

Western Australia

## **Equal Opportunity Act 1984**

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### **THE TEXT OF THE LEGISLATION FOLLOWS**



# Equal Opportunity Act 1984

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Western Australia

## **Equal Opportunity Act 1984**

**An Act to promote equality of opportunity in Western Australia and to provide remedies in respect of discrimination on the grounds of sex, marital status, pregnancy, sexual orientation, family responsibility or family status, race, religious or political conviction, impairment, or age, or involving sexual or racial harassment or, in certain cases, on gender history grounds.**

*[Long title amended by No. 40 of 1988 s. 4; No. 74 of 1992 s. 4; No. 2 of 2000 s. 28; No. 3 of 2002 s. 46.]*

## **Part I — Preliminary**

### **1. Short title**

This Act may be cited as the *Equal Opportunity Act 1984*<sup>1</sup>.

### **2. Commencement**

The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation<sup>1</sup>.

### **3. Objects**

The objects of this Act are —

- (a) to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs;
- (b) to eliminate, so far as is possible, sexual harassment and racial harassment in the workplace and in educational institutions and sexual harassment and racial harassment related to accommodation;
- (c) to promote recognition and acceptance within the community of the equality of men and women; and
- (d) to promote recognition and acceptance within the community of the equality of persons of all races and of all persons regardless of their sexual orientation, religious or political convictions or their impairments or ages.

*[Section 3 amended by No. 40 of 1988 s. 5; No. 74 of 1992 s. 5; No. 2 of 2000 s. 28; No. 3 of 2002 s. 47.]*

**4. Interpretation**

- (1) In this Act, unless the contrary intention appears —
- “**accommodation**” includes residential and business accommodation;
  - “**age**”, in relation to a person, means chronological age of the person;
  - “**charitable benefits**” means benefits for purposes that are exclusively charitable according to the law in force in Western Australia;
  - “**club**” means an association (whether incorporated or unincorporated) of not less than 30 persons associated together for social, literary, cultural, political, sporting, athletic or other lawful purposes that —
    - (a) provides and maintains its facilities, in whole or in part, from the funds of the association; and
    - (b) sells or supplies liquor for consumption on its premises;
  - “**commission agent**” means a person who does work for another person as the agent of that person and who is remunerated, whether in whole or in part, by commission;
  - “**Commissioner**” means the Commissioner for Equal Opportunity appointed under section 75;
  - “**committee of management**” in relation to a club, organisation or incorporated association, means the group or body of persons (however described) that manages the affairs of that club, organisation or incorporated association, as the case may be;
  - “**complainant**” in relation to a complaint, means the person or each of the persons by whom that complaint is lodged;
  - “**complaint**” means —
    - (a) a complaint, whether or not a representative complaint, lodged under section 83; and

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(b) a matter referred to the Tribunal for inquiry as a complaint pursuant to section 107;

**“contract worker”** means a person who does work for another person pursuant to a contract between the employer of the first-mentioned person and that other person;

**“Director”** means the Director of Equal Opportunity in Public Employment appointed under section 142;

**“document”** includes any book, register or other record of information, however compiled, recorded or stored;

**“educational authority”** means a body or person administering an educational institution;

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

**“employment”** includes —

- (a) part-time and temporary employment;
- (b) work under a contract for services; and
- (c) work as a State employee;

**“employment agency”** means any person who or body that, whether for payment or not, assists persons to find employment or other work or assists employers to find employees or workers;

**“family responsibility or family status”**, in relation to a person, means —

- (a) having responsibility for the care of another person, whether or not that person is a dependant, other than in the course of paid employment;
- (b) the status of being a particular relative; or
- (c) the status of being a relative of a particular person;

**“functions”** includes powers, authorities and duties;

**“gender reassigned person”** means a person who has been issued with a recognition certificate under the *Gender*



*Reassignment Act 2000* or a certificate which is an equivalent certificate for the purposes of that Act;

**“impairment”** in relation to a person, means one or more of the following conditions —

- (a) any defect or disturbance in the normal structure or functioning of a person’s body;
- (b) any defect or disturbance in the normal structure or functioning of a person’s brain; or
- (c) any illness or condition which impairs a person’s thought processes, perception of reality, emotions or judgment or which results in disturbed behaviour, whether arising from a condition subsisting at birth or from an illness or injury and includes an impairment —
- (d) which presently exists or existed in the past but has now ceased to exist; or
- (e) which is imputed to the person;

**“incorporated association”** means an association that is incorporated or deemed to be incorporated under the *Associations Incorporation Act 1987*;

**“inquiry”** in relation to the Tribunal, means an inquiry referred to in section 107;

**“institution of tertiary education”** means a university, college of advanced education or other institution at which tertiary education or training is provided, but does not include a technical and further education institution within the meaning assigned to that term in the *Employment, Education and Training Act 1988* of the Commonwealth;

**“legal practitioner”** means a legal practitioner as defined in the *Legal Practice Act 2003*;

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

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

- (a) single;
- (b) married;

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- (c) married but living separately and apart from one's spouse;
- (d) divorced;
- (e) widowed; or
- (f) the de facto partner of another person;

**“near relative”** in relation to a person, means —

- (a) a parent, child, grandparent, grandchild, brother or sister of the person; or
- (b) the spouse or de facto partner of the first-mentioned person or of a person referred to in paragraph (a);

**“principal”** means —

- (a) in relation to a commission agent — a person for whom the commission agent does work as a commission agent; and
- (b) in relation to a contract worker — a person for whom the contract worker does work pursuant to a contract between the employer of the contract worker and that other person;

**“private educational authority”** means a person or body administering an educational institution, not being a school, college, university or other institution established under the *School Education Act 1999*, the *Vocational Education and Training Act 1996*, or an Act of incorporation of a university or institute of technology;

**“race”** includes colour, descent, ethnic or national origin or nationality and the fact that a race may comprise 2 or more distinct races does not prevent it being a race for the purposes of this Act;

**“relative”**, in relation to a person, means a person who is related to the first-mentioned person by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the first-mentioned person;

**“representative complaint”** means a complaint lodged under section 83 by a person on behalf of the person and other persons or by 2 or more persons on behalf of themselves and other persons, and which is treated by the Tribunal as a representative complaint;

**“respondent”** in relation to a complaint, means the person who is, or each of the persons who are, alleged to have done the act to which the complaint relates;

**“services”** includes —

- (a) services relating to banking, insurance, superannuation 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 the kind provided by members of any profession or trade; and
- (e) services of the kind provided by a government (other than the assessment of an application for suitability for adoptive parenthood, or the placement of a child for adoption or with a view to the child’s adoption, under the *Adoption Act 1994*), a government or public authority or a local government body;

**“sexual orientation”**, in relation to a person, means heterosexuality, homosexuality, lesbianism or bisexuality and includes heterosexuality, homosexuality, lesbianism or bisexuality imputed to the person;

**“State employee”** includes a member of the Police Force of Western Australia;

**“Tribunal”** means the State Administrative Tribunal under the *State Administrative Tribunal Act 2004*;

**“vehicle”** includes a ship and an aircraft;

**“voluntary body”** means an association or other body (whether incorporated or unincorporated) the activities of which are

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not engaged in for the purpose of making a profit, but does not include —

- (a) a club;
- (b) a body established by a law of the Commonwealth, or of a State or Territory of the Commonwealth; or
- (c) an association that provides grants, loans, credit or finance to its members;

**“Western Australian law”** means —

- (a) an Act;
- (b) a regulation, rule, local law or by-law made under or pursuant to an Act; or
- (c) an order or award made under or pursuant to —
  - (i) an Act;
  - (ii) a regulation, rule, local law or by-law referred to in paragraph (b);

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

- (2) For the purposes of this Act, refusing or failing to do an act shall be deemed to be the doing of an act and a reference to an act includes a reference to a refusal or failure to do an act.
- (3) For the purposes of this Act, **“religious or political conviction”** shall be construed so as to include a lack or absence of religious or political conviction.
- (4) In determining what constitutes “unjustifiable hardship” for the purposes of Part IVA, all relevant circumstances of the particular case shall be taken into account including the nature of the benefit or detriment likely to accrue or be suffered by all persons concerned, the nature of the impairment of the person concerned and the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.

*[Section 4 amended by No. 40 of 1988 s. 6; No. 74 of 1992 s. 6; No. 14 of 1996 s. 4; No. 42 of 1996 s. 71(1); No. 36 of 1999*

*s. 247; No. 2 of 2000 s. 28; No. 3 of 2002 s. 48; No. 65 of 2003 s. 33; No. 55 of 2004 s. 303.]*

**5. Act done for 2 or more reasons**

A reference in Part II, IIAA, IIA, IIB, III, IV, IVA or IVB to the doing of an act on the ground of a particular matter includes a reference to the doing of an act on the ground of 2 or more matters that include the particular matter, whether or not the particular matter is the dominant or substantial reason for the doing of the act.

*[Section 5 amended by No. 40 of 1988 s. 7; No. 74 of 1992 s. 7 and 40; No. 2 of 2000 s. 28; No. 3 of 2002 s. 49.]*

**6. Act binds Crown**

This Act binds the Crown.

**7. Inter-governmental arrangements**

- (1) The Minister may make an arrangement with a Minister of the Commonwealth for or in relation to —
  - (a) the performance on a joint basis of functions relating to the promotion of the objects of this Act; or
  - (b) the performance by this State or by an authority of this State on behalf of the Commonwealth of functions, including functions of the Human Rights Commission established by the *Human Rights Commission Act 1981*<sup>2</sup> of the Commonwealth, relating to the promotion of the objects of this Act.
- (2) An arrangement under this section may contain such incidental or supplementary provisions as the Minister and the Minister of the Commonwealth think necessary.
- (3) The Minister may arrange with the Minister of the Commonwealth for the variation or revocation of the arrangement.

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

## **Part II — Discrimination on ground of sex, marital status or pregnancy**

### **Division 1 — General**

#### **8. Sex discrimination**

(1) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of the sex of the aggrieved person if, on the ground of —

- (a) the sex of the aggrieved person;
- (b) a characteristic that appertains generally to persons of the sex of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the sex of the aggrieved person,

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of the opposite sex.

