats the aggrieved person less favourably than in the same circumstances, or in circumstances which are not materially different, the perpetrator treats or would treat a person who is not of that age or age group or who does not have such a relative or associate who is that age or age group, or
  - (b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not of that age or age group, or who do not have such a relative or associate who is that age or age group, comply or are able to comply, being a requirement which is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.
- (2) For the purposes of subsection (1) (a), something is done on the ground of a person's age if it is done on the ground of the person's age or age group, a characteristic that appertains generally to persons who are that age or age group or a characteristic that is generally imputed to persons who are of that age or age group.
- (3) (Repealed)

### **Division 2 Discrimination in work**

#### **49ZYB Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of age:
  - (a) in the arrangements the employer makes for the purpose of determining who should be offered employment, or
  - (b) in determining who should be offered employment, or
  - (c) in the terms 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 that are afforded to the employee, or
  - (b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or

(c) by dismissing the employee or subjecting the employee to any other detriment.

(3) This section does not apply to employment for the purposes of a private household.

#### **49ZYC Discrimination against commission agents**

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

(a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent, or

(b) in determining who should be engaged as a commission agent, or

(c) in the terms on which the principal engages the person as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of age:

(a) in the terms or conditions that are afforded to the commission agent, or

(b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits associated with his or her position as a commission agent, or

(c) by terminating the commission agent's engagement or subjecting the commission agent to any other detriment.

#### **49ZYD Discrimination against contract workers**

It is unlawful for a principal to discriminate against a contract worker on the ground of age:

(a) in the terms on which the contract worker is allowed to work, or

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

(c) by denying or limiting access to any benefit associated with the work performed by the contract worker, or

(d) by subjecting the contract worker to any other detriment.

#### **49ZYE Partnerships**

(1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against another person on the ground of age:

(a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm, or

(b) in determining who should be offered a position as partner in the firm, or

- (c) in the terms on which the other person is offered a position as partner in the firm.
- (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of age:
  - (a) by denying or limiting access to any benefit arising from membership of the firm,  
or
  - (b) by expelling the partner from the firm, or
  - (c) by subjecting the partner to any other detriment.

#### **49ZYF Industrial organisations**

- (1) It is unlawful for an industrial organisation to discriminate against a person on the ground of age:
  - (a) by refusing or failing to accept the person's application for membership of the organisation, or
  - (b) in the terms on which it is prepared to admit the person to membership of the organisation.
- (2) It is unlawful for an industrial organisation to discriminate against a member of the organisation on the ground of age:
  - (a) by denying or limiting access to any benefit provided by the organisation, or
  - (b) by depriving the person of membership of the organisation or varying the terms of that membership, or
  - (c) by subjecting the person to any other detriment.
- (3) (Repealed)

#### **49ZYG Qualifying bodies**

- (1) It is unlawful for an authority or 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, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of age:
  - (a) by refusing or failing to confer, renew or extend the authorisation or qualification,  
or
  - (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 on which it is held.

- (2) This section does not prevent such an authority or body from imposing a reasonable and appropriate minimum age under which an authorisation or qualification will not be conferred.

#### **49ZYH Employment agencies**

It is unlawful for an employment agency to discriminate against a person on the ground of age:

- (a) by refusing to provide the person with any of its services, or
- (b) in the terms on which it offers to provide the person with any of its services, or
- (c) in the manner in which it provides the person with any of its services.

#### **49ZYI Junior employees**

- (1) Nothing in section 49ZYB (1) applies to or in respect of the offering of employment to persons who are under 21 years of age or the terms on which employment is offered to persons who are under 21 years of age.
- (2) Nothing in section 49ZYB (2) (a) applies to or in respect of the terms or conditions of employment that are afforded to employees who are under 21 years of age.
- (3) This section ceases to operate on a day appointed by proclamation published on the NSW legislation website for the purposes of this section, being a day that is not earlier than 2 years after the date of commencement of this Part.

#### **49ZYJ Exception—genuine occupational qualification**

- (1) Nothing in this Division renders unlawful discrimination against a person on the ground of the person's age if being a person of a particular age or age group is a genuine occupational qualification for the job.
- (2) Being a person of a particular age or age group is a genuine occupational qualification for a job if either of the following requirements is satisfied:
  - (a) in dramatic performances or other entertainment, the essential nature of the job calls for a person of that age or age group for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a person of another age or age group,
  - (b) the holder of the job provides persons of that age or age group with services for the purpose of promoting their welfare or furthering their education and those services can most effectively be provided by a person of a particular age or age group.
- (3) Being a person of a particular age or age group is a genuine occupational qualification for a job, or a job of a class or description, prescribed by the regulations.

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

**49ZYK Exception—voluntary retirement or severance schemes**

Nothing in this Division renders it unlawful to offer to a person who is an employee, commission agent, contract worker or partner, on the ground of the length of service of that person, participation in a voluntary phased-in retirement scheme, voluntary retirement scheme, retirement incentives scheme, voluntary severance scheme or other like scheme.

**Division 3 Discrimination in other areas**

**49ZYL Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of age:
- (a) by refusing or failing to accept the person's application for admission as a student, or
  - (b) in the terms on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of age:
- (a) by denying or limiting access to any benefit provided by the educational authority, or
  - (b) by expelling the student or subjecting the student to any other detriment.
- (3) Nothing in this section applies to or in respect of:
- (a) the admission of, or the refusal of admission to, a person to a school, college, university or other institution if the level of education or training sought by the person is provided only for students above a particular age, or
  - (b) a private educational authority, or
  - (c) an education authority prescribed by the regulations in relation to such circumstances (if any) as may be so prescribed.
- (4) Nothing in this section applies to or in respect of a refusal by an educational authority to enrol at a government school or registered non-government school a child who is not of or above the age of 6 years. In this subsection, **registered non-government school** has the same meaning as in the [Education Reform Act 1990](#).
- (5) Nothing in this section applies to or in respect of benefits, including concessions, provided in good faith to a student by reason of his or her age.

**49ZYM (Repealed)**

**49ZYN Provision of goods and services**

- (1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against another person on the ground of age:
  - (a) by refusing to provide the other person with those goods or services, or
  - (b) in the terms on which the other person is provided with those goods or services.
- (2) Nothing in subsection (1) applies to or in respect of:
  - (a) benefits, including concessions, provided in good faith to a person by reason of his or her age, or
  - (b) holiday tours offered or provided to persons who are of a particular age or age group.
- (3) Nothing in this section renders it unlawful for a person to discriminate against a person on the ground of age in disposing of goods, or in providing services, by gift or will or in accordance with the terms of a gift or will.

**49ZYO Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of age:
  - (a) by refusing the person's application for accommodation, or
  - (b) in the terms on which the principal or agent offers the other person accommodation, or
  - (c) by deferring the other person's application for accommodation or according the other person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against a person for whom accommodation has been provided on the ground of age:
  - (a) in the terms or conditions on which accommodation is provided, or
  - (b) by denying or limiting access to any benefit associated with accommodation, or
  - (c) by evicting the person or subjecting the person 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, in those premises, and

- (b) the accommodation provided in those premises is for no more than 6 persons, and
- (c) the accommodation is provided with a concession provided in good faith to a person by reason of the person's age.

#### **49ZYP Registered clubs**

- (1) It is unlawful for a registered club to discriminate against a person (not being a person under the age of 18 years) on the ground of age:
  - (a) by refusing or failing to accept the person's application for membership of the club, or
  - (b) in the terms on which it is prepared to admit the person to membership of the club.
- (2) It is unlawful for a registered club to discriminate against a member of the registered club on the ground of age:
  - (a) by denying or limiting access to any benefit provided by the club, or
  - (b) by depriving the member of membership of the club or varying the terms of that membership, or
  - (c) by subjecting the member to any other detriment.
- (3) Nothing in subsection (1) or (2) applies to or in respect of a registered club:
  - (a) that has as its principal object the provision of benefits for persons who are of a particular age or age group, or
  - (b) so as to prevent the retention by the club of different categories of membership for members of different ages or age groups.
- (4) In determining whether the principal object of a registered club is as referred to in subsection (3) (a), regard is to be had to:
  - (a) the essential character of the club, and
  - (b) the extent to which the affairs of the club are so conducted that the persons primarily enjoying the benefits of membership are of the relevant age or age group, and
  - (c) any other relevant circumstance.

## **Division 4 Exceptions to Part 4G**

### **49ZYQ Legal capacity and welfare of children**

Nothing in this Part:

- (a) affects the operation of a law that relates to the legal capacity or the legal entitlements, obligations or disqualifications of persons who are under 18 years of age, or
- (b) affects the operation of a law the object of which is to protect the welfare of those persons, including provisions of the criminal law that are designed to protect them.

### **49ZYR Special needs programs and activities**

Nothing in this Part applies to or in respect of anything done to afford persons who are of a particular age or age group access to facilities, services or opportunities to meet their special needs or to promote equal or improved access for them to facilities, services and opportunities.

### **49ZYS Superannuation**

- (1) Nothing in this Part renders unlawful discrimination against a person on the ground of age in the terms or conditions appertaining to a superannuation or provident fund or scheme if, subject to subsection (2), one or more of the following apply:
  - (a) the discrimination occurs because of the application of a standard in force under the *Occupational Superannuation Standards Act 1987*, or a requirement under the *Superannuation Industry (Supervision) Act 1993*, of the Commonwealth,
  - (b) the discrimination is required in order to comply with, or obtain a benefit of, or avoid a penalty under, any other Act of the Commonwealth,
  - (c) the discrimination is based on actuarial or statistical data from a source on which it is reasonable to rely,
  - (d) if there is no data of a kind referred to in paragraph (c), the discrimination is based on such other data as may be available and on which it is reasonable to rely,
  - (e) if none of the above apply, the discrimination is reasonable having regard to any other relevant factors,
  - (f) the discrimination is based on an existing condition and relates to a person who became a member of the fund or scheme before the commencement of this section or not more than 12 months after that commencement, or happens not more than 12 months after that commencement.
- (2) An exemption under subsection (1) (c)–(e) is available only if the sources on which the

data are based and those relevant factors (if any) are disclosed to the Tribunal, if the Tribunal so requires.