(2) For the purposes of this Act, a person (in this subsection referred to as “**the discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of the sex of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition —

- (a) with which a substantially higher proportion of persons of the opposite sex to the aggrieved person comply or are able to comply;
- (b) which is not reasonable having regard to the circumstances of the case; and

- (c) with which the aggrieved person does not or is not able to comply.

*[Section 8 amended by No. 74 of 1992 s. 40.]*

**9. Discrimination on the ground of marital status**

- (1) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of the marital status of the aggrieved person if, on the ground of —
  - (a) the marital status of the aggrieved person;
  - (b) a characteristic that appertains generally to persons of the marital status of the aggrieved person; or
  - (c) a characteristic that is generally imputed to persons of the marital status of the aggrieved person,

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of a different marital status.

- (2) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of the marital status of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition —
  - (a) with which a substantially higher proportion of persons not of the same marital status as the aggrieved person comply or are able to comply;
  - (b) which is not reasonable having regard to the circumstances of the case; and
  - (c) with which the aggrieved person does not or is not able to comply.

*[Section 9 amended by No. 74 of 1992 s. 40.]*



**10. Discrimination on the ground of pregnancy**

- (1) For the purposes of this Act, a person (in this subsection referred to as the **“discriminator”**) discriminates against another person (in this subsection referred to as the **“aggrieved person”**) on the ground of the pregnancy of the aggrieved person if —
- (a) on the ground of —
    - (i) the pregnancy of the aggrieved person;
    - (ii) a characteristic that appertains generally to persons who are pregnant; or
    - (iii) a characteristic that is generally imputed to persons who are pregnant,the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who was not pregnant; and
  - (b) the less favourable treatment is not reasonable in the circumstances.
- (2) For the purposes of this Act, a person (in this subsection referred to as the **“discriminator”**) discriminates against another person (in this subsection referred to as the **“aggrieved person”**) on the ground of the pregnancy of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition —
- (a) with which a substantially higher proportion of persons who are not pregnant comply or are able to comply;
  - (b) which is not reasonable having regard to the circumstances of the case; and
  - (c) with which the aggrieved person does not or is not able to comply.

*[Section 10 amended by No. 74 of 1992 s. 40.]*

**Division 2 — Discrimination in work**

**11. Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person's sex, marital status or pregnancy —
  - (a) in the arrangements made for the purpose of determining who should be offered employment;
  - (b) in determining who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's sex, marital status or pregnancy —
  - (a) in the terms or conditions of employment that 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;
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.
- (3) Nothing in subsection (1)(a) and (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

**12. Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a person on the ground of the person's sex, marital status or pregnancy —
  - (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 or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's sex, marital status or pregnancy —
- (a) in the terms or conditions that the principal affords the commission agent as a commission agent;
  - (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 the position as a commission agent;
  - (c) by terminating the engagement; or
  - (d) by subjecting the commission agent to any other detriment.

**13. Discrimination against contract workers**

- (1) It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's sex, marital status or pregnancy —
- (a) in the terms or conditions 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 the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
  - (d) by subjecting the contract worker to any other detriment.
- (2) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other

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person's sex, in connection with work to perform domestic duties on the premises on which the first-mentioned person resides.

**14. Partnerships**

- (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate against a person on the ground of the person's sex, marital status or pregnancy —
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's sex, marital status or pregnancy —
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's sex, marital status or pregnancy —
  - (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
  - (b) by expelling the partner from the partnership; or
  - (c) by subjecting the partner to any other detriment.

**15. Professional or trade organisations, etc.**

- (1) This section applies to an organisation of employees and to an organisation of employers.

- (2) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is not a member of the organisation on the ground of the person's sex, marital status or pregnancy —
- (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.
- (3) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is a member of the organisation on the ground of the person's sex, marital status or pregnancy —
- (a) by denying the person access, or limiting the person's access, to any benefit provided by the 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.

**16. Qualifying bodies**

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the engaging in of an occupation to discriminate against a person on the ground of the person's sex, marital status or pregnancy —

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

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

**17. Employment agencies**

It is unlawful for an employment agency to discriminate against a person on the ground of the person's sex, marital status or pregnancy —

- (a) by refusing to provide the person with any of its services;
- (b) in the terms or conditions 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.

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**18. Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's sex, marital status or pregnancy —

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

- (2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's sex, marital status or pregnancy —

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

- (3) Nothing in this section applies to or in respect of a refusal or failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students of the opposite sex to the sex of the applicant.

**19. Access to places and vehicles**

It is unlawful for a person (in this section referred to as the **“discriminator”**) to discriminate against another person (in this section referred to as the **“aggrieved person”**) on the ground of the aggrieved person's sex, marital status or pregnancy —

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

**20. Goods, services and facilities**

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's sex, marital status or pregnancy —

- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;

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

**21. Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sex, marital status or pregnancy —
  - (a) by refusing the other person's application for accommodation;
  - (b) in the terms or conditions on which accommodation is offered to the other person; or
  - (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sex, marital status or pregnancy —
  - (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person;
  - (b) by evicting the other person from accommodation occupied by the other person; or
  - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.
- (3) Nothing in this section applies to or in respect of —
  - (a) the provision of accommodation in premises if —
    - (i) the person who provides or proposes to provide the accommodation or a near relative of that



person resides, and intends to continue to reside, on those premises; and

(ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (i) or near relatives of such a person;

(b) accommodation provided by a religious body; or

(c) accommodation provided by a charitable or other voluntary body solely for persons of one sex or solely for persons of a particular marital status or particular marital statuses.

**21A. Land**

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

(a) by refusing or failing to dispose of an estate or interest in land to the other person; or

(b) in the terms or conditions on which an estate or interest in land is offered to the other person.

(2) Without limiting the generality of section 70(1), this section does not apply in relation to a disposal of an estate or interest in land by will or by way of gift.

*[Section 21A inserted by No. 74 of 1992 s. 8.]*

**22. Clubs**

(1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club on the ground of the person's sex, marital status or pregnancy —

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

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- (b) in the terms or conditions on which the club is prepared to admit the person to membership.
- (2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is a member of the club on the ground of the member's sex, marital status or pregnancy —
  - (a) in the terms or conditions of membership that are afforded to the member;
  - (b) by refusing or failing to accept the member's application for a particular class or type of membership;
  - (c) by denying the member access, or limiting the member's access, to any benefit provided by the club;
  - (d) by depriving the member of membership or varying the terms of membership; or
  - (e) by subjecting the member to any other detriment.
- (3) Nothing in subsection (1) or (2) renders it unlawful to discriminate against a person on the ground of the person's sex if membership of the club is available to persons of the opposite sex only.
- (4) Nothing in subsection (1), other than paragraph (a), or subsection (2) renders it unlawful to discriminate against a person on the ground of the person's sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the 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 club is established;
  - (b) the membership of the club, including any class or type of membership;
  - (c) the nature of the benefits provided by the club;
  - (d) the opportunities for the use and enjoyment of those benefits by men and women; and
  - (e) any other relevant circumstances.

**23. Application forms, etc.**

- (1) Where, by virtue of a provision of Division 2 or this Division, it would be unlawful, in particular circumstances, for a person to discriminate against another person, on the ground of the other person's sex, marital status or pregnancy, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons of the opposite sex or of a different marital status, or persons who are not pregnant, as the case requires, would not, in circumstances that are the same or not materially different, be requested or required to provide.
- (2) Nothing in subsection (1) renders it unlawful for a person to request or require —
  - (a) a person of a particular sex to provide information concerning such part of the last-mentioned person's

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medical history as relates to medical conditions that affect persons of that sex only; or

- (b) a person who is pregnant to provide medical information concerning the pregnancy.

**Division 4 — Discrimination involving sexual harassment**

**24. Sexual harassment in employment**

- (1) It is unlawful for a person to harass sexually —
- (a) an employee of that or any other person; or
  - (b) a person who is seeking employment by that or any other person.
- (2) It is unlawful for a person to harass sexually —
- (a) a commission agent or contract worker of that person;
  - (b) a commission agent or contract worker of a person of whom the first-mentioned person is a commission agent or contract worker; or
  - (c) a person who is seeking to become a commission agent or contract worker of the first-mentioned person or of a person of whom the first-mentioned person is a commission agent or contract worker.
- (3) A person shall, for the purposes of this section, be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and —
- (a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's employment or work or possible employment or possible work; or

- (b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's employment or work or possible employment or possible work.
- (4) A reference in subsection (3) to conduct of a sexual nature in relation to a person includes a reference to the making, to or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

*[Section 24 amended by No. 74 of 1992 s. 9(1).]*

**25. Sexual harassment in education**

- (1) It is unlawful for a person who is a member of the staff of an educational institution to harass sexually a person who is a student at that educational institution or is seeking admission to that educational institution as a student.
- (2) A person shall, for the purposes of this section, be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and —
  - (a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's studies or the other person's application for admission to an educational institution as a student; or
  - (b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's studies or the other

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person's application for admission to an educational institution as a student.

- (3) A reference in subsection (2) to conduct of a sexual nature in relation to a person includes a reference to the making, to or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

**26. Sexual harassment related to accommodation**

- (1) It is unlawful for a person who as principal or agent exercises control or purports to exercise control over accommodation or the letting or other allocation of accommodation to harass sexually —
- (a) a person who occupies accommodation over which that person exercises or purports to exercise control; or
  - (b) a person who is an applicant for accommodation.
- (2) A person shall, for the purposes of this section, be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person and —
- (a) the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's accommodation or application for accommodation; or
  - (b) as a result of the other person's rejection of the advance, refusal of the request or taking of objection to the conduct, the other person is disadvantaged in any way in connection with the other person's accommodation or application for accommodation.

- (3) A reference in subsection (2) to conduct of a sexual nature in relation to a person includes a reference to the making, to or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing.

### **Division 5 — Exceptions to Part II**

#### **27. Exception — genuine occupational qualification**

- (1) Nothing in section 11(1)(a) or (b), 12(1)(a) or (b) or 13(b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with a position as an employee, contract worker or commission agent, being a position in relation to which it is a genuine occupational qualification to be a person of the opposite sex to the sex of the other person.
- (2) Without limiting the generality of subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular sex (in this subsection referred to as the “**relevant sex**”) if —
- (a) the duties of the position can be performed only by a person having particular physical attributes (other than attributes of strength or stamina) that are not possessed by persons of the opposite sex to the relevant sex;
  - (b) the duties of the position involve performing in a dramatic performance or other entertainment in a role that, for reasons of authenticity, aesthetics or tradition, is required to be performed by a person of the relevant sex;
  - (c) the duties of the position need to be performed by a person of the relevant sex to preserve decency or privacy because they involve the fitting of clothing for persons of that sex;
  - (d) the duties of the position include the conduct of searches of the clothing or bodies of persons of the relevant sex;

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- (e) the occupant of the position is required to enter a lavatory ordinarily used by persons of the relevant sex while the lavatory is in use by persons of that sex;
  - (f) the occupant of the position is required to live on premises provided by the employer or principal of the occupant of the position and —
    - (i) the premises are not equipped with separate sleeping accommodation and sanitary facilities for persons of each sex;
    - (ii) the premises are already occupied by a person or persons of the relevant sex and are not occupied by any person of the opposite sex to the relevant sex; and
    - (iii) it is not reasonable to expect the employer or principal to provide separate sleeping accommodation and sanitary facilities for persons of each sex;
  - (g) the occupant of the position is required to enter areas ordinarily used only by persons of the relevant sex while those persons are in a state of undress; or
  - (h) the position is declared, by regulations made for the purposes of this paragraph, to be a position in relation to which it is a genuine occupational qualification to be a person of a particular sex.
- (3) This section does not apply in relation to a person at a time when the employer or principal concerned already has employees, commission agents or contract workers of the opposite sex to the person —
- (a) who are capable of carrying out the duties of the position concerned;
  - (b) whom it would be reasonable to employ, engage or allow to work on the duties referred to in paragraph (a); and



- (c) whose numbers are sufficient to meet the likely requirements of that employer or principal in respect of the duties referred to in paragraph (a).

*[Section 27 amended by No. 74 of 1992 s. 10; No. 57 of 1997 s. 55(1).]*

**28. Pregnancy or childbirth**

Nothing in Division 2 or 3 renders it unlawful for a person to discriminate against a man on the ground of his sex by reason only of the fact that the first-mentioned person grants to a woman rights or privileges in connection with pregnancy or childbirth.

**29. Employment of married couple or partners in a de facto relationship**

Nothing in Division 2 or 3 renders unlawful discrimination against a person on the ground of the person's marital status in relation to a job which is one of 2 to be held by a married couple or partners in a de facto relationship.

*[Section 29 inserted by No. 3 of 2002 s. 50.]*

**30. Services for members of one sex**

Nothing in Division 2 or 3 applies to or in relation to the provision of services the nature of which is such that they can only be provided to members of one sex.

**31. Measures intended to achieve equality**

Nothing in Division 2 or 3 renders it unlawful to do an act a purpose of which is —

- (a) to ensure that persons of a particular sex or marital status or persons who are pregnant have equal opportunities with other persons in circumstances in relation to which provision is made by this Act; or

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- (b) to afford persons of a particular sex or marital status or persons who are pregnant access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare.

**32. Accommodation provided for employees or students**

- (1) Nothing in Division 2 or 3 renders it unlawful for an employer who provides accommodation to employees of the employer to provide accommodation of different standards to different employees where —
  - (a) the standard of the accommodation provided to each employee is determined having regard to the number of persons in the household of the employee; and
  - (b) it is not reasonable to expect the employer to provide accommodation of the same standard for all employees.
- (2) Nothing in Division 2 or 3 applies to or in relation to the provision of accommodation, where the accommodation is provided solely for persons of one sex who are students at an educational institution.

**33. Residential care of children**

- (1) Nothing in section 11(1)(a) or (b) or 13(b) renders it unlawful for a person to discriminate against another person on the ground of the other person's sex in connection with a position as an employee or contract worker where the duties of the position involve the care of a child or children in the place where the child or children resides or reside.
- (2) Nothing in section 11(1)(a) or (b), 11(2)(c) or 13(b) renders it unlawful for a person to discriminate against another person on the ground of the other person's marital status in connection with a position as an employee or contract worker of a particular employer or principal, where —
  - (a) the duties of the position involve the care of a child or children in the place where the child or children resides or reside; and

- (b) it is intended that the spouse of the occupant of the position would also occupy a position as an employee or contract worker of that employer or principal.

**34. Superannuation and insurance**

*[(1)-(3) repealed]*

- (4) Nothing in Division 2 or 3 renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex or marital status, with respect to the terms on which an annuity, a life assurance policy, a policy of insurance against accident or any other policy of insurance is offered to, or may be obtained by, the other person, where the discrimination is —
  - (a) based upon actuarial or statistical data from a source on which it is reasonable for the first-mentioned person to rely; and
  - (b) reasonable having regard to the matter of the data and any other relevant factors.

*[Section 34 amended by No. 3 of 2002 s. 51(1) and (2).]*

**35. Sport**

- (1) Nothing in Division 2 or 3 renders it unlawful to exclude persons of one sex from participation in any competitive sporting activity in which the strength, stamina or physique of competitors is relevant.
- (2) Subsection (1) does not apply in relation to the exclusion of persons from participation in —
  - (a) the coaching of persons engaged in any sporting activity;
  - (b) the umpiring or refereeing of any sporting activity;
  - (c) the administration of any sporting activity;
  - (d) any prescribed sporting activity; or
  - (e) sporting activities by children who have not attained the age of 12 years.

**Part IIAA — Discrimination on gender history grounds in certain cases**

*[Heading inserted by No. 2 of 2000 s. 28.]*

**Division 1 — General**

*[Heading inserted by No. 2 of 2000 s. 28.]*

**35AA. Interpretation**

- (1) For the purposes of this Part, a person has a gender history if the person identifies as a member of the opposite sex by living, or seeking to live, as a member of the opposite sex.
- (2) In subsection (1) —  
    **“opposite sex”** means a sex of which the person was not a member at birth.

*[Section 35AA inserted by No. 2 of 2000 s. 28.]*

**35AB. Discrimination on gender history grounds**

- (1) For the purposes of this Act, a person (in this subsection referred to as the **“discriminator”**) discriminates against a gender reassigned person on gender history grounds if, on the ground of the gender reassigned person having a gender history, the discriminator treats the gender reassigned person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person not thought by the discriminator to have a gender history.
- (2) A reference in subsection (1) to something done on the ground of a person having a gender history includes a reference to something done on the ground of —
  - (a) a characteristic that appertains generally to persons who have a gender history; or
  - (b) a characteristic that is generally imputed to persons who have a gender history.

- (3) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against a gender reassigned person on gender history grounds if on the ground of the person having a gender history the discriminator —
- (a) treats the person as being of the person’s former sex; or
  - (b) requires the person to comply with a requirement or condition —
    - (i) with which a substantially higher proportion of persons who do not have a gender history comply or are able to comply;
    - (ii) which is not reasonable having regard to the circumstances of the case; and
    - (iii) with which the gender reassigned person does not or is not able to comply.

*[Section 35AB inserted by No. 2 of 2000 s. 28.]*

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

*[Heading inserted by No. 2 of 2000 s. 28.]*

#### **35AC. Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a gender reassigned person on gender history grounds —
- (a) in the arrangements made for the purpose of determining who should be offered employment;
  - (b) in determining who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate on gender history grounds against an employee who is a gender reassigned person —
- (a) in the terms or conditions of employment that the employer affords the employee;

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- (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;
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.
- (3) Nothing in subsection (1) or (2) renders it unlawful for a person to discriminate against a gender reassigned person on gender history grounds in connection with employment to perform domestic duties within a private household in which the employer resides.

*[Section 35AC inserted by No. 2 of 2000 s. 28.]*

**35AD. Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a gender reassigned person on gender history grounds —
- (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 or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate on gender history grounds against a commission agent who is a gender reassigned person —
- (a) in the terms or conditions that the principal affords the commission agent as a commission agent;
  - (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 the position as a commission agent;

- (c) by terminating the engagement; or
- (d) by subjecting the commission agent to any other detriment.

*[Section 35AD inserted by No. 2 of 2000 s. 28.]*

**35AE. Discrimination against contract workers**

It is unlawful for a principal to discriminate on gender history grounds against a contract worker who is a gender reassigned person —

- (a) in the terms or conditions 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 the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
- (d) by subjecting the contract worker to any other detriment.

*[Section 35AE inserted by No. 2 of 2000 s. 28.]*

**35AF. Partnerships**

- (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate against a gender reassigned person on gender history grounds —
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a gender reassigned person on gender history grounds —
  - (a) in determining who should be invited to become a partner in the partnership; or

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- (b) in the terms or conditions on which the gender reassigned person is invited to become a partner in the partnership.
- (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate on gender history grounds against a partner in the partnership who is a gender reassigned person —
  - (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
  - (b) by expelling the partner from the partnership; or
  - (c) by subjecting the partner to any other detriment.

*[Section 35AF inserted by No. 2 of 2000 s. 28.]*

**35AG. Professional or trade organisations etc.**

- (1) This section applies to an organisation of employees and to an organisation of employers.
- (2) It is unlawful for an organisation to which this section applies, or for the committee of management of such an organisation, or for a member of such a committee of management, to discriminate on gender history grounds against a gender reassigned person who is not a member of the organisation —
  - (a) by refusing or failing to accept the gender reassigned person's application for membership; or
  - (b) in the terms or conditions on which the organisation is prepared to admit the gender reassigned person to membership.
- (3) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate



on gender history grounds against a gender reassigned person who is a member of the organisation —

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

*[Section 35AG inserted by No. 2 of 2000 s. 28.]*

**35AH. Qualifying bodies**

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke, or withdraw an authorisation or qualification that is needed for, or facilitates the practice of, a profession, the carrying on of a trade or business or the engaging in of an occupation to discriminate against a gender reassigned person on gender history grounds —

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

*[Section 35AH inserted by No. 2 of 2000 s. 28.]*

**35AI. Employment agencies**

It is unlawful for an employment agency to discriminate against a gender reassigned person on gender history grounds —

- (a) by refusing to provide the gender reassigned person with any of its services;

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- (b) in the terms or conditions on which it offers to provide the gender reassigned person with any of its services; or
- (c) in the manner in which it provides the gender reassigned person with any of its services.