(3) This section has effect despite section 54 (1) (d).

#### **49ZYT Provision of insurance**

Nothing in this Part renders unlawful discrimination on the ground of age the terms on which any annuity, life assurance policy or accident or insurance policy or any other kind of insurance is offered or may be obtained if:

(a) those terms:

(i) are based on actuarial or statistical data from a source on which it is reasonable to rely or, if there are no such data, on such other data as may be available, and

(ii) are reasonable having regard to the data and any other relevant factors, and

(b) the sources on which the data are based and those relevant factors (if any) are disclosed to the Tribunal, if the Tribunal so requires.

#### **49ZYU Credit applications**

Nothing in this Part renders unlawful discrimination against a person on the ground of age with respect to the criteria on which an application for credit is assessed or the terms on which credit is offered or may be obtained if:

(a) those criteria or terms:

(i) are based on actuarial or statistical data from a source on which it is reasonable to rely or, if there are no such data, on such other data as may be available, and

(ii) are reasonable having regard to the data and any other relevant factors, and

(b) the sources on which the data are based and those relevant factors (if any) are disclosed to the Tribunal, if the Tribunal so requires.

#### **49Zyv Safety procedures**

Nothing in this Part renders unlawful discrimination against a person on the ground of age with respect to:

(a) the manner in which fitness to control a vehicle or a class of vehicle is assessed, or

(b) the terms and conditions on which and the length of time during which a licence to drive or ride a vehicle is provided or made available,

as the case requires, if that manner is, or those terms and conditions and length of time are, imposed in order to meet safety considerations that are reasonable in the circumstances.

#### **49ZYW Sport**

- (1) Nothing in this Part renders unlawful the exclusion of persons of particular ages from participation in any sporting activity.
- (2) Subsection (1) does not apply:
  - (a) to the coaching of persons engaged in any sporting activity, or
  - (b) to the administration of any sporting activity, or
  - (c) to any sporting activity prescribed by the regulations for the purposes of this section.

#### **49ZYX Certain activities or matters may be prescribed to be lawful**

Nothing in this Part renders unlawful any activity or matter declared to be lawful by regulation made for the purposes of this Part.

#### **49ZYY Operation of Part 4E not affected**

Nothing in this Part affects the operation of Part 4E.

### **Part 5 Other unlawful acts**

#### **50 Victimisation**

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

## 51 Advertisements

(1) In this section:

- (a) **advertisement**, without affecting the generality of the expression, includes any notice, sign, label, circular and any similar thing, and includes any matter that is not writing but which, by reason of the form or context in which it appears, conveys a message, and
- (b) a reference to the publishing of an advertisement is a reference to the publishing of the advertisement by any means including the publishing thereof in a newspaper or periodical, by radio or television broadcast or in a film.

(2) A person shall not publish or cause to be published an advertisement that indicates an intention to do an act that is unlawful under this Act.

Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

(3) For the purposes of subsection (2), but without limiting the generality of that subsection, the use of a word which, by reason of its gender, denotes a person or persons of a particular sex:

(a) as or as part of:

- (i) the description of a job offered, or
- (ii) the description of a class of persons to whom any offer or invitation is made, by an advertisement, or

(b) as or as part of a classification or heading under which an advertisement which makes any offer or invitation is published, shall be taken to indicate the intention that the offer of the job or other offer or invitation made by the advertisement is made only to persons of that sex, unless the contrary intention appears in the advertisement or in the classification or heading.

(4) In proceedings for an offence under subsection (2), it is a defence for the defendant to prove that he or she believed on reasonable grounds that the publication of the advertisement was not an offence under that subsection.

## 52 Aiding and abetting etc

It is unlawful for a person to cause, instruct, induce, aid or permit another person to do an act that is unlawful by reason of a provision of this Act.

## 53 Liability of principals and employers

(1) An act done by a person as the agent or employee of the person's principal or

employer which if done by the principal or employer would be a contravention of this Act is taken to have been done by the principal or employer also unless the principal or employer did not, either before or after the doing of the act, authorise the agent or employee, either expressly or by implication, to do the act.

- (2) If both the principal or employer and the agent or employee who did the act are subject to any liability arising under this Act in respect of the doing of the act, they are jointly and severally subject to that liability.
- (3) Despite subsection (1), a principal or an employer is not liable under that subsection if the principal or employer took all reasonable steps to prevent the agent or employee from contravening the Act.
- (4) For the purposes of subsection (1), the principal or employer of a volunteer or unpaid trainee who contravenes Part 2A is the person or body on whose behalf the volunteer or unpaid trainee provides services.

## **Part 6 General exceptions to this Act**

### **54 Acts done under statutory authority**

- (1) Nothing in this Act renders unlawful anything done by a person if it was necessary for the person to do it in order to comply with a requirement of:
  - (a) any other Act, whether passed before or after this Act,
  - (b) any regulation, ordinance, by-law, rule or other instrument made under any such other Act,
  - (c) an order of the Tribunal,
  - (d) an order of any court, not including an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment, or
  - (e) (Repealed)
- (2) (Repealed)
- (3) Except as provided in this section, this Act has effect notwithstanding anything contained in:
  - (a)-(c) (Repealed)
  - (c1) the [Co-operatives Act 1992](#),
  - (d), (e) (Repealed)
  - (f) the [Registered Clubs Act 1976](#),

or any instrument of whatever nature made or approved thereunder.

## 55 Charities

(1) Nothing in this Act affects:

- (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.

## 56 Religious bodies

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 act or 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.

## 57 Voluntary bodies

(1) In this section, **body** means a body, the activities of which are carried on otherwise than for profit and which is not established by an Act, but does not include:

- (a) a co-operative registered under the *Co-operatives Act 1992* or a society under the *Friendly Societies Act 1989*, or
- (b) a friendly society registered under the *Friendly Societies Act 1989*, or
- (c) a building society or credit union registered under the *Financial Institutions (NSW) Code*, or
- (d) a co-operative housing society registered under the *Co-operative Housing and Starr-Bowkett Societies Act 1998*, or

(e) a registered club.

(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 (Repealed)**

## **59 Establishments providing housing accommodation for aged persons**

Nothing in this Act affects any rule or practice of an establishment which provides housing accommodation for aged persons, whether by statute or otherwise, whereby admission to the establishment is restricted to persons of a particular sex, marital or domestic status or race.

## **59A Adoption services**

(1) Nothing in Part 3A or 4C affects any policy or practice of a faith-based organisation concerning the provision of adoption services under the [Adoption Act 2000](#) or anything done to give effect to any such policy or practice.

### **Note—**

Section 8 (1) (a) of the [Adoption Act 2000](#) requires decision makers to follow the principle that, in making a decision about the adoption of a child, the best interests of the child, both in childhood and in later life, must be the paramount consideration.

(2) Subsection (1) does not apply to discrimination against any child who is or may be adopted.

(3) In this section, **faith-based organisation** means an organisation that is established or controlled by a religious organisation and that is accredited under the [Adoption Act 2000](#) to provide adoption services.

## **Parts 7, 7A**

**60-690**

## **Part 8 The Anti-Discrimination Board**

### **70 Definition**

In this Part:

**member** means a member of the Board and includes the President.

### **71 Constitution of Board**

There shall be an Anti-Discrimination Board.



## **72 Appointment of members**

The Board shall consist of 5 members (including a President) appointed by the Governor.

## **73 Term of office**

Subject to this Part a member shall hold office for such period not exceeding:

- (a) in the case of the President—7 years, and
- (b) in the case of any other member—3 years,

as is specified in the instrument of the member's appointment and is eligible for re-appointment as a member.

## **74 Eligibility for appointment to Board**

- (1) (Repealed)
- (2) A person is not eligible for appointment as a member if the person is:
  - (a) (Repealed)
  - (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 Vacation of office**

A member shall be deemed to have vacated the member's office:

- (a) if the member dies,
- (b) if, being the full-time President, the member engages in any paid employment outside the duties of the member's office,
- (c) if, being the President, the member absents himself or herself 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 the member's absence is occasioned by illness or other unavoidable cause,
- (d) if, being a member other than the President, the member 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 the member's unavailability is occasioned by illness or other unavoidable cause,
- (e) if the member 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 the member resigns the member's office by writing under the member's hand

addressed to the Governor,

(f1) if, being the President, the member is removed from office by the Governor pursuant to section 80 (4), or

(g) if, being a member other than the President, the member is removed from office by the Governor pursuant to section 76.

#### **76 Removal from office**

The Governor may for any cause which to the Governor seems sufficient remove any member (other than the President) from office.

#### **77 Filling casual vacancy**

On the occurrence of a vacancy in the office of a member, otherwise than by the expiration of the term for which the member was appointed, the Governor may appoint a person to hold that office.

#### **78 Member not subject to [Public Sector Management Act 1988](#)**

The provisions of Part 2 of the [Public Sector Management Act 1988](#) 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 the member's term of office.

#### **79 Remuneration of members other than the President**

A member (other than the President) 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 or her.

#### **80 President**

(1) The President may be appointed on a full-time or part-time basis.

(2) A President appointed on a full-time basis shall devote the whole of his or her time to the duties of his or her office and shall be entitled to be paid:

(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 or her.

(3) A President appointed on a part-time basis 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 or her.

(3A) A person may hold office, and exercise functions, as President (whether full-time or

part-time) even though the person also holds, and exercises the functions of, a judicial office or a statutory or other public office.

- (4) The Governor may remove the President from office for incapacity, incompetence or misbehaviour.
- (5) (Repealed)

### **81 Acting President**

- (1) The Minister may appoint an acting President to act during the absence of the President or during a vacancy in the President's office.
- (2) An acting President 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 or her.
- (3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting President to act as President.
- (4) A person appointed an acting President shall, while so acting, be deemed to be the President and shall have the immunities and functions of the President.
- (5) The Minister may, for any cause which to the Minister seems sufficient, remove an acting President from office.

### **82 Alternate members**

- (1) The Minister may at any time appoint a person as an alternate member to act during the absence or illness of a member other than the President.
- (2) An alternate member shall have and may exercise, while acting as a member, the functions of the person for whom he or she is the alternate member.