*[Section 35AI inserted by No. 2 of 2000 s. 28.]*

**Division 3 — Discrimination in other areas**

*[Heading inserted by No. 2 of 2000 s. 28.]*

**35AJ. Education**

- (1) It is unlawful for an educational authority to discriminate against a gender reassigned person on gender history grounds —
  - (a) by refusing or failing to accept the gender reassigned person’s application for admission as a student; or
  - (b) in the terms or conditions on which it is prepared to admit the gender reassigned person as a student.
- (2) It is unlawful for an educational authority to discriminate on gender history grounds against a student who is a gender reassigned person —
  - (a) by denying the student access, or limiting the student’s access, to any benefit provided by the educational authority;
  - (b) by expelling the student; or
  - (c) by subjecting the student to any other detriment.

*[Section 35AJ inserted by No. 2 of 2000 s. 28.]*

**35AK. Access to places and vehicles**

It is unlawful for a person (in this section referred to as the “**discriminator**”) to discriminate against a gender reassigned person on gender history grounds —

- (a) by refusing to allow the gender reassigned person access to or the use of any place or vehicle that the public or a

section of the public is entitled or allowed to enter or use, for payment or not;

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

*[Section 35AK inserted by No. 2 of 2000 s. 28.]*

**35AL. Goods, services and facilities**

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against a gender reassigned person on gender history grounds —

- (a) by refusing to provide the gender reassigned person with those goods or services or to make those facilities available to the gender reassigned person;
- (b) in the terms or conditions on which the first-mentioned person provides the gender reassigned person with those goods or services or makes those facilities available to the gender reassigned person; or
- (c) in the manner in which the first-mentioned person provides the gender reassigned person with those goods or services or makes those facilities available to the gender reassigned person.

*[Section 35AL inserted by No. 2 of 2000 s. 28.]*

**35AM. Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against a gender reassigned person on gender history grounds —
  - (a) by refusing the gender reassigned person’s application for accommodation;
  - (b) in the terms or conditions on which accommodation is offered to the gender reassigned person; or
  - (c) by deferring the gender reassigned person’s application for accommodation, or according to the gender reassigned 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 gender reassigned person on gender history grounds —
  - (a) by denying the gender reassigned person access, or limiting the gender reassigned person’s access, to any benefit associated with accommodation occupied by the gender reassigned person;
  - (b) by evicting the gender reassigned person from accommodation occupied by the gender reassigned person; or
  - (c) by subjecting the gender reassigned person to any other detriment in relation to accommodation occupied by the gender reassigned person.
  
- (3) Nothing in this section applies to or in respect of —
  - (a) the provision of accommodation in premises if —
    - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and

- (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in paragraph (a) or near relatives of such a person;

or

- (b) accommodation provided by a religious body.

*[Section 35AM inserted by No. 2 of 2000 s. 28.]*

**35AN. Land**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against a gender reassigned person on gender history grounds —
  - (a) by refusing or failing to dispose of an estate or interest in land to the gender reassigned person; or
  - (b) in the terms or conditions on which an estate or interest in land is offered to the gender reassigned person.
- (2) Without limiting the generality of section 70(1), this section does not apply in relation to a disposal of an estate or interest in land by will or by way of gift.

*[Section 35AN inserted by No. 2 of 2000 s. 28.]*

**35AO. Clubs**

- (1) It is unlawful for a club, the committee of management of a club, or a member of the committee of management of a club, to discriminate on gender history grounds against a gender reassigned person who is not a member of the club —
  - (a) by refusing or failing to accept the gender reassigned person's application for membership; or
  - (b) in the terms or conditions on which the club is prepared to admit the gender reassigned person to membership.
- (2) It is unlawful for a club, the committee of management of a club, or a member of the committee of management of a club, to

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discriminate on gender history grounds against a gender reassigned person who is a member of the club —

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

*[Section 35AO inserted by No. 2 of 2000 s. 28.]*

**35AP. Discrimination in sport on gender history grounds**

- (1) It is unlawful for a person to discriminate against a gender reassigned person on gender history grounds by excluding that person from —
  - (a) a sporting activity; or
  - (b) an administrative, coaching, refereeing or umpiring activity in relation to any sport.
- (2) Subsection (1)(a) does not apply to discrimination against a gender reassigned person if —
  - (a) the relevant sporting activity is a competitive sporting activity for members of the sex with which the person identifies; and
  - (b) the person would have a significant performance advantage as a result of his or her medical history.

*[Section 35AP inserted by No. 2 of 2000 s. 28.]*

**35AQ. Application forms etc.**

Where, by virtue of a provision of Division 2 or this Division, it would be unlawful, in particular circumstances, for a person to

discriminate against a gender reassigned person on gender history grounds in doing a particular act, it is unlawful for the first-mentioned person to request or require the gender reassigned person to provide, in connection with or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons who do not have a gender history would not, in circumstances that are the same or not materially different, be requested or required to provide.

*[Section 35AQ inserted by No. 2 of 2000 s. 28.]*

**35AR. Superannuation schemes and provident funds**

It is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a gender reassigned person on gender history grounds —

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

except to the extent that —

- (aa) the discrimination —
  - (i) is based upon actuarial or statistical data from a source upon which it is reasonable to rely or where there is no such data, on such other data as may be available; and
  - (ii) is reasonable having regard to the data, if any, and other relevant factors;

or

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

*[Section 35AR inserted by No. 2 of 2000 s. 28.]*

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**Part IIA**            Discrimination on the ground of family responsibility or family status

**Division 1**        General

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**Part IIA — Discrimination on the ground of family responsibility or family status**

*[Heading inserted by No. 74 of 1992 s. 11.]*

**Division 1 — General**

*[Heading inserted by No. 74 of 1992 s. 11.]*

**35A. Discrimination on the ground of family responsibility or family status**

(1) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of family responsibility or family status if, on the ground of —

- (a) the family responsibility or family status of the aggrieved person;
- (b) a characteristic that appertains generally to persons having the same family responsibility or family status as the aggrieved person; or
- (c) a characteristic that is generally imputed to persons having the same family responsibility or family status as the aggrieved person,

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who does not have such a family responsibility or family status.

(2) For the purposes of this Act, a person (in this subsection referred to as “**the discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of family responsibility or family status



if the discriminator requires the aggrieved person to comply with a requirement or condition —

- (a) with which a substantially higher proportion of persons not of the same family responsibility or family status as the aggrieved person comply or are able to comply;
- (b) which is not reasonable having regard to the circumstances of the case; and
- (c) with which the aggrieved person does not or is not able to comply.

*[Section 35A inserted by No. 74 of 1992 s. 11.]*

**Division 2 — Discrimination in work**

*[Heading inserted by No. 74 of 1992 s. 11.]*

**35B. Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person's family responsibility or family status —
  - (a) in the arrangements made for the purpose of determining who should be offered employment;
  - (b) in determining who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's family responsibility or family status —
  - (a) in the terms or conditions of employment that the employer affords the employee;
  - (b) by denying the employee access, or limiting the access of the employee, to opportunities for promotion, transfer or training or to any other benefits associated with employment;
  - (c) by dismissing the employee; or

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- (d) by subjecting the employee to any other detriment.
- (3) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other person's family responsibility or family status, in connection with employment to perform domestic duties within a private household in which the employer resides.
- (4) Nothing in this section renders it unlawful for a person to do an act a purpose of which is to afford persons with a particular family responsibility or family status rights, benefits or privileges in connection with that family responsibility or family status.

*[Section 35B inserted by No. 74 of 1992 s. 11.]*

**35C.    Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a person on the ground of the person's family responsibility or family 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 or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's family responsibility or family status —
  - (a) in the terms or conditions that the principal affords the commission agent as a commission agent;
  - (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 the position as a commission agent;

- (c) by terminating the agreement; or
- (d) by subjecting the commission agent to any other detriment.

*[Section 35C inserted by No. 74 of 1992 s. 11.]*

**35D. Discrimination against contract workers**

- (1) It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's family responsibility or family status —
  - (a) in the terms or conditions 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 the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
  - (d) by subjecting the contract worker to any other detriment.
- (2) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the family responsibility or family status of the other person, in connection with work to perform domestic duties within a private household in which the first-mentioned person resides.

*[Section 35D inserted by No. 74 of 1992 s. 11.]*

**35E. Partnerships**

- (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate against a person on the ground of the person's family responsibility or family status —
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.

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- (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's family responsibility or family status —
- (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's family responsibility or family status —
- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
  - (b) by expelling the partner from the partnership; or
  - (c) by subjecting the partner to any other detriment.

*[Section 35E inserted by No. 74 of 1992 s. 11.]*

**35F. Professional or trade organisations, etc.**

- (1) This section applies to an organisation of employees and to an organisation of employers.
- (2) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is not a member of the organisation on the ground of the person's family responsibility or family status —
- (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.
- (3) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for

a member of such a committee of management to discriminate against a person who is a member of the organisation on the ground of the person's family responsibility or family status —

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

*[Section 35F inserted by No. 74 of 1992 s. 11.]*

**35G. Qualifying bodies**

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the engaging in of an occupation to discriminate against a person on the ground of the person's family responsibility or family status —

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

*[Section 35G inserted by No. 74 of 1992 s. 11.]*

**35H. Employment agencies**

It is unlawful for an employment agency to discriminate against a person on the ground of the person's family responsibility or family status —

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

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- (b) in the terms or conditions 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.