### **83 (Repealed)**

### **84 Preservation of rights of President who was previously public servant**

- (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 or her appointment, where the President was, immediately before his or her appointment as the President:
  - (a) an officer of the Public Service, or
  - (b) a contributor to a superannuation scheme,the President:

- (c) shall retain any rights accrued or accruing to him or her as such an officer or contributor,
- (d) may continue to contribute to any superannuation scheme to which the President was a contributor immediately before his or her appointment as the President, and
- (e) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if the President had continued to be such an officer or contributor during his or her service as the President, and:

- (f) his or her service as the President 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 the President continues to contribute or by which that entitlement is conferred, and
- (g) the President shall be deemed to be an officer or employee, and the Board shall be deemed to be his or her employer, for the purpose of the superannuation scheme to which the President is entitled to contribute under this subsection.

- (3) A President 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 or her becoming (whether upon his or her appointment as the President or at any later time while he or she holds office as the President) a contributor to any other superannuation scheme, and the provisions of subsection (2) (g) cease to apply to or in respect of him or her and the Board in any case where he or she becomes a contributor to such another superannuation scheme.
- (4) Subsection (3) does not prevent the payment to the President upon his or her ceasing to be a contributor to a superannuation scheme of such an amount as would have been payable to him or her if he or she had ceased, by way of resignation, to be an officer or employee for the purposes of that scheme.
- (5) The President shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

## **85 Meetings of the Board**

- (1) The procedure for the calling of meetings of the Board and for the conduct of business at those meetings 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 or she 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.

## 86 Officers and employees

- (1) Such officers and employees as may be necessary to enable the President and the Board to exercise their functions may be appointed and employed under and subject to Part 2 of the *Public Sector Management Act 1988*.
- (2) A person who is employed for the purposes of subsection (1) is, while he or she is so employed, an officer of the Board.

# Part 9 The functions of the President, the Tribunal and the Board

## Division 1 Preliminary

### 87 Definitions

In this Part:

**agent** includes Australian legal practitioner.

**complainant** means a person by whom or on whose behalf a complaint is made.

**complaint** means a complaint made under section 87A and includes a matter referred to the Tribunal as a complaint under section 95 (2).

**representative body** means a body (whether incorporated or unincorporated) that represents or purports to represent a group of people within New South Wales (whether or not the body is authorised to do so by the group concerned) and that has as its primary object the promotion of the interests or welfare of the group.

**representative complaint** means a complaint made by one or more persons (which may comprise or include a representative body) on his, her or their own behalf as well as on behalf of another person or persons, and that is treated by the Tribunal as a representative complaint.

**respondent** means a person about whose conduct a complaint has been made.

**vilification complaint** means a complaint in respect of a contravention of section 20C, 38S, 49ZT or 49ZXB.

## Division 2 Complaints—the functions of the President

## Subdivision 1 Lodgment of complaints

### 87A Persons who may make a complaint

- (1) A complaint alleging that a named person has, or named persons have, contravened a provision of this Act or the regulations (other than a provision for which a specific penalty is imposed) may be made by any of the following:
  - (a) one or more persons:
    - (i) on his, her or their own behalf, or
    - (ii) on his, her or their own behalf as well as on behalf of another person or persons,
  - (b) a parent or guardian of a person who lacks the legal capacity to lodge a complaint (for example, because of age or disability),
  - (c) a representative body on behalf of a named person or persons, subject to section 87C,
  - (d) an agent of any of the persons referred to in paragraph (a), (b) or (c).
- (2) Nothing in this Division prevents a person from making a complaint (not being a representative complaint) even though the conduct in respect of which the complaint is made is also conduct in respect of which a representative complaint has been made.
- (3) In this section, **guardian** has the same meaning as it has in the [Guardianship Act 1987](#).

### 87B Complaints made on behalf of others

- (1) When a complaint is made on behalf of another person or persons (**the other complainants**):
  - (a) the person who makes the complaint is, for the purposes of this Division, taken to have the same rights, obligations and interests with respect to the investigation, conciliation or referral of the complaint as the other complainants, and
  - (b) the complaint is, for the purposes of this Part, taken to have been made by the other complainants on their own behalf.
- (2) In respect of a complaint made wholly or partly on behalf of another person or persons (not including a complaint made on behalf of a person who lacks legal capacity), the President may require:
  - (a) the person or persons on whose behalf the complaint is made to show that the complaint has been made with his, her or their consent, or

(b) the person or persons making the complaint to prove that he, she or they have authority to act at all times in the complaint handling process,

or both.

(3) In respect of a complaint made wholly or partly on behalf of another person or persons (including a complaint made on behalf of a person who lacks legal capacity), if at any time the President is not satisfied that the person who made the complaint is acting in the best interests of the person or persons on whose behalf the complaint was made or retains the confidence of that person or those persons, the President may (without limiting section 92):

(a) appoint another person to act in that behalf, or

(b) decline the complaint.

The regulations may make provision for or with respect to matters that may be taken into consideration by the President in making a decision under this subsection.

(4) On declining a complaint under subsection (3) (b), the President is to advise the complainant, by notice in writing, of:

(a) the declining of the complaint, and

(b) the rights of the complainant under section 93A.

(5) This section does not apply to a complaint made by:

(a) an agent, or

(b) a representative body.

### **87C Complaints by representative bodies**

(1) Before a complaint can be made by a representative body as referred to in section 87A (1) (c), the representative body must satisfy the President:

(a) that each person on whose behalf the complaint is made consents to the complaint being made by the body on his or her behalf, and

(b) that the body has a sufficient interest in the complaint, that is, that the conduct that constitutes the alleged contravention is a matter of genuine concern to the body because of the way conduct of that nature adversely affects, or has the potential to adversely affect:

(i) the interests of the body, or

(ii) the interests or welfare of the group of people it represents or purports to represent.

- (2) The President may require a representative body that has made a complaint to nominate a person to appear for the representative body in conciliation proceedings concerning the complaint before the President.

### **88 Vilification complaints**

A vilification complaint cannot be made unless each person on whose behalf the complaint is made:

- (a) has the characteristic that was the ground for the conduct that constitutes the alleged contravention, or
- (b) claims to have that characteristic and there is no sufficient reason to doubt that claim.

### **88A Assistance by President in making complaints**

The President may assist a person to make a complaint.

### **88B Making of complaints in more than one jurisdiction**

- (1) A person is not prevented from making a complaint under this Division only because the person has made a complaint or taken proceedings in relation to the same facts in another jurisdiction, whether in New South Wales or elsewhere.
- (2) The Tribunal must have regard to any such proceedings, and to the outcome of any such proceedings, in dealing with or determining the complaint.

### **88C Withdrawal of consent for complaint**

- (1) If a complaint has been made on a person's behalf with the person's consent, the person may withdraw the consent:
  - (a) by notice in writing to the President, at any time before the complaint is declined, terminated or otherwise resolved by the President, or referred to the Tribunal, or
  - (b) by notice in writing to the Tribunal, at any time before the complaint is dismissed, or found to be substantiated, by the Tribunal.
- (2) If a consent is withdrawn, the President or the Tribunal may make such arrangements as the President or the Tribunal, as the case requires, thinks appropriate for the further management of the complaint.

## **Subdivision 2 Making of complaints**

### **89 Form and content of complaints**

- (1) A complaint is to be in writing but does not have to take any particular form.
- (2) A complaint, as made, need not demonstrate a prima facie case.



### **89A Making of complaint**

- (1) A complaint is made by lodging it with the President.
- (2) A complaint may be lodged with the President:
  - (a) by delivery by post or hand to an office of the Board, or
  - (b) by facsimile to an office of the Board, or
  - (c) by such other means as may be prescribed by the regulations.

### **89B Acceptance or declining of complaints by the President**

- (1) The President is to determine whether or not a complaint made to the President is to be accepted or declined, in whole or in part.
- (2) The President may decline a complaint if:
  - (a) no part of the conduct complained of could amount to a contravention of a provision of this Act or the regulations, or
  - (b) the whole or part of the conduct complained of occurred more than 12 months before the making of the complaint, or
  - (c) the conduct complained of could amount to a contravention of a provision of this Act (not including section 20D, 38T, 49ZTA or 49ZXC) for which a specific penalty is imposed, or
  - (d) in the case of a vilification complaint, it fails to satisfy the requirements of section 88, or
  - (e) the President is not satisfied that the complaint was made by or on behalf of the complainant named in the complaint.
- (3) The President is to give notice of a decision to accept or decline a complaint to:
  - (a) the person who made the complaint, and
  - (b) if the respondent has been given notice of the complaint, the respondent, so far as is reasonably practicable, within 28 days after the decision is made.
- (4) A decision under this section to decline a complaint in whole or in part is not reviewable by the Tribunal.

### **89C (Repealed)**

## **Subdivision 3 Investigation and conciliation of complaints**

## 90 President to investigate complaints

- (1) The President is to investigate each complaint that the President has accepted under section 89B.
- (2) The President may conduct a joint investigation into more than one complaint.
- (3) The President must give notice to the parties if a joint investigation is undertaken.

## 90A Investigation of vilification complaints

- (1) If a complaint to be investigated is a vilification complaint, or alleges an offence under section 20D, 38T, 49ZTA or 49ZXC, the President may, by notice in writing, require any person to produce a copy or transcript of any broadcast the subject of the complaint at a specified place.
- (2) A person must not fail to comply with the terms of a notice under this section.

Maximum penalty: 50 penalty units, in the case of a body corporate, or 10 penalty units in any other case.

## 90B Supplying information and documents

- (1) The President may, by notice in writing, require a complainant or a person against whom a complaint is made to provide:
  - (a) information (orally or in writing), or
  - (b) documents,(such information or documents, or both, being referred to in this section as **the relevant material**) within 28 days after the date of the notice or such other period as the President determines and specifies when making the requirement.
- (2) A person of whom a requirement is made under subsection (1):
  - (a) must provide to the President any of the relevant material that is in the person's possession, custody or control within the period specified in the notice, unless the person has a reasonable excuse for not doing so, and
  - (b) must, if the person has a reasonable excuse for not providing the relevant material, or any part of it, give notice to the President of the excuse and of the relevant material to which the excuse relates within the period specified in the notice under subsection (1).

Maximum penalty: 50 penalty units, in the case of a body corporate, or 10 penalty units in any other case.

- (3) The President may, by notice in writing, require a person other than a person referred to in subsection (1) to supply the relevant material within 28 days after the date of the

notice or such other period as the President determines and specifies in the notice.

- (4) A person who receives a notice under subsection (3):
- (a) must provide to the President any of the relevant material specified in the notice that is in the person's possession, custody or control within the period specified in the notice, unless the person has a reasonable excuse for not doing so, and
  - (b) must, if the person has a reasonable excuse for not providing the relevant material, or any part of it, give notice to the President of the excuse and of the relevant material to which the excuse relates within the period specified in the notice under subsection (3).

Maximum penalty: 50 penalty units, in the case of a body corporate, or 10 penalty units in any other case.

- (5) If the relevant material is not provided or supplied under subsection (2) or (4), the President may refer the complaint to the Tribunal.

### **90C Progress reports**

The President must, as frequently as is reasonably convenient and, in any event, at periods not exceeding 90 days, give notice to the parties to the complaint of the steps taken for the purpose of the investigation.

### **91 Prosecution for serious vilification**

- (1) The President:
- (a) after investigating a vilification complaint, and
  - (b) before endeavouring to resolve the complaint by conciliation,
- is to consider whether an offence may have been committed under section 20D, 38T, 49ZTA or 49ZXC in respect of the matter the subject of the complaint.
- (2) If the President considers that an offence may have been so committed, the President is to refer the complaint to the Attorney General.
- (3) The President may only make such a referral within 28 days after receipt of the complaint.
- (4) On making the referral, the President is to give notice in writing to the complainant of:
- (a) the making of the referral, and
  - (b) the rights of the complainant under section 93A.
- (5) The Tribunal may stay proceedings relating to the complaint until the conclusion of proceedings for the alleged offence under section 20D, 38T, 49ZTA or 49ZXC.

### **91A Resolution of complaint by conciliation**

- (1) If the President is of the opinion that a complaint, other than a complaint that the President has declined under section 92, may be resolved by conciliation, the President may, at his or her discretion, at any stage after acceptance of the complaint endeavour to resolve the complaint by conciliation.
- (2) The President may, by notice in writing, require the complainant and the respondent, or either of them, to appear before the President, either separately or together, for the purpose of endeavouring to resolve the complaint by conciliation.
- (3) A person must not fail to comply with the terms of a notice under subsection (2).  
Maximum penalty: 50 penalty units, in the case of a body corporate, or 10 penalty units in any other case.
- (4) Evidence of anything said or done in the course of conciliation proceedings under this section is not admissible in any subsequent proceedings relating to the complaint.
- (5) A written record is to be prepared by the parties, and signed by or on behalf of each of them, of any agreement reached, following conciliation, with respect to the subject-matter of the complaint if any party requests the making of such a record within 28 days after the agreement is reached.
- (6) If a party to a recorded agreement is of the opinion that any other party has not complied with the terms of the agreement, the party may, not later than 6 months after the date of the agreement, apply to the Tribunal to have the agreement registered.
- (7) The party making the application must serve a copy of the application and the agreement on each other party.
- (8) If the member of the Tribunal who hears the application is satisfied that a party to the agreement has not complied with the terms of the agreement, the member is to register those provisions of the agreement (if any) that, in the exercise of the Tribunal's jurisdiction, could have been the subject of an order in proceedings relating to a complaint.
- (9) The provisions of an agreement that are registered in accordance with this section are taken to be an order of the Tribunal and may be enforced accordingly.

### **91B No right to representation**

A complainant or respondent in conciliation proceedings before the President cannot be represented by any other person, except by leave of the President.

### **91C Amendment of complaint**

- (1) If, at any time after a complaint is made and before the complaint is declined, terminated or otherwise resolved by the President, or referred to the Tribunal:
  - (a) the person making the complaint seeks to amend the complaint, or
  - (b) the President becomes aware of information that could conveniently be dealt with as part of the complaint,the person making the complaint is to be offered the opportunity to amend the complaint.
- (2) An amendment may be made in writing but, if further written material is already in the possession of the President or the Board, the President may treat the written material as if it formed part of the complaint.
- (3) If a complaint is amended at any time, the respondent must be informed in writing by the President of the substance of the amendment and, if the effect of the amendment is to cause the complaint to be made against further or other persons, they must be informed in writing of the complaint as amended.
- (4) Section 89B applies to the amendment of a complaint in the same way as it applies to the making of a complaint.

## **Subdivision 4 Declining of complaints during investigation**

### **92 President may decline complaint during investigation**

- (1) If at any stage of the President's investigation of a complaint:
  - (a) the President is satisfied that:
    - (i) the complaint, or part of the complaint, is frivolous, vexatious, misconceived or lacking in substance, or
    - (ii) the conduct alleged, or part of the conduct alleged, if proven, would not disclose the contravention of a provision of this Act or the regulations, or
    - (iii) the nature of the conduct alleged is such that further action by the President in relation to the complaint, or any part of the complaint, is not warranted, or
    - (iv) another more appropriate remedy has been, is being, or should be, pursued in relation to the complaint or part of the complaint, or
    - (v) the subject-matter of the complaint has been, is being, or should be, dealt with by another person or body, or
    - (vi) the respondent has taken appropriate steps to remedy or redress the conduct,

or part of the conduct, complained of, or

(vii) it is not in the public interest to take any further action in respect of the complaint or any part of the complaint, or

(b) the President is satisfied that for any other reason no further action should be taken in respect of the complaint, or part of the complaint,

the President may, by notice in writing addressed to the complainant, decline the complaint or part of the complaint.

(2) The President, in a notice under this section, is to advise the complainant of:

(a) the reason for declining the complaint or part of the complaint, and

(b) the rights of the complainant under sections 93A and 96.

## **Subdivision 5 Termination of complaints**

### **92A Settlement or resolution of complaint**

(1) If at any stage of the President's investigation of a complaint the President is satisfied that the complaint, or part of the complaint, has been settled or resolved by agreement between the parties, the President may terminate the complaint, or part of the complaint.

(2) If the President terminates a complaint, or part of a complaint, under this section, the complainant has no right under section 93A to require the President to refer the complaint, or part of the complaint, to the Tribunal.

### **92B Withdrawal of complaint**

(1) A person who has made a complaint, other than a representative complaint, may at any time, by notice in writing lodged with the President, withdraw the complaint.

(2) If the President receives a notice under subsection (1) signed by or on behalf of the complainant or, if more than one, all the complainants, the President is to terminate the complaint.

(3) If the President receives a notice under subsection (1) signed by or on behalf of some, but not all, of the complainants, the President is to treat the notice as an amendment removing the names of those persons as complainants from the complaint.

(4) The President is to give notice in writing of any decision by the President under this section to the complainant and respondent and to each person on whose behalf the complaint was made.

(5) The President is not required to give a respondent notice of the President's decision to terminate a complaint if the President had not given notice to the respondent that the

complaint had been made.

### **92C Abandonment of complaint**

(1) If a complainant has:

- (a) failed to respond to a request for documents or information, or
- (b) failed to give notice to the President of an address (or new address) at which he or she may be contacted,

the President may serve a notice on the complainant at his or her address last known to the President stating that, if a response is not received within 28 days, the complaint will be taken to be abandoned and the President will terminate the complaint.

(2) If a complaint is taken to have been abandoned under this section, it may be revived if, within 12 months after the end of the 28-day period referred to in subsection (1), the complainant satisfies the President that:

- (a) he or she wishes to pursue the complaint, and
- (b) the failure relied on for the purpose of subsection (1) did not take place or ought reasonably to be excused, and
- (c) no undue prejudice would be caused to the respondent by reviving the complaint.

### **93 Death of complainant or respondent does not terminate complaint**

(1) If a complainant dies before his or her complaint is finally determined, the complaint survives and the legal personal representative of the complainant:

- (a) may continue the carriage of the complaint, including any referral, review or appeal, and
- (b) the estate of the complainant is entitled to the benefit of any monetary sum ordered to be paid by the respondent in respect of the complaint.

(2) If a respondent dies before any complaint against him or her is finally determined, the complainant may continue to pursue the complaint (including any referral, review or appeal) and any monetary sum ordered to be paid in respect of the complaint is payable from the estate of the respondent.

## **Subdivision 6 Referral of complaints to Tribunal**

### **93A Referral of complaints to Tribunal at requirement of complainant**

(1) If the President has given a complainant a notice under section 87B (4), 91 (4) or 92, the complainant may, within 21 days after the date on which the notice was given,

require the President, by notice in writing, to refer the complaint to the Tribunal.

- (2) On receipt of a notice under subsection (1) from the complainant, the President is to refer the complaint to the Tribunal.

### **93B Referral of unresolved complaints to Tribunal after 18 months**

- (1) If a complaint has not been declined, terminated or otherwise resolved within 18 months after the date on which it was made, a party to the complaint may request the President by notice in writing to refer the complaint to the Tribunal.
- (2) On receipt of the notice, the President must give notice in writing to all the other parties to the complaint of the request.
- (3) If, within 28 days after the President gives notice to all the other parties, no party has objected to referral of the complaint, the President is to refer the complaint to the Tribunal.
- (4) If the complainant objects to the referral of the complaint, the President must not refer the complaint to the Tribunal, but may, if satisfied that there is no reasonable prospect of a conciliated agreement, terminate the complaint.
- (5) If the respondent objects to the referral of the complaint, the President is to refer the complaint to the Tribunal, unless satisfied that there are reasonable prospects of a conciliated agreement.

### **93C Other referral of complaints to Tribunal**

If the President:

- (a) is of the opinion that a complaint cannot be resolved by conciliation, or
- (b) has endeavoured to resolve a complaint by conciliation but has not been successful in his or her endeavours, or
- (c) is of the opinion that the nature of a complaint is such that it should be referred to the Tribunal, or
- (d) is satisfied that all parties wish the complaint to be referred to the Tribunal and that it is appropriate in the circumstances to do so,

the President is to refer the complaint to the Tribunal.

#### **Note—**

The President may also refer a complaint to the Tribunal under section 90B (5).