*[Section 35H inserted by No. 74 of 1992 s. 11.]*

**Division 3 — Discrimination in other areas**

*[Heading inserted by No. 74 of 1992 s. 11.]*

**35I. Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's family responsibility or family status —
  - (a) by refusing or failing to accept the person's application for admission as a student; or
  - (b) in the terms or conditions on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's family responsibility or family status —
  - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority;
  - (b) by expelling the student; or
  - (c) by subjecting the student to any other detriment.
- (3) Nothing in this section applies to or in respect of bona fide benefits, including concessions, provided to a person by reason of his or her family responsibility or family status.

*[Section 35I inserted by No. 74 of 1992 s. 11.]*

**35J. Application forms, etc.**

If, by virtue of a provision of Division 2 or this Division, it would be unlawful, in particular circumstances, for a person to discriminate against another person, on the ground of the other person's family responsibility or family status, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons with a different family responsibility or family status would not, in circumstances that are the same or not materially different, be requested or required to provide.

*[Section 35J inserted by No. 74 of 1992 s. 11.]*

**Division 4 — Exceptions to Part IIA**

*[Heading inserted by No. 74 of 1992 s. 11.]*

**35K. Measures intended to meet special needs**

Nothing in Division 2 or 3 renders it unlawful to do an act a purpose of which is to afford a person with a particular family responsibility or of a particular family status access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare, or any ancillary benefits.

*[Section 35K inserted by No. 74 of 1992 s. 11.]*

**35L. Accommodation provided for employees**

Nothing in Division 2 renders it unlawful for an employer who provides accommodation to employees of the employer to provide accommodation of different standards to different employees where —

- (a) the standard of the accommodation provided to each employee is determined having regard to the number of persons in the household of the employee; and

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- (b) it is not reasonable to expect the employer to provide accommodation of the same standard for all employees.

*[Section 35L inserted by No. 74 of 1992 s. 11.]*

**35M. Identity of relative**

Nothing in Division 2 renders it unlawful for an employer to restrict the employment of a person if —

- (a) that person is a relative of an employee of the employer; or
- (b) that person is a relative of an employee of another employer,

and the first-mentioned employer can demonstrate, after making reasonable enquiries, that there is a significant likelihood of collusion between that person and that person's relative which would result in damage to the business of the first-mentioned employer.

*[Section 35M inserted by No. 74 of 1992 s. 11.]*

**35N. Acts done under statutory authority**

- (1) Nothing in this Part 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 any other written law which is in force when the *Equal Opportunity Amendment Act 1992*<sup>1</sup> comes into operation, not being —
  - (a) the rules of a society registered under the *Co-operative and Provident Societies Act 1903*;
  - (b) the rules of a credit union within the meaning of the *Credit Unions Act 1979*<sup>3</sup>;
  - (c) the rules of a society registered under the *Friendly Societies (Western Australia) Code 1999*; or
  - (d) the rules of a society registered under the *Housing Societies Act 1976*.
- (2) Subsection (1) shall, except to the extent that regulations made for the purposes of this subsection provide otherwise, cease to



be in force at the expiration of 2 years after the coming into operation of section 11 of the *Equal Opportunity Amendment Act 1992*<sup>1</sup>.

- (3) Regulations made for the purposes of subsection (2) may provide generally in relation to the application of subsection (1) or may make provision in relation to specified written laws.

*[Section 35N inserted by No. 74 of 1992 s. 11; amended by No. 2 of 1999 s. 19(a); No. 12 of 2001 s. 48(2).]*

**Part IIB — Discrimination on ground of  
sexual orientation**

*[Heading inserted by No. 3 of 2002 s. 52.]*

**Division 1 — General**

*[Heading inserted by No. 3 of 2002 s. 52.]*

**350. Discrimination on the ground of sexual orientation**

- (1) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of the sexual orientation of the aggrieved person if, on the ground of —

- (a) the sexual orientation of the aggrieved person;
- (b) a characteristic that appertains generally to persons of the sexual orientation of the aggrieved person; or
- (c) a characteristic that is generally imputed to persons of the sexual orientation of the aggrieved person,

the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who is not of that sexual orientation.

- (2) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of sexual orientation if, on the ground of —

- (a) the sexual orientation of;
- (b) a characteristic that appertains generally to persons of the same sexual orientation as; or
- (c) a characteristic that is generally imputed to persons of the same sexual orientation as,

any relative or associate of the aggrieved person, the discriminator treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person who is not of that sexual orientation.

- (3) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of the sexual orientation of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition —
- (a) with which a substantially higher proportion of persons who are not of the sexual orientation of the aggrieved person comply or are able to comply;
  - (b) which is not reasonable having regard to the circumstances of the case; and
  - (c) with which the aggrieved person does not or is not able to comply.

*[Section 35O inserted by No. 3 of 2002 s. 52.]*

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

*[Heading inserted by No. 3 of 2002 s. 52.]*

#### **35P. Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person’s sexual orientation —
- (a) in the arrangements made for the purpose of determining who should be offered employment;
  - (b) in determining who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.

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- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's sexual orientation —
- (a) in the terms or conditions of employment that 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;
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.
- (3) Nothing in subsection (1)(a) and (b) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sexual orientation, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

*[Section 35P inserted by No. 3 of 2002 s. 52.]*

**35Q. Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a person on the ground of the person's sexual orientation —
- (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 or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's sexual orientation —
- (a) in the terms or conditions that the principal affords the commission agent as a commission agent;

- (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 the position as a commission agent;
- (c) by terminating the engagement; or
- (d) by subjecting the commission agent to any other detriment.

*[Section 35Q inserted by No. 3 of 2002 s. 52.]*

**35R. Discrimination against contract workers**

- (1) It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's sexual orientation —
  - (a) in the terms or conditions 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 the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
  - (d) by subjecting the contract worker to any other detriment.
- (2) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other person's sexual orientation, in connection with work to perform domestic duties on the premises on which the first-mentioned person resides.

*[Section 35R inserted by No. 3 of 2002 s. 52.]*

**35S. Partnerships**

- (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate

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against a person on the ground of the person's sexual orientation —

- (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's sexual orientation —
- (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's sexual orientation —
- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
  - (b) by expelling the partner from the partnership; or
  - (c) by subjecting the partner to any other detriment.

*[Section 35S inserted by No. 3 of 2002 s. 52.]*

**35T. Professional or trade organisations, etc.**

- (1) This section applies to an organisation of employees and to an organisation of employers.
- (2) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate

against a person who is not a member of the organisation on the ground of the person's sexual orientation —

- (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.
- (3) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is a member of the organisation on the ground of the person's sexual orientation —
- (a) by denying the person access, or limiting the person's access, to any benefit provided by the 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.

*[Section 35T inserted by No. 3 of 2002 s. 52.]*

**35U. Qualifying bodies**

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the engaging in of an occupation to discriminate against a person on the ground of the person's sexual orientation —

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

*[Section 35U inserted by No. 3 of 2002 s. 52.]*

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**35V.    Employment agencies**

It is unlawful for an employment agency to discriminate against a person on the ground of the person's sexual orientation —

- (a) by refusing to provide the person with any of its services;
- (b) in the terms or conditions 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.

*[Section 35V inserted by No. 3 of 2002 s. 52.]*

**Division 3 — Discrimination in other areas**

*[Heading inserted by No. 3 of 2002 s. 52.]*

**35W.    Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's sexual orientation —
  - (a) by refusing or failing to accept the person's application for admission as a student; or
  - (b) in the terms or conditions on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's sexual orientation —
  - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority;
  - (b) by expelling the student; or
  - (c) by subjecting the student to any other detriment.

*[Section 35W inserted by No. 3 of 2002 s. 52.]*



**35X. Access to places and vehicles**

It is unlawful for a person (in this section referred to as the “**discriminator**”) to discriminate against another person (in this section referred to as the “**aggrieved person**”) on the ground of the aggrieved person’s sexual orientation —

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

*[Section 35X inserted by No. 3 of 2002 s. 52.]*

**35Y. Goods, services and facilities**

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person’s sexual orientation —

- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
- (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or

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services or makes those facilities available to the other person; or

- (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

*[Section 35Y inserted by No. 3 of 2002 s. 52.]*

**35Z. Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sexual orientation —
  - (a) by refusing the other person's application for accommodation;
  - (b) in the terms or conditions on which accommodation is offered to the other person; or
  - (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's sexual orientation —
  - (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person;
  - (b) by evicting the other person from accommodation occupied by the other person; or
  - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.
- (3) Nothing in this section applies to or in respect of —
  - (a) the provision of accommodation in premises if —
    - (i) the person who provides or proposes to provide the accommodation or a near relative of that

person resides, and intends to continue to reside, on those premises; and

- (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (i) or near relatives of such a person; or

- (b) accommodation provided by a religious body.

*[Section 35Z inserted by No. 3 of 2002 s. 52.]*

**35ZA. Land**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the sexual orientation of the other person —
  - (a) by refusing or failing to dispose of an estate or interest in land to the other person; or
  - (b) in the terms or conditions on which an estate or interest in land is offered to the other person.
- (2) Without limiting the generality of section 70(1), this section does not apply in relation to a disposal of an estate or interest in land by will or by way of gift.

*[Section 35ZA inserted by No. 3 of 2002 s. 52.]*

**35ZB. Clubs**

- (1) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to discriminate against a person who is not a member of the club on the ground of the person's sexual orientation —
  - (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the club is prepared to admit the person to membership.
- (2) It is unlawful for a club, the committee of management of a club or a member of the committee of management of a club to

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discriminate against a person who is a member of the club on the ground of the member's sexual orientation —

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

*[Section 35ZB inserted by No. 3 of 2002 s. 52.]*

**35ZC. Application forms, etc.**

Where, by virtue of a provision of Division 2 or this Division, it would be unlawful, in particular circumstances, for a person to discriminate against another person, on the ground of the other person's sexual orientation, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons who are not of the other person's sexual orientation would not, in circumstances that are the same or not materially different, be requested or required to provide.

*[Section 35ZC inserted by No. 3 of 2002 s. 52.]*

**Division 4 — Exceptions to Part IIB**

*[Heading inserted by No. 3 of 2002 s. 52.]*

**35ZD. Measures intended to achieve equality**

Nothing in Division 2 or 3 renders it unlawful to do an act a purpose of which is —

- (a) to ensure that persons of a particular sexual orientation have equal opportunities with other persons in

circumstances in relation to which provision is made by this Act; or

- (b) to afford persons of a particular sexual orientation access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare.