### **94 Severing complaints**

If there is more than one complainant or respondent to a complaint, the President may, in dealing with the complaint under section 93B or 93C, if the President thinks fit, treat the



complaint as a number of complaints by or against each such complainant or respondent.

#### **94A Form of complaint to be referred to Tribunal**

- (1) If a complaint is referred to the Tribunal under this Division, the complaint is to comprise:
  - (a) the original complaint lodged with the President, and
  - (b) any amendment made pursuant to section 91C, and
  - (c) any other documents or information obtained or recorded by the President that, in the opinion of the President, help to identify the subject-matter of the complaint or otherwise contain an allegation of a contravention of a provision of this Act or the regulations.
- (2) A complaint that is referred to the Tribunal is to be accompanied by a report relating to any investigation by the President of the complaint.

### **Subdivision 7 Miscellaneous**

#### **94B Calculation of time**

If a notice under this Division is given by post, a period calculated from the day on which the notice is given is taken to run from, and includes, the fourth day after the notice was posted.

#### **94C Delegation—officers of President**

- (1) The President:
  - (a) may designate a specified person or the holder of a specified office for the purposes of this section, and
  - (b) may delegate to such a person or office holder the exercise of such of the President's functions (other than this power of delegation) as may be specified in the delegation.
- (2) A person who is a delegate of the President under this section is an officer of the President.
- (3) Nothing in this section limits the application of section 49 of the *Interpretation Act 1987*.

### **Division 3 Complaints—the functions of the Administrative Decisions Tribunal**

## **95 Referral of complaints to Tribunal**

- (1) A complaint may be referred to the Tribunal by the President under section 90B, 93A, 93B or 93C.
- (2) The Minister may refer any matter to the Tribunal as a complaint.
- (3) For the purposes of the *Administrative Decisions Tribunal Act 1997*, the referral of a complaint to the Tribunal is taken to be an application for an original decision within the meaning of that Act.

## **95A (Repealed)**

## **96 Leave of Tribunal required for inquiry into certain matters**

- (1) A complaint that is referred to the Tribunal on the requirement of a complainant under section 93A (1), but not including a complaint to which section 91 (2) applies, may not be the subject of proceedings before the Tribunal without the leave of the Tribunal.
- (2) An issue that is the subject of proceedings before the Industrial Relations Commission may not be the subject of proceedings relating to a complaint before the Tribunal without the leave of the Tribunal.
- (3) Subsection (2) does not affect the operation of section 73 (Procedure of the Tribunal generally) of the *Administrative Decisions Tribunal Act 1997* in relation to evidence given before, or findings made by, the Industrial Relations Commission.
- (4) A decision of the Tribunal under this section with respect to the granting of leave cannot be the subject of an appeal to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997*.

## **97 Parties to proceedings before Tribunal**

- (1) Despite section 67 (1) of the *Administrative Decisions Tribunal Act 1997*, the parties to proceedings before the Tribunal relating to a complaint are:
  - (a) the complainant who, for the purposes of the *Administrative Decisions Tribunal Act 1997*, is taken to be the applicant, and
  - (b) the respondent, and
  - (c) any other person who has been made a party to the proceedings in accordance with section 67 (4) of the *Administrative Decisions Tribunal Act 1997*, and
  - (d) if the Attorney General intervenes in the proceedings under section 69 of the *Administrative Decisions Tribunal Act 1997*, the Attorney General.
- (2) The Tribunal may substitute a complainant or respondent if the Tribunal is of the opinion that the other parties to the proceedings will not be prejudiced by the

substitution.

- (3) The Tribunal may remove or agree to the withdrawal of a complainant from proceedings if the Tribunal is satisfied that the complainant does not wish to proceed with the complaint.

#### **98 Fees or rewards for representing parties**

- (1), (2) (Repealed)
- (3) A person, other than an Australian legal practitioner, is not entitled to demand or receive a fee or reward that is provided for the purpose of representing a party in proceedings before the Tribunal relating to a complaint.
- (4) (Repealed)

#### **99 Officer assisting Tribunal**

- (1) The Tribunal may make arrangements with the Board for an officer of the Board to appear and assist the Tribunal in proceedings before the Tribunal relating to a complaint.
- (2) An officer of the Board in assisting the Tribunal in proceedings pursuant to arrangements made under this section is subject to the control and direction of the Tribunal.

#### **100 Single proceeding in relation to several complaints**

If the Tribunal is of the opinion that two or more complaints arise out of the same or substantially the same circumstances or subject-matter, it may deal with those complaints in the same proceedings.

#### **101 Determinations with respect to representative complaints**

- (1) In proceedings relating to a representative complaint, the Tribunal is to determine, as a preliminary matter, whether the complaint should be dealt with as a representative complaint.
- (2) The Tribunal must not permit a complaint to be dealt with as a representative complaint unless it is satisfied that the complaint is made in good faith as a representative complaint.
- (3) In considering whether a complaint is made in good faith as a representative complaint, the Tribunal is to satisfy itself:
  - (a) that:
    - (i) the complainant is a member of a class of persons whose members have been affected, or may reasonably be likely to be affected, by the conduct of the

respondent, and

- (ii) the complainant has in fact been affected by the conduct of the respondent, and
- (iii) the class is so numerous that joinder of all its members is impracticable, and
- (iv) there are questions of law or fact common to all members of the class, and
- (v) the claims of the complainant are typical of the claims of the class, and
- (vi) multiple complaints would be likely to produce varying determinations which could have incomparable 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, even though the requirements of paragraph (a) are not satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint.

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

### **101A, 101B (Repealed)**

### **102 Tribunal may dismiss complaint**

The Tribunal may, at any stage in proceedings relating to a complaint, dismiss the whole or any part of the complaint on a ground on which the President may decline the whole or any part of a complaint under section 92 (1) (a) (i) or (ii) or (b).

### **103 Tribunal may amend complaint**

- (1) The Tribunal may, on the application of a party to a complaint or on its own motion, at any stage in proceedings relating to the complaint, amend the complaint.
- (2) A complaint may be amended to include additional complaints and anything else that was not included in the complaint as investigated by the President.
- (3) An amendment may be made subject to such conditions as the Tribunal thinks fit.

#### **104 Proof of exceptions**

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 proceedings before the Tribunal relating to a complaint lies on the respondent.

#### **105 Interim orders**

- (1) The Tribunal may, on the application of the President after a complaint is made and before the complaint is declined, terminated or otherwise resolved by the President, or referred to the Tribunal, or on the application of a complainant or respondent at any time, make an interim order:
  - (a) to preserve the status quo between the parties to the complaint, or
  - (b) to preserve the rights of the parties to the complaint, or
  - (c) to return the parties to the complaint to the circumstances they were in before the contravention of this Act or the regulations alleged in the complaint occurred, pending determination of the matter the subject of the complaint.
- (2) Section 89 of the [Administrative Decisions Tribunal Act 1997](#) applies to an interim order of the Tribunal in the same way as it applies to an original decision of the Tribunal.

#### **106 Appeals against interim orders**

An appeal against an interim order of the Tribunal may be made under Part 1 of Chapter 7 of the [Administrative Decisions Tribunal Act 1997](#) only with the leave of an Appeal Panel under that Part.

#### **107 (Repealed)**

#### **108 Order or other decision of Tribunal**

- (1) In proceedings relating to a complaint, the Tribunal may:
  - (a) dismiss the complaint in whole or in part, or
  - (b) find the complaint substantiated in whole or in part.
- (2) If the Tribunal finds the complaint substantiated in whole or in part, it may do any one or more of the following:
  - (a) except in respect of a matter referred to the Tribunal under section 95 (2), order the respondent to pay the complainant damages not exceeding \$100,000 by way of compensation for any loss or damage suffered by reason of the respondent's conduct,

- (b) make an order enjoining the respondent from continuing or repeating any conduct rendered unlawful by this Act or the regulations,
  - (c) except in respect of a representative complaint or a matter referred to the Tribunal under section 95 (2), order the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant,
  - (d) order the respondent to publish an apology or a retraction (or both) in respect of the matter the subject of the complaint and, as part of the order, give directions concerning the time, form, extent and manner of publication of the apology or retraction (or both),
  - (e) in respect of a vilification complaint, order the respondent to develop and implement a program or policy aimed at eliminating unlawful discrimination,
  - (f) make an order declaring void in whole or in part and either ab initio or from such time as is specified in the order any contract or agreement made in contravention of this Act or the regulations,
  - (g) decline to take any further action in the matter.
- (3) An order of the Tribunal may extend to conduct of the respondent that affects persons other than the complainant or complainants if the Tribunal, having regard to the circumstances of the case, considers that such an extension is appropriate.
- (4) The power of the Tribunal to award damages to a complainant is taken, in the case of a complaint lodged by a representative body, to be a power to award damages to the person or persons on behalf of whom the complaint is made and not to include a power to award damages to the representative body.
- (5) In making an order for damages concerning a complaint made on behalf of a person or persons, the Tribunal may make such order as it thinks fit as to the application of those damages for the benefit of the person or persons.
- (6) If two or more vilification complaints are made in respect of the same public act of the respondent and those complaints are found to be substantiated in whole or in part, the Tribunal must not make an order or orders for damages that would cause the respondent to pay more than \$100,000 in the aggregate in respect of that public act.
- (7) If the Tribunal makes an order under subsection (2) (b), (c), (d) or (e), it may also order that, in default of compliance with the order within the time specified by the Tribunal, the respondent is to pay the complainant damages not exceeding \$100,000 by way of compensation for failure to comply with the order.

### **109 Order affecting industrial instrument**

If the Tribunal makes an order that affects an industrial instrument within the meaning of

the *Industrial Relations Act 1996*, it must give notice in writing to the President of the Industrial Relations Commission of the order as soon as practicable after the order is made.

### **110 Tribunal may award costs**

The Tribunal may award costs under section 88 of the *Administrative Decisions Tribunal Act 1997* in respect of proceedings before the Tribunal in relation to a complaint.

### **110A (Repealed)**

### **111 Compliance with order of Tribunal**

A person must not refuse or neglect, or for any other reason fail to obey or comply with, an order under section 108 (2) (b), (c), (d) or (e), or an interim order, of the Tribunal.

Maximum penalty: 50 penalty units, in the case of a corporation, or 10 penalty units in any other case.

### **111A Compensation to offenders in custody—payment to Victims Compensation Fund**

(1) In this section:

**offender damages** means damages ordered by the Tribunal under this Division to be paid to a person:

- (a) by way of compensation for any loss or damage suffered by reason of the conduct of a protected defendant that occurred while the person was an offender in custody, or
- (b) by way of compensation for failure by a protected defendant to comply with an order of the Tribunal made in connection with a complaint about any such conduct.

**offender in custody** and **protected defendant** have the same meanings as in Part 2A (Special provisions for offenders in custody) of the *Civil Liability Act 2002*.

- (2) A protected defendant who is liable to pay offender damages to a person must not pay the damages to the person and instead must pay the amount of the damages into the Victims Compensation Fund established under the *Victims Support and Rehabilitation Act 1996* to be expended as money forming part of that Fund.
- (3) Payment of an amount of damages into the Victims Compensation Fund by a protected defendant pursuant to this section discharges the protected defendant's liability to pay the damages to the person to whom the damages were ordered to be paid.
- (4) This section extends to any interest that accrues on an amount of damages and a reference in this section to damages includes interest on damages.

- (5) This section does not apply to any costs payable pursuant to an order of the Tribunal.
- (6) This section does not apply to any offender damages that are excluded by the regulations from the operation of this section.

### **112 Interest on damages**

- (1) Interest accrues on an amount of damages ordered to be paid by the Tribunal from the date on which the order takes effect until payment.
- (2) Despite subsection (1), the Tribunal may order that interest accrues on an amount of damages ordered to be paid by it from a date that is earlier than the date on which its order is made.
- (3) Interest referred to in this section accrues at the same rate as that applicable to a judgment of the District Court.

### **113 Enforcement of orders by the President**

If the President believes it is in the public interest to do so, the President may:

- (a) in the case of an individual complaint, take steps to enforce an order of the Tribunal on behalf of the complainant, with the complainant's consent, or
- (b) in the case of a representative complaint, take steps to enforce an order of the Tribunal, on the President's own motion.

### **114 Enforcement of non-monetary orders**

- (1) This section applies to an order, or part of an order, of the Tribunal other than an order, or part of an order, for the recovery of an amount ordered to be paid by the Tribunal or a civil or other penalty ordered to be paid by the Tribunal.
- (2) For the purpose of enforcing an order, or part of an order, to which this section applies, the Registrar may certify the making of the order, or part, and its terms.
- (3) A certificate of the Registrar under this section that is filed in the registry of the Supreme Court operates as a judgment of that Court.
- (4) Nothing in this section limits or otherwise affects section 82 or 82A of the [Administrative Decisions Tribunal Act 1997](#).

### **115 Appeals to Appeal Panel against decisions of Tribunal**

An order or other decision made by the Tribunal pursuant to this Act (other than a decision under section 96) may be appealed to an Appeal Panel of the Tribunal under Part 1 of Chapter 7 of the [Administrative Decisions Tribunal Act 1997](#) by a party to the proceedings in which the order or decision is made.



## **116 Relationship between this Division and [Administrative Decisions Tribunal Act 1997](#)**

This Division applies in addition to the provisions of the [Administrative Decisions Tribunal Act 1997](#) but prevails over those provisions to the extent of any inconsistency.

## **117-118 (Repealed)**

## **Division 4 The functions of the Board**

### **119 General functions of the Board**

- (1) For the purpose of eliminating discrimination and promoting equality and equal treatment of all human beings, the Board may, by resolution, determine to:
  - (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) 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) mental disability,
    - (viii) a characteristic that appertains to persons having a mental disability or any particular mental disability,
    - (ix) a characteristic that is generally imputed to persons having a mental disability or any particular mental disability,
    - (x)–(xii) (Repealed)
    - (xiii) membership or non-membership of an industrial organisation, or
    - (xiv) a characteristic that appertains generally to membership or non-membership of an industrial organisation or a characteristic that is generally imputed to members or non-members of an industrial organisation,
  - (a1) without limiting paragraph (a), carry out investigations, research and inquiries relating to discrimination or racial vilification on the referral of a matter to the Board by the Community Relations Commission,

- (b) acquire and disseminate knowledge on all matters relating to the elimination of discrimination and the achievement of equal rights,
- (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,
- (g) develop human rights programmes and policies, and
- (h) liaise or collaborate with academics and other persons engaged in carrying out investigations, research or inquiries relating to discrimination when it considers it appropriate to do so and, for those purposes, to facilitate disclosure to those persons of information obtained under this Act.

**Note—**

Sections 17 and 18 of the [Privacy and Personal Information Protection Act 1998](#) impose limits on the disclosure of personal information by the Board in exercising this function.

- (2) The Board may, for the purposes of the exercise of any of its functions under this section, enter into an agreement with any person that provides for payment to the Board for any services or materials it supplies.

**120 Reference of certain matters to the Board by the Minister**

- (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.

**120A Codes of practice**

- (1) The Board may develop and promote codes of practice.
- (2) The Board may consult with a representative body and persons operating in an industry or other area of conduct to which this Act applies for the purpose of developing a code of practice.

- (3) A code of practice is to provide guidance to persons in a specified area of conduct as to:
  - (a) the kinds of activity that may involve or constitute a contravention of this Act, and
  - (b) means of limiting, avoiding or restricting the width of any such activity or contravention, and
  - (c) any other matter that the Board considers necessary or convenient in the exercise of its functions under section 119.
- (4) A code of practice is not legally binding on any person, but evidence of compliance with or contravention of a code may be considered by the President and the Tribunal in the exercise of functions under this Act or the *Administrative Decisions Tribunal Act 1997*.
- (5) To avoid doubt, a code of practice does not have the effect:
  - (a) of rendering lawful any conduct that contravenes this Act, or
  - (b) of rendering unlawful any conduct not otherwise unlawful.

#### **121 Review of legislation etc**

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 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.

#### **121A Execution of functions of the Board**

Resolutions of the Board relating to:

- (a) matters referred to in section 119, and
- (b) the conduct of an examination under section 120 (2),

shall be implemented by the President.

#### **122 Annual report**

- (1) The Board shall, on or before 31 October 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.

(1A) The report shall include an account by the President of the administration of Division 2 during that period of 12 months.

(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 the Minister.

## **Part 9A Equal Opportunity in Public Employment**

### **Division 1 General**

#### **122A Definitions**

In this Part:

**authority** means a person, group of persons or body specified in section 122B (1) (a)-(c) or the subject of a proclamation pursuant to section 122B (1) (d).

**Commissioner** means the Public Service Commissioner.

**investigation** means an investigation under section 122N (1).

**management plan** means an equal employment opportunity management plan referred to in section 122J (1).

**reference** means a matter which has been referred to the Board by the Commissioner under section 122M.

#### **122B Application of Part 9A—authorities**

(1) This Part applies to and in respect of:

- (a) each Department, and
  - (a1) the Teaching Service, and
- (b) each Division of the Government Service to which section 124 of the *Public Sector Employment and Management Act 2002* applies, and
  - (b1) each State owned corporation,

(c) the NSW Police Force, and

(d) such persons, groups of persons or bodies as the Governor may, by proclamation published in the Gazette, declare to be authorities to which this Part applies.

(2) The Governor may, by proclamation published in the Gazette, declare that a proclamation made pursuant to subsection (1) (d) has ceased to have effect.

### **122C Objects**

The objects of this Part are:

(a) to eliminate and ensure the absence of discrimination in employment on the grounds of race, sex, marital or domestic status and disability, and

(b) to promote equal employment opportunity for women, members of racial minorities and persons who have a disability,

in the authorities to which this Part applies.

### **122D Exercise of functions of authorities under Part 9A**

The functions of an authority to which this Part applies, being the functions conferred or imposed on the authority by or under this Part, shall be exercised:

(a) in the case of an authority referred to in section 122B (1) (a)—by the Department Head, or

(a1) in the case of the authority referred to in section 122B (1) (a1)—by the Director-General of the Department of School Education, or

(b) in the case of an authority referred to in section 122B (1) (b)—by the Division Head within the meaning of the *Public Sector Employment and Management Act 2002*, or

(b1) in the case of a corporation referred to in section 122B (1) (b1)—by the corporation, or

(c) in the case of the authority referred to in section 122B (1) (c)—by the Commissioner of Police, and

(d) in the case of an authority the subject of a proclamation under section 122B (1) (d):

(i) except as provided by subparagraph (ii)—by the authority, or

(ii) where in the proclamation the Governor specifies a person as being the person by whom the functions conferred or imposed on the authority by or under this Part shall be exercised—by the person so specified.

## **Division 2 EEO functions of Commissioner**

## **122E-122HG (Repealed)**

### **122I EEO functions of Commissioner**

- (1) The functions of the the Commissioner under this Part are:
  - (a) to advise and assist authorities in relation to management plans,
  - (b) to evaluate the effectiveness of management plans in achieving the objects of this Part, and
  - (c) to make reports and recommendations, at least once in each year, to the Minister as to:
    - (i) the operation of management plans, and
    - (ii) such matters as the Commissioner thinks appropriate relating to the objects of this Part.
- (2) The Commissioner may exercise such other functions as are conferred or imposed on the Commissioner by or under this Part.
- (3) The Commissioner may, in the exercise of the Commissioner's functions under this Part, consult, as the Commissioner thinks fit, with persons or bodies, including the Community Relations Commission, who are concerned with the welfare of women, members of racial minorities or persons who have a disability.
- (4) The Commissioner may do all such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of the Commissioner's functions under this Part.