*[Section 35ZD inserted by No. 3 of 2002 s. 52.]*

## **Part III — Discrimination on the ground of race**

### **Division 1 — General**

#### **36. Racial discrimination**

- (1) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of race if, on the ground of —
- (a) the race of the aggrieved person;
  - (b) a characteristic that appertains generally to persons of the race of the aggrieved person; or
  - (c) a characteristic that is generally imputed to persons of the race of the aggrieved person,
- the discriminator —
- (d) treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person of a different race; or
  - (e) segregates the aggrieved person from persons of a different race.
- (1a) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of race if, on the ground of —
- (a) the race of;
  - (b) a characteristic that appertains generally to persons of the same race as; or
  - (c) a characteristic that is generally imputed to persons of the same race as,

any relative or associate of the aggrieved person, the discriminator —

- (d) treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat persons; or
- (e) segregates the aggrieved person from persons,

who are not of that race.

- (2) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of race if the discriminator requires the aggrieved person to comply with a requirement or condition —
  - (a) with which a substantially higher proportion of persons not of the same race as the aggrieved person comply or are able to comply;
  - (b) which is not reasonable having regard to the circumstances of the case; and
  - (c) with which the aggrieved person does not or is not able to comply.

*[Section 36 amended by No. 74 of 1992 s. 12.]*

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

### **37. Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of the race of that person —
  - (a) in the arrangements made for the purpose of determining who should be offered employment;
  - (b) in determining who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.

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- (2) It is unlawful for an employer to discriminate against an employee on the ground of the race of the employee —
- (a) in the terms or conditions of employment that 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;
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.
- (3) Nothing in subsection (1) renders it unlawful for an employer to discriminate against a person, on the ground of the race of the person, in connection with employment to perform domestic duties within a private household in which the employer resides.

*[Section 37 amended by No. 74 of 1992 s. 13.]*

**38.        Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a person on the ground of the race of that person —
- (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 or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's race —
- (a) in the terms or conditions which the principal affords the commission agent as a commission agent;
  - (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 the position as a commission agent;

- (c) by terminating the engagement; or
- (d) by subjecting the commission agent to any other detriment.

**39. Discrimination against contract workers**

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

- (a) in the terms or conditions on which the principal allows the contract worker to work;
- (b) by not allowing 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 the employer is made;
- (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 the employer is made; or
- (d) by subjecting the contract worker to any other detriment.

**40. Partnerships**

- (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate against a person on the ground of the person's race —
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's race —
  - (a) in determining who should be invited to become a partner in the partnership; or

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- (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's race —
  - (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
  - (b) by expelling the partner from the partnership; or
  - (c) by subjecting the partner to any other detriment.

**41. Professional or trade organisations, etc.**

- (1) This section applies to an organisation of employees and to an organisation of employers.
- (2) It is unlawful for an organisation to which this section applies or for a committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is not a member of the organisation on the ground of the person's race —
  - (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.
- (3) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is a member of the organisation on the ground of the person's race —
  - (a) by denying the person access, or limiting the person's access to any benefit provided by the 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.

**42. Qualifying bodies**

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of the person's race —

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

**43. Employment agencies**

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

- (a) by refusing to provide the person with any of its services;
- (b) in the terms or conditions 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**

**44. Education**

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

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- (b) in the terms or conditions 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 the student's race —
  - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority;
  - (b) by expelling the student; or
  - (c) by subjecting the student to any other detriment.
- (3) Nothing in this section applies to or in respect of an educational authority prescribed by regulations in relation to such circumstances, if any, as may be prescribed by regulations.

**45. Access to places and vehicles**

It is unlawful for a person (in this section referred to as the “**discriminator**”) to discriminate against another person (in this section referred to as the “**aggrieved person**”) on the ground of race —

- (a) by refusing to allow the aggrieved person access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;
- (b) in the terms on which the discriminator is prepared to allow the aggrieved person access to or the use of any such place or vehicle;
- (c) by refusing to allow the aggrieved person the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not;
- (d) in the terms on which the discriminator is prepared to allow the aggrieved person the use of any such facilities; or

- (e) by requiring the aggrieved person to leave or cease to use any such place or vehicle or any such facilities.

**46. Goods, services and facilities**

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's race —

- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
- (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
- (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

**47. Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's race —
  - (a) by refusing the other person's application for accommodation;
  - (b) in the terms or conditions on which accommodation is offered to the other person; or
  - (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.

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- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's race —
- (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person;
  - (b) by evicting the other person from accommodation occupied by the other person; or
  - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.
- (3) Nothing in this section applies to or in respect of —
- (a) the provision of accommodation in premises if —
    - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
    - (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (i) or a near relative of such a person;
  - or
  - (b) accommodation provided by a charitable or other voluntary body solely for persons of one race.

**47A. Land**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the race of the other person —
- (a) by refusing or failing to dispose of an estate or interest in land to the other person; or
  - (b) in the terms or conditions on which an estate or interest in land is offered to the other person.

- (2) Without limiting the generality of section 70(1), this section does not apply in relation to a disposal of an estate or interest in land by will or by way of gift.

*[Section 47A inserted by No. 74 of 1992 s. 14.]*

**48. Clubs**

- (1) It is unlawful for a club, the committee of management of a club, or a member of the committee of management of a club to discriminate against a person who is not a member of the club on the ground of the person's race —
- (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the club is prepared to admit the person to membership.
- (2) It is unlawful for a club, the committee of management of a club, or a member of the committee of management of a club to discriminate against a person who is a member of the club on the ground of the person's race —
- (a) in the terms or conditions of membership that are afforded to the member;
  - (b) by refusing or failing to accept the member's application for a particular class or type of membership;
  - (c) by denying the member access, or limiting the member's access, to any benefit provided by the club;
  - (d) by depriving the member of membership or varying the terms of the member's membership; or
  - (e) by subjecting the member to any other detriment.
- (3) Nothing in subsection (1) or (2) applies to or in respect of a club that has as its principal object the provision of benefits for persons of a specified race if those persons are described otherwise than —
- (a) by reference to colour; or

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- (b) in a manner 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 come within that description.
- (4) In determining whether the principal object of a club is as referred to in subsection (3), regard shall be had to —
  - (a) the essential character of the club;
  - (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 race specified in the principal object; and
  - (c) any other relevant circumstance.

**49. Application forms, etc.**

Where, by virtue of a provision of Division 2 or this Division, it would be unlawful in particular circumstances for a person to discriminate against another person, on the ground of the other person's race, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons of a different race would not, in circumstances that are the same or not materially different, be requested or required to provide.

**Division 3A — Discrimination involving racial harassment**

*[Heading inserted by No. 74 of 1992 s. 15.]*

**49A. Racial harassment in employment**

- (1) It is unlawful for a person (in this subsection referred to as the “**harasser**”) to harass racially —
  - (a) an employee of the harasser;
  - (b) an employee of a person by whom the harasser is employed; or



- (c) a person who is seeking employment by the harasser or by an employer of the harasser.
- (2) It is unlawful for a person (in this subsection referred to as the “**harasser**”) to harass racially —
- (a) a commission agent or contract worker of the harasser;
  - (b) a commission agent or contract worker of a person of whom the harasser is a commission agent or contract worker; or
  - (c) a person who is seeking to become a commission agent or contract worker of the harasser or of a person of whom the harasser is a commission agent or contract worker.
- (3) A person shall, for the purposes of this section, be taken to harass racially another person if the first-mentioned person threatens, abuses, insults or taunts the other person on a ground referred to in section 49D, and —
- (a) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts would disadvantage the other person in any way in connection with the employment or work, or possible employment or possible work, of the other person; or
  - (b) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with the employment or work, or possible employment or possible work, of the other person.

*[Section 49A inserted by No. 74 of 1992 s. 15.]*

**49B. Racial harassment in education**

- (1) It is unlawful for a person who is a member of the staff of an educational institution to harass racially a person who is a student at the educational institution or is seeking admission to the educational institution as a student.

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- (2) A person shall, for the purposes of this section, be taken to harass racially another person if the first-mentioned person threatens, abuses, insults or taunts the other person on a ground referred to in section 49D, and —
- (a) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts would disadvantage the other person in any way in connection with the studies, or the application for admission to an educational institution as a student, of the other person; or
  - (b) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with the studies, or the application for admission to an educational institution as a student, of the other person.

*[Section 49B inserted by No. 74 of 1992 s. 15.]*

**49C. Racial harassment related to accommodation**

- (1) It is unlawful for a person who as principal or agent exercises control or purports to exercise control over accommodation or the letting or other allocation of accommodation to harass racially —
- (a) a person who occupies accommodation over which the first-mentioned person exercises or purports to exercise control; or
  - (b) a person who is an applicant for accommodation.
- (2) A person shall, for the purposes of this section, be taken to harass racially another person if the first-mentioned person threatens, abuses, insults or taunts the other person on a ground referred to in section 49D, and —
- (a) the other person has reasonable grounds for believing that objecting to the relevant threats, abuse, insults or taunts by the other person would disadvantage the other person in any way in connection with the accommodation, or application for accommodation, of the other person; or

- (b) as a result of the objection by the other person to the relevant threats, abuse, insults or taunts, the other person is disadvantaged in any way in connection with the accommodation, or application for accommodation, of the other person.

*[Section 49C inserted by No. 74 of 1992 s. 15.]*

**49D. Racial grounds**

The grounds referred to in this section are —

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

of the other person referred to in section 49A(3), 49B(2) or 49C(2) or of a relative or associate of that person.

*[Section 49D inserted by No. 74 of 1992 s. 15.]*

**Division 4 — Exceptions to Part III**

**50. Exception — genuine occupational qualification**

Nothing in this Part 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

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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.

**51. Measures intended to achieve equality**

Nothing in Division 2 or 3 renders it unlawful to do an act a purpose of which is —

- (a) to ensure that persons of a particular race have equal opportunities with other persons in circumstances in relation to which provision is made by this Act; or
- (b) to afford persons of a particular race access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare, or any ancillary benefits.

*[Section 51 inserted by No. 74 of 1992 s. 16.]*

**52. Exception — citizenship**

This Part does not apply to or in respect of any act of an authority to which Part IX applies being an act performed pursuant to a Western Australian law that discriminates between Australian citizens and persons who are not Australian citizens.

## **Part IV — Discrimination on the ground of religious or political conviction**

### **Division 1 — General**

#### **53. Discrimination on ground of religious or political conviction**

- (1) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of religious or political conviction if, on the ground of —
- (a) the religious or political conviction of the aggrieved person;
  - (b) a characteristic that appertains generally to persons of the religious or political conviction of the aggrieved person; or
  - (c) a characteristic that is generally imputed to persons of the religious or political conviction of the aggrieved person,
- the discriminator treats the aggrieved person less favourably than in the same circumstances or in circumstances that are not materially different, the discriminator treats or would treat a person of a different religious or political conviction.
- (2) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of religious or political conviction if the discriminator requires the aggrieved person to comply with a requirement or condition —
- (a) with which a substantially higher proportion of persons who are of a different religious or political conviction comply or are able to comply;
  - (b) which is not reasonable having regard to the circumstances of the case; and

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**Part IV** Discrimination on the ground of religious or political conviction

**Division 2** Discrimination in work

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- (c) with which the aggrieved person does not or is not able to comply.

**Division 2 — Discrimination in work**

**54. Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person's religious or political conviction —
  - (a) in the arrangements made for the purpose of determining who should be offered employment;
  - (b) in determining who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's religious or political conviction —
  - (a) in the terms or conditions of employment that 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;
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.
- (3) It is unlawful for an employer to discriminate against an employee on the ground of the employee's religious conviction by refusing the employee permission to carry out a religious practice during working hours being a practice —
  - (a) of a kind recognised as necessary or desirable by persons of the same religious conviction as that of the employee;
  - (b) the performance of which during working hours is reasonable having regard to the circumstances of the employment; and

- (c) that does not subject the employer to any detriment.
- (4) Subsections (1), (2) and (3) do not apply to employment —
  - (a) to perform domestic duties on the premises on which the employer resides; or
  - (b) where the number of persons employed by the employer, disregarding any persons employed to perform domestic duties, does not exceed 5.

**55. Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a person on the ground of the person's religious or political conviction —
  - (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 or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's religious or political conviction —
  - (a) in the terms or conditions that the principal affords the commission agent as a commission agent;
  - (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 the position as a commission agent;
  - (c) by terminating the engagement; or
  - (d) by subjecting the commission agent to any other detriment.

**56. Discrimination against contract workers**

It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's religious or political conviction —

- (a) in the terms or conditions 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 the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
- (d) by subjecting the contract worker to any other detriment.

**57. Partnerships**

- (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate against a person on the ground of the person's religious or political conviction —
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's religious or political conviction —
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.



- (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's religious or political conviction —
- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
  - (b) by expelling the partner from the partnership; or
  - (c) by subjecting the partner to any other detriment.

**58. Professional or trade organisations, etc.**

- (1) This section applies to an organisation of employees and to an organisation of employers.
- (2) It is unlawful for an organisation to which this section applies or for a committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is not a member of the organisation on the ground of the person's religious or political conviction —
- (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.
- (3) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is a member of the organisation on the ground of the person's religious or political conviction —
- (a) by denying the person access, or limiting the person's access, to any benefit provided by the organisation;
  - (b) by depriving the person of membership or varying the terms of membership; or
  - (c) by subjecting the person to any other detriment.

**59. Qualifying bodies**

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation to discriminate against a person on the ground of the person's religious or political conviction —

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

**60. Employment agencies**

It is unlawful for an employment agency to discriminate against a person on the ground of the person's religious or political conviction —

- (a) by refusing to provide the person with any of its services;
- (b) in the terms or conditions 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**

**61. Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's religious or political conviction —
  - (a) by refusing or failing to accept the person's application for admission as a student; or

- (b) in the terms or conditions on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of the student's religious or political conviction —
  - (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 an educational authority prescribed by regulations in relation to such circumstances, if any, as may be prescribed by regulations.

**62. Goods, services and facilities**

It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's religious or political conviction —

- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
- (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
- (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.

**63. Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's religious or political conviction —
  - (a) by refusing the other person's application for accommodation;
  - (b) in the terms or conditions on which accommodation is offered to the other person; or
  - (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.
  
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's religious or political conviction —
  - (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person;
  - (b) by evicting the other person from accommodation occupied by the other person; or
  - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.
  
- (3) Nothing in this section applies to or in respect of —
  - (a) the provision of accommodation in premises if —
    - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
    - (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (i) or a near relative of such a person;
  - (b) accommodation provided by a religious body.

**64. Clubs**

- (1) It is unlawful for a club, the committee of management of a club, or a member of the committee of management of a club to discriminate against a person who is not a member of the club on the ground of the person's religious or political conviction —
  - (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the club is prepared to admit the person to membership.
  
- (2) It is unlawful for a club, the committee of management of a club, or a member of the committee of management of a club to discriminate against a person who is a member of the club on the ground of the person's religious or political conviction —
  - (a) in the terms or conditions of membership that are afforded to the member;
  - (b) by refusing or failing to accept the member's application for a particular class or type of membership;
  - (c) by denying the member access, or limiting the member's access, to any benefit provided by the club;
  - (d) by depriving the member of membership or varying the terms of the member's membership; or
  - (e) by subjecting the member to any other detriment.

**65. Application forms, etc.**

Where, by virtue of a provision of Division 2 or this Division, it would be unlawful in particular circumstances for a person to discriminate against another person, on the ground of the other person's religious or political conviction, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons of a different religious or political conviction would not, in circumstances that are the same or not materially different, be requested or required to provide.

**Division 4 — Exceptions to Part IV**

**66. Exceptions to sections 54 to 56**

- (1) Nothing in section 54, 55 or 56 renders unlawful discrimination by an employer, principal or person —
- (a) where the employer or principal is a private educational authority; or
  - (b) in the case of employment or work in a hospital or other place where a medical or other health related service is provided, where the employer or principal is a religious body,

if the duties of the employment or work are for the purposes of, or in connection with, or otherwise involve or relate to the participation of the employee in any religious observance or practice.

- (2) Nothing in section 54, 55 or 56 renders unlawful discrimination by an employer, principal or person on the ground of the holding or not holding of any political conviction or the engaging in or refusal or failure to engage in any lawful political activities with respect to the offering of employment or work to a person as an officer within the meaning of the *Electoral Act 1907*, or as a ministerial adviser or officer, employee or worker for a political party, member of the electoral staff of another person, or in other similar employment or work.

*[Section 66 amended by No. 43 of 1996 s. 28.]*

## **Part IVA — Discrimination on the ground of impairment**

*[Heading inserted by No. 40 of 1988 s. 8.]*

### **Division 1 — General**

*[Heading inserted by No. 40 of 1988 s. 8.]*

#### **66A. Discrimination on ground of impairment**

- (1) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of impairment if, on the ground of —
- (a) the impairment of the aggrieved person;
  - (b) a characteristic that appertains generally to persons having the same impairment as the aggrieved person;
  - (c) a characteristic that is generally imputed to persons having the same impairment as the aggrieved person; or
  - (d) a requirement that the aggrieved person be accompanied by or in possession of any palliative device in respect of that person’s impairment,

the discriminator treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person who does not have such an impairment.

- (1a) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of impairment if, on the ground of —
- (a) the impairment of;
  - (b) a characteristic that appertains generally to persons having the same impairment as; or

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- (c) a characteristic that is generally imputed to persons having the same impairment as,
- any relative or associate of the aggrieved person, the discriminator treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person who does not have such an impairment.
- (2) For the purposes of subsection (1) or (1a), circumstances in which a person treats or would treat another person who has, or has a relative or associate who has, an impairment are not materially different by reason of the fact that different accommodations or services may be required by the person who has an impairment.
- (3) For the purposes of this Act, a person (in this subsection referred to as the **“discriminator”**) discriminates against another person (in this subsection referred to as the **“aggrieved person”**) on the ground of impairment if the discriminator requires the aggrieved person to comply with a requirement or condition —
- (a) with which a substantially higher proportion of persons who do not have the same impairment as the aggrieved person comply or are able to comply;
- (b) which is not reasonable having regard to the circumstances of the case; and
- (c) with which the aggrieved person does not or is not able to comply.
- (4) For the purposes of this Act, a person (in this subsection referred to as the **“discriminator”**) discriminates against another person who is blind, deaf, partially blind or partially deaf (in this subsection referred to as the **“aggrieved person”**) if the discriminator treats the aggrieved person less favourably on the ground of the fact that the aggrieved person possesses, or is accompanied by, a guide dog or hearing dog, or on the ground of any matter related to that fact, whether or not it is the



discriminator's practice to treat less favourably any person who possesses, or is accompanied by, a dog, but nothing in this Act affects the liability of the aggrieved person for any injury, loss or damage caused by the guide dog or hearing dog.

*[Section 66A inserted by No. 40 of 1988 s. 8; amended by No. 74 of 1992 s. 17 and 40.]*

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

*[Heading inserted by No. 40 of 1988 s. 8.]*

#### **66B. Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person's impairment —
  - (a) in the arrangements made for the purpose of determining who should be offered employment;
  - (b) in determining who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.
  
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee's impairment —
  - (a) in the terms or conditions of employment that 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;
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to any other detriment.
  
- (3) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other person's impairment, in connection with employment to perform domestic duties on the premises on which the first-mentioned person resides.

*[Section 66B inserted by No. 40 of 1988 s. 8.]*

**66C.    Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a person on the ground of the person's impairment —
  - (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 or conditions on which the person is engaged as a commission agent.
  
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's impairment —
  - (a) in the terms or conditions that the principal affords the commission agent as a commission agent;
  - (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 the position as a commission agent;
  - (c) by terminating the engagement; or
  - (d) by subjecting the commission agent to any other detriment.