## **Division 3 Equal employment opportunity management plans**

### **122J Preparation and implementation of management plans**

- (1) Each authority shall prepare and implement an equal employment opportunity management plan in order to achieve the objects of this Part.
- (2) The management plan of an authority shall include provisions relating to:
  - (a) the devising of policies and programmes by which the objects of this Part are to be achieved,
  - (b) the communication of those policies and programmes to persons within the authority,
  - (c) the collection and recording of appropriate information,
  - (d) the review of personnel practices within the authority (including recruitment techniques, selection criteria, training and staff development programmes,

promotion and transfer policies and patterns, and conditions of service) with a view to the identification of any discriminatory practices,

- (e) the setting of goals or targets, where these may reasonably be determined, against which the success of the management plan in achieving the objects of this Part may be assessed,
  - (f) the means, other than those referred to in paragraph (e), of evaluating the policies and programmes referred to in paragraph (a),
  - (g) the revision and amendment of the management plan, and
  - (h) the appointment of persons within the authority to implement the provisions referred to in paragraphs (a)–(g).
- (3) The management plan of an authority may include provisions, other than those referred to in subsection (2), which are not inconsistent with the objects of this Part.
- (4) The preparation of a management plan shall take place and the implementation of the management plan shall commence:
- (a) in the case of an authority referred to in section 122B (1) (a)—on or before 1 September 1981,
  - (b) in the case of an authority referred to in section 122B (1) (b) or (c)—on or before 1 March 1982, and
  - (c) in the case of an authority the subject of a proclamation under section 122B (1) (d)—on or before such date as is specified in the proclamation.
- (5) An authority may, from time to time, amend its management plan.
- (6) Each authority shall send a copy of its management plan or any amendment thereto to the Commissioner as soon as practicable after the management plan or the amendment, as the case may be, has been prepared.

**122JA (Repealed)**

**122K Inconsistencies**

- (1) The provisions of a management plan shall, to the extent of any inconsistency between those provisions and the provisions of this Act, prevail.
- (2) Subsection (1) does not apply to or in respect of the provisions of a management plan which are the subject of a reference.

**122L (Repealed)**

### **122M References**

Where the Commissioner is dissatisfied with any matter relating to the preparation, amendment or implementation of a management plan by an authority or any failure or omission of an authority with respect to the preparation, amendment or implementation of a management plan, the Commissioner may refer the matter to the Board.

### **122N Investigation**

- (1) The Board shall endeavour to determine a reference and may, for that purpose, hold an investigation into the reference.
- (2) Except as otherwise provided by this Part, an investigation shall be held in such manner as the Board determines.

### **122O Representation**

The Commissioner or an authority in respect of which a reference is made is not entitled to be represented by an Australian legal practitioner during the holding of an investigation into the reference.

### **122P Powers of the Board on an investigation**

- (1) For the purposes of an investigation, the Board may require the Commissioner and an authority:
  - (a) to answer any question,
  - (b) to give it a statement of information,
  - (c) to produce to it any document or other thing, or
  - (d) to give to it a copy of any document.
- (2) A requirement under subsection (1):
  - (a) shall be in writing,
  - (b) shall specify or describe the information, document or thing required, and
  - (c) shall specify a time for compliance.
- (3) The Commissioner or an authority of whom a requirement under subsection (1) is made shall comply with the requirement notwithstanding:
  - (a) any rule of law which, in proceedings in a court of law, might justify an objection to compliance with a like requirement on grounds of public interest,
  - (b) any privilege of the Commissioner or authority, or
  - (c) any duty of secrecy or other restriction on disclosure applying to the



Commissioner or authority.

- (4) Notwithstanding subsection (3), the Board shall set aside a requirement under subsection (1) if it appears to it that the Commissioner or authority of whom the requirement is made has a ground of privilege whereby, in proceedings in a court of law, the Commissioner or authority, as the case may be, might resist a like requirement and it does not appear to the Board that the Commissioner or authority, as the case may be, consents to compliance with the requirement.

#### **122Q Incriminatory statements**

- (1) Where, under section 122P, a person is required to give a statement that tends to incriminate that person, neither the requirement nor the statement may be used in any proceedings against that person except proceedings under section 124.
- (2) Subsection (1) applies whether the person required to give a statement objects to giving it or not.

#### **122R Conclusion of investigation**

At the conclusion of an investigation in relation to a reference, the Board may do either or both of the following:

- (a) make recommendations to the Commissioner or to the authority in respect of which the reference is made,
- (b) furnish a report, with or without recommendations, to the Minister in relation to the reference.

#### **122S Direction to amend management plan**

- (1) On receipt of a report from the Board under section 122R (b), the Minister may, by instrument in writing, direct an authority to amend its management plan in the manner specified in the instrument.
- (2) An authority shall comply with a direction given to it by the Minister under subsection (1).

### **Part 9B Inter-governmental arrangements**

#### **122T Definitions**

- (1) In this Part:

***Commonwealth Minister*** means a Minister of the Crown of the Commonwealth.

***human rights*** has the meaning ascribed thereto in section 3 (1) of the *Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth and includes any rights and freedoms prescribed to be human rights for the purposes of this definition.

**Human Rights and Equal Opportunity Commission** means the Human Rights and Equal Opportunity Commission established under the [Human Rights and Equal Opportunity Commission Act 1986](#) of the Commonwealth.

- (2) In this Part, a reference to an Act of the Commonwealth is a reference to the Act as amended from time to time and includes a reference to any Act made in substitution for that Act.
- (3) In this Part, a reference to an officer of the Board includes a reference to an officer of the Board designated for the purposes of section 94C.

#### **122U Arrangements relating to human rights**

- (1) The Minister may make an arrangement with a Commonwealth Minister for or in relation to the performance by the State, or by an authority of the State, on behalf of the Commonwealth of functions (including functions of the Human Rights and Equal Opportunity Commission) relating to the promotion of the observance of human rights.
- (2) An arrangement under this section may contain such incidental or supplementary provisions as the Minister and the Commonwealth Minister with whom the arrangement is made think necessary.
- (3) The Minister may arrange with the Commonwealth Minister with whom an arrangement is in force under this section 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.

#### **122V Exercise of functions by State authorities pursuant to arrangement**

Where an arrangement under section 122U is in force, the President, the Board or any officer of the Board may, subject to the terms of the arrangement and to any agreement made or authorisation given pursuant to the arrangement, exercise a function of the Human Rights and Equal Opportunity Commission or a function of a prescribed person within the meaning of section 3 (1) of the [Human Rights and Equal Opportunity Commission Act 1986](#) of the Commonwealth.

#### **122W Exercise of functions by State authorities pursuant to delegation etc**

The President, the Board or any officer of the Board may exercise a function delegated to or conferred (otherwise than pursuant to an arrangement under section 122U) on the President, the Board or any officer of the Board, as the case may be, pursuant to the provisions of the [Human Rights and Equal Opportunity Commission Act 1986](#) of the Commonwealth, the [Racial Discrimination Act 1975](#) of the Commonwealth, the [Sex](#)

*Discrimination Act 1984* of the Commonwealth or the provisions of any other law which may be prescribed for the purposes of this section.

### **122X Exercise of certain functions by officers of the Board**

- (1) Nothing in section 122V or 122W enables an officer of the Board to exercise a function referred to in either of those sections, being a function relating to the investigation and conciliation of complaints, without the approval of the President and the concurrence of the Minister.
- (2) An approval or concurrence referred to in subsection (1) may be given generally or in any particular case or class or description of cases.

## **Part 10 Miscellaneous**

### **123 Effect of contravention of Act or regulations**

This Act is in addition to, and not in derogation of, any other law in force in New South Wales that provides for the protection of a person from conduct that is or would be unlawful under this Act or the regulations.

### **124 Obstruction**

A person shall not, without lawful excuse, wilfully obstruct, hinder or resist:

- (a) the President, or an officer of the President, in the exercise of his or her functions under Division 2 of Part 9, or
- (b) a member of the Tribunal, the Registrar, a member of the Board, or the Public Service Commissioner or a member of staff of the Public Service Commission, in the exercise of his or her functions under this Act or the regulations.

Maximum penalty: 50 penalty units in the case of a body corporate or 10 penalty units in any other case.

### **124A Secrecy**

- (1) This section applies to every person who is or has been:
  - (a) a member of the Board, or
  - (b) an officer of the Board within the meaning of section 86 (2), or
  - (c) an officer of the President within the meaning of section 94C (2), or
  - (d) any other person acting under the authority of the Board, or
  - (e) an academic or other person referred to in section 119 (1) (h).
- (2) This section applies to information concerning the affairs of any person that is or has

been obtained by a person to whom this section applies:

- (a) in the course of exercising functions under this Act, or
- (b) as a result of another person exercising functions under this Act,

unless the information is otherwise publicly available or is information the disclosure of which is authorised or required under a provision of another Act.

- (3) A person to whom this section applies must not, either directly or indirectly, make a record of, disclose or communicate to any person any information to which this section applies unless it is necessary to do so for the purposes of, or in connection with, the exercise of a function under this Act or is otherwise permitted by this Act.

Maximum penalty: 10 penalty units.

- (4) Information concerning the affairs of any person that is or has been obtained by a person to whom this section applies:

- (a) in the course of exercising functions under this Act, or
- (b) as a result of another person exercising functions under this Act,

is inadmissible in a court and a person cannot be required, by subpoena or otherwise, to produce or disclose it except in proceedings (including any prosecution) under or arising out of this Act.

- (5) Information to which this section applies may be disclosed or communicated to the Minister, or recorded for that purpose, if the President certifies in writing that it is necessary to do so in the public interest.

- (6) In this section:

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

**produce** includes permit access to.

## **125 Proceedings for offences**

Proceedings for an offence against this Act or the regulations shall be dealt with summarily before the Local Court.

## **126 Granting of exemptions by President**

- (1) **Granting of exemptions** The President 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, or

- (b) an activity or class of activity, or
  - (c) any other matter or circumstance specified in the order.
- (2) An exemption is subject to such conditions, if any, as may be specified in the order.
- (3) **Duration of exemptions** An exemption remains in force for the period specified in the order, which cannot be more than 10 years.
- (4) **Renewal of exemptions** The President may renew any exemption, for no more than 10 years at a time, by making a new order in accordance with subsection (1).
- (5) **Variation and revocation of exemptions** The power to make an order conferred by this section includes power, exercisable in the same manner and subject to the same conditions, to vary or revoke any order so made.
- (6) **Applications in relation to exemptions** The President may grant, renew, vary or revoke an exemption only on the written application of a person. The regulations may make provision for or with respect to the making of such applications.
- (7) In deciding whether to grant or refuse an application, the President may consult with such persons or bodies as the President considers appropriate in the circumstances.
- (8) The President must make a decision on any such application within the period of 60 days after the application is made.
- (9) **Reviews of exemption decisions by Tribunal** An affected person may apply to the Tribunal for a review of any of the following decisions (**exemption decisions**):
- (a) a decision to refuse to grant an exemption,
  - (b) a decision to refuse to renew an exemption,
  - (c) a decision to grant an exemption (whether or not subject to conditions),
  - (d) a decision to vary or revoke an order granting an exemption.
- (10) For the purposes of subsection (9), a person is an **affected person** in relation to an exemption decision if:
- (a) the person applied for the decision or for the grant or renewal of the exemption to which the decision relates, or
  - (b) the person is otherwise directly affected by the decision.
- (11) Section 53 (Internal reviews) of the [Administrative Decisions Tribunal Act 1997](#) does not apply to any exemption decision.

### **126A Exemption for special needs programs and activities**

- (1) Nothing in Parts 3–4C renders unlawful anything done by a person in good faith for the purposes of or in the course of any program or activity for which certification is in force under this section as a special needs program or activity.
- (2) The Minister may certify a program or activity to be a special needs program or activity if satisfied that its purpose or primary purpose is the promotion of access, for members of a group of persons affected by any form of unlawful discrimination to which this Act applies in an area of discrimination to which this Act applies, to facilities, services or opportunities to meet their special needs or the promotion of equal or improved access for them to facilities, services and opportunities.
- (3) (Repealed)
- (4) Certification for a program or activity remains in force for the period specified in the certification or (if no period is specified) until the certification is withdrawn.
- (5) Certification may be withdrawn by the Minister at any time by giving notice in writing to the person who appears to the Minister to be the person who is in charge of the program or who has responsibility for the activity concerned.
- (6) A person who is in charge of a program or activity may apply to the Tribunal for a review of a decision of the Minister under this section concerning the certification of the program or activity.

### **127 Regulations**

- (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) Before making a recommendation to the Governor for the making of any regulation, the Minister shall take into consideration any recommendation of the Tribunal or 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 written notice of its making is, pursuant to section 40 of the *Interpretation Act 1987*, 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 9,
  - (c) the manner of serving any notice or other document,
  - (d) making complaints, amending complaints, dealing with complaints, declining complaints and terminating complaints,
  - (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 5 penalty units 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.

## **128 Savings and transitional provisions**

Schedule 1 has effect.

## **Schedule 1 Savings and transitional provisions**

(Section 128)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may include provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Anti-Discrimination (Amendment) Act 1994*

*Anti-Discrimination Amendment (Carers' Responsibilities) Act 2000*

*Anti-Discrimination Amendment (Miscellaneous Provisions) Act 2004*

*Courts Legislation Amendment Act 2005*

*Anti-Discrimination Amendment (Offender Compensation) Act 2007*

*Anti-Discrimination Amendment (Breastfeeding) Act 2007*

*Administrative Decisions Tribunal Amendment Act 2008* (to the extent that it amends this Act)

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

## **Part 2 Anti-Discrimination (Amendment) Act 1994**

### **2 Definition**

In this Part:

**the amending Act** means the *Anti-Discrimination (Amendment) Act 1994*.

### **3 Operation of amendments**

Except as otherwise provided by this Part:

- (a) an amendment made by the amending Act does not apply to or in respect of anything done or omitted to be done before the commencement of the amendment, and
- (b) this Act continues to apply to anything done or omitted before the commencement of such an amendment as if the amendment had not been made.

### **4 Complaints by representative bodies**

The amendments made by the amending Act to sections 87 and 88 extend to apply in respect of an Act done before the commencement of the amendments.

### **5 Complaints not pursued**

Section 90A (as inserted by the amending Act) and the amendments made by the amending Act to section 111 extend to complaints lodged before the commencement of that section and those amendments.



## 6 Joinder of parties

The amendments made by the amending Act to section 98 extend to notice of joinder given by the Tribunal before the commencement of the amendments.

## 7 Industrial awards and agreements

The amendments made by the amending Act to section 54 do not apply in respect of any order, award or agreement in force immediately before the commencement of those amendments until the first anniversary of the commencement of those amendments.

## 8 Superannuation

The amendments made by the amending Act to sections 36 and 49 (Superannuation), and section 49Q (Superannuation) as inserted by the amending Act, are not limited in their operation to superannuation or provident funds or schemes begun after the commencement of those amendments or that section and extend to apply in respect of such a fund or scheme begun before that commencement.

## Part 3 Anti-Discrimination Amendment Act 1997

### 9 Definition

In this Part:

**the amending Act** means the [Anti-Discrimination Amendment Act 1997](#).

### 10 (Repealed)

### 11 Complaints relating to sexual harassment

The insertion of Part 2A by the amending Act does not affect any complaint lodged before the commencement of Schedule 1 [10] to the amending Act.

### 12 Exemptions under sections 126 and 126A

- (1) The amendment made to section 126 by the amending Act extends to an exemption in force immediately before the commencement of Schedule 1 [43] to the amending Act.
- (2) The amendments made to section 126A by the amending Act do not affect the validity of any exemption in force immediately before the commencement of Schedule 1 [44] and [45] to the amending Act.

## Part 4 Anti-Discrimination Amendment (Carers' Responsibilities) Act 2000

### 13 Operation of amendment

- (1) Part 4B does not apply to or in respect of anything done or omitted to be done before

the commencement of Schedule 1 [1] to the amending Act.

(2) This Act continues to apply to anything done or omitted to be done before the commencement of Schedule 1 [1] to the amending Act as if Part 4B had not been enacted. In particular, the insertion of Part 4B by the amending Act does not affect any complaint lodged on a ground of unlawful discrimination before the commencement of Schedule 1 [1] to the amending Act.

(3) In this clause:

**the amending Act** means the *Anti-Discrimination Amendment (Carers' Responsibilities) Act 2000*.

## **Part 5 Anti-Discrimination Amendment (Miscellaneous Provisions) Act 2004**

### **14 Operation of amendments**

- (1) An amendment made to this Act by the *Anti-Discrimination Amendment (Miscellaneous Provisions) Act 2004* (including a provision inserted by such an amendment) extends to anything commenced to be done but not completed before the commencement of the amendment, except as provided by clauses 15 and 16.
- (2) Without limiting subclause (1), that subclause applies to a complaint made but not finalised before the commencement of such an amendment.

### **15 Order or other decision of the Tribunal**

Section 113, as in force immediately before its repeal by the *Anti-Discrimination Amendment (Miscellaneous Provisions) Act 2004*, continues to apply to proceedings before the Tribunal relating to a complaint that were not finally determined by the Tribunal before the repeal of that section.

### **16 Interest on damages**

Section 112, as inserted by the *Anti-Discrimination Amendment (Miscellaneous Provisions) Act 2004*, does not apply to an order of the Tribunal made in respect of proceedings before the Tribunal relating to a complaint that were commenced but not finally determined by the Tribunal before the commencement of that section.

## **Part 6 Anti-Discrimination Amendment (Offender Compensation) Act 2007**

### **17 Operation of amendment**

- (1) Section 111A (Compensation to offenders in custody—payment to Victims Compensation Fund) as inserted by the *Anti-Discrimination Amendment (Offender Compensation) Act 2007* extends to:

- (a) an order for the payment of damages made in proceedings before the Tribunal commenced before the commencement of that section but does not extend to such an order made before 29 May 2007, and
- (b) an order for the payment of damages made before the commencement of that section (but on or after 29 May 2007) unless the damages concerned have been paid pursuant to the order before the commencement of that section.

**Note—**

29 May 2007 is the date on which notice of motion was given in Parliament for the introduction of the Bill for the above amending Act.

- (2) If an amount that is the subject of an order referred to in subclause (1) (b) is paid into the Victims Compensation Fund on or after 29 May 2007 (but before the commencement of section 111A), being a payment that would be required to be made by section 111A had that section been in force at the time of the payment:
  - (a) the payment is validated, and
  - (b) section 111A applies in respect of the payment as if that section had been in force when the payment was made.
- (3) A regulation made pursuant to section 111A (6) can be expressed to extend to an order for the payment of damages made before the commencement of the regulation.

## **Part 7 Anti-Discrimination Amendment (Breastfeeding) Act 2007**

### **18 Operation of amendments**

An amendment made by the *Anti-Discrimination Amendment (Breastfeeding) Act 2007* does not apply to or in respect of anything done or omitted to be done before the commencement of the amendment.

## **Part 8 Administrative Decisions Tribunal Amendment Act 2008**

### **19 Definition**

In this Part:

**amending Act** means the *Administrative Decisions Tribunal Amendment Act 2008*.

### **20 Legal representation**

Section 98, as in force immediately before its amendment by the amending Act, continues to apply to any proceedings in the Tribunal that were commenced before the commencement of that amendment.

## **21 Dismissal of proceedings**

Section 107, as in force immediately before its repeal by the amending Act, continues to apply in relation to any proceedings in the Tribunal that were commenced before the repeal of that section.

## **22 Increase in maximum damages amount for section 108**

- (1) The amendment made to section 108 by the amending Act does not apply to or in respect of anything done or omitted to be done before the commencement of the amendment.
- (2) Accordingly, section 108 as in force immediately before its amendment by the amending Act continues to apply to or in respect of anything done or omitted to be done before the commencement of the amendment.

## **23 Costs**

Section 110, as substituted by the amending Act, extends to proceedings in the Tribunal that were commenced, but not finally determined, before that substitution.

## **24 Existing exemptions under section 126**

- (1) An exemption that is in force under section 126 immediately before the substitution of that section by the amending Act (a ***continued exemption***) is taken to be an exemption granted under section 126 as substituted.
- (2) A continued exemption ceases to be in force when the period for its duration specified in the order granting the exemption expires, unless it is sooner revoked.
- (3) A continued exemption may be renewed, varied or revoked by the President under section 126 (as substituted by the amending Act).
- (4) Nothing in this clause authorises or permits any person to apply to the Tribunal for the review of any decision of the Minister or the Board made in relation to a continued exemption before the substitution of section 126.