*[Section 66C inserted by No. 40 of 1988 s. 8.]*

**66D.    Discrimination against contract workers**

- (1) It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's impairment —
  - (a) in the terms or conditions 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 the contract worker's access, to any benefit associated with

the work in respect of which the contract with the employer is made; or

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

- (2) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other person's impairment, in connection with work to perform domestic duties on the premises on which the first-mentioned person resides.

*[Section 66D inserted by No. 40 of 1988 s. 8.]*

**66E. Partnerships**

- (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate against a person on the ground of the person's impairment —
- (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's impairment —
- (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's impairment —
- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
  - (b) by expelling the partner from the partnership; or

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

*[Section 66E inserted by No. 40 of 1988 s. 8.]*

**66F. Professional or trade organisations, etc.**

(1) This section applies to an organisation of employees and to an organisation of employers.

(2) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is not a member of the organisation on the ground of the person's impairment —

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

(b) in the terms or conditions on which the organisation is prepared to admit the person to membership.

(3) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is a member of the organisation on the ground of the person's impairment —

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

*[Section 66F inserted by No. 40 of 1988 s. 8.]*

**66G. Qualifying bodies**

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the

engaging in of an occupation to discriminate against a person on the ground of the person's impairment —

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

*[Section 66G inserted by No. 40 of 1988 s. 8.]*

**66H. Employment agencies**

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

- (a) by refusing to provide the person with any of its services;
- (b) in the terms or conditions 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.

*[Section 66H inserted by No. 40 of 1988 s. 8.]*

**Division 3 — Discrimination in other areas**

*[Heading inserted by No. 40 of 1988 s. 8.]*

**66I. Education**

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

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- (b) in the terms or conditions 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 the student's impairment —
  - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority;
  - (b) by expelling the student; or
  - (c) by subjecting the student to any other detriment.
- (3) Nothing in this section applies to or in respect of a refusal or failure to accept a person's application for admission as a student at an educational institution that is conducted solely for students who have an impairment which the applicant does not have.
- (4) Nothing in this section applies to or in respect of a refusal or failure to accept a person's application for admission as a student at an educational institution where the person, if admitted as a student by the educational authority, would require services or facilities that are not required by students who do not have an impairment and the provision of which would impose unjustifiable hardship on the educational authority.

*[Section 66I inserted by No. 40 of 1988 s. 8.]*

**66J. Access to places and vehicles**

- (1) It is unlawful for a person (in this section referred to as the **“discriminator”**) to discriminate against another person (in this section referred to as the **“aggrieved person”**) on the ground of the aggrieved person's impairment —
  - (a) by refusing to allow the aggrieved person access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;

- (b) in the terms on which the discriminator is prepared to allow the aggrieved person access to or the use of any such place or vehicle;
  - (c) by refusing to allow the aggrieved person the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not;
  - (d) in the terms on which the discriminator is prepared to allow the aggrieved person the use of any such facilities; or
  - (e) by requiring the aggrieved person to leave or cease to use any such place or vehicle or any such facilities.
- (2) Nothing in this section applies to or in respect of discrimination arising out of the fact that —
- (a) premises, or a part of premises, or a vehicle are so constructed as to be inaccessible to the aggrieved person; or
  - (b) the owner or occupier of premises or a vehicle fails to ensure that every part, or a particular part, of the premises or vehicle is accessible to the aggrieved person,

but this subsection does not apply to a building to which the *Uniform Building Amendment By-laws (No. 2) 1985*<sup>4</sup> apply.

[Section 66J inserted by No. 40 of 1988 s. 8; amended by No. 57 of 1997 s. 55(2).]

**66K. Goods, services and facilities**

- (1) It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's impairment —
- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;

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- (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
  - (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.
- (2) This section does not apply to discrimination against a person on the ground of impairment in relation to the provision of a service or facility where, in consequence of the person's impairment, the person requires the service to be performed or the facility to be made available in a special manner that without unjustifiable hardship —
  - (a) cannot be provided by the person providing the service or making the facility available; or
  - (b) cannot be provided by the person providing the service or making the facility available except on more onerous terms.

*[Section 66K inserted by No. 40 of 1988 s. 8.]*

**66L. Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's impairment —
  - (a) by refusing the other person's application for accommodation;
  - (b) in the terms or conditions on which accommodation is offered to the other person; or
  - (c) by deferring the other person's application for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.



- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's impairment —
- (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person;
  - (b) by evicting the other person from accommodation occupied by the other person;
  - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person; or
  - (d) by refusing to permit the other person to make reasonable alterations to accommodation occupied by that person where —
    - (i) that person has undertaken to restore the accommodation to its condition before alteration on leaving the accommodation;
    - (ii) in all the circumstances of the case it is likely that that person will perform the undertaking;
    - (iii) in all the circumstances of the case, the action required to restore the accommodation to its condition before alteration is reasonably practical;
    - (iv) the alteration does not necessitate alteration of the premises of any other occupier; and
    - (v) the alteration is at that other person's own expense.
- (3) Nothing in this section applies to or in respect of —
- (a) the provision of accommodation in premises if —
    - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and

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- (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (i) or near relatives of such a person;
- (b) accommodation provided by a charitable or other voluntary body solely for persons who have a particular impairment; or
- (c) the provision of accommodation in premises if special services or facilities would be required by the person with an impairment 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.

*[Section 66L inserted by No. 40 of 1988 s. 8.]*

**66M. Clubs and incorporated associations**

- (1) It is unlawful for a club or incorporated association, committee of management of a club or incorporated association or a member of the committee of management of a club or incorporated association to discriminate against a person who is not a member of the club or incorporated association on the ground of the person's impairment —
  - (a) by refusing or failing to accept the person's application for membership; or
  - (b) in the terms or conditions on which the club or incorporated association is prepared to admit the person to membership.
- (2) It is unlawful for a club or incorporated association, the committee of management of a club or incorporated association or a member of the committee of management of a club or incorporated association to discriminate against a person who is a member of the club or incorporated association on the ground of the member's impairment —
  - (a) in the terms or conditions of membership that are afforded to the member;

- (b) by refusing or failing to accept the member's application for a particular class or type of membership;
  - (c) by denying the member access, or limiting the member's access, to any benefit provided by the club or incorporated association;
  - (d) by depriving the member of membership or varying the terms of membership; or
  - (e) by subjecting the member to any other detriment.
- (3) Nothing in subsection (1) or (2) applies to or in respect of a club or incorporated association that has as its principal object the provision of benefits for persons who have a particular impairment.
- (4) In determining whether the principal object of a club or incorporated association is as referred to in subsection (3), regard shall be had to —
- (a) the essential character of the club or incorporated association;
  - (b) the extent to which the affairs of the club or incorporated association are so conducted that the persons primarily enjoying the benefits of membership do have the particular impairment; and
  - (c) any other relevant circumstance.
- (5) This section does not apply to discrimination of the kind referred to in subsection (2)(c) where in consequence of the person's impairment the person requires the benefit to be provided in a special manner and the benefit cannot without unjustifiable hardship be so provided by the club or incorporated association.

*[Section 66M inserted by No. 40 of 1988 s. 8.]*

**66N.    Discrimination in sport on ground of impairment**

- (1) It is unlawful for a person to discriminate against another person on the ground of the other person's impairment by excluding that person from a sporting activity.
- (2) In subsection (1), reference to a sporting activity includes a reference to an administrative or coaching activity in relation to any sport.
- (3) Subsection (1) does not apply to discrimination against a person —
  - (a) if the person is not adequately capable of performing the actions required in relation to the sporting activity;
  - (b) where 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) where a sporting activity is conducted only for persons who have a particular impairment and the first-mentioned person does not have that impairment.

*[Section 66N inserted by No. 40 of 1988 s. 8.]*

**66O.    Application forms, etc.**

Where, by virtue of a provision of Division 2 or this Division, it would be unlawful, in particular circumstances, for a person to discriminate against another person, on the ground of the other person's impairment, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons who do not have an impairment would not, in circumstances that are the same or not materially different, be requested or required to provide.

*[Section 66O inserted by No. 40 of 1988 s. 8.]*

**66P. Superannuation schemes and provident funds**

It is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of the person's impairment —

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

except to the extent that —

- (aa) the discrimination —
    - (i) is based upon actuarial or statistical data from a source upon which it is reasonable to rely or where there is no such data, on such other data as may be available; and
    - (ii) is reasonable having regard to the data, if any, and other relevant factors;
- or
- (bb) where no such actuarial or statistical data is available, the discrimination is reasonable having regard to any other relevant factors.

*[Section 66P inserted by No. 40 of 1988 s. 8.]*

**Division 4 — Exceptions to Part IVA**

*[Heading inserted by No. 40 of 1988 s. 8.]*

**66Q. Exceptions to certain work related provisions in Division 2**

- (1) Nothing in section 66B(1)(b) or (2)(c), 66C(1)(b) or (2)(c) or 66E(1)(a) or (2)(a) renders unlawful discrimination by an employer, principal or person against a person on the ground of the impairment of that person if it is reasonable for the

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employer, principal or person to conclude, on such grounds as having regard to the circumstances of the case and having taken all reasonable steps to obtain relevant and necessary information concerning the impairment it is reasonable for the employer, principal or person to rely on, that the person with the impairment because of that impairment —

- (a) would be unable to carry out work reasonably required to be performed in the course of the employment or engagement concerned; or
  - (b) would, in order to carry out that work, require services or facilities that are not required by persons who do not have an impairment and the provision of which would impose an unjustifiable hardship on the employer, principal or person.
- (2) Nothing in section 66B(1)(c), (2)(a) or (b), section 66C(1)(c), (2)(a) or (b), section 66D(1)(a) or (c) or section 66E(1)(b), (2)(b) or (3)(a) renders unlawful discrimination by an employer, principal or person against a person on the ground of the impairment of that person in respect of any determination by the employer, principal or person of any terms or conditions relating to the person with the impairment that are reasonable having regard to either or both of the following —
- (a) any limitation or restriction that the impairment would or does impose on the person's ability to carry out the work required to be performed in the course of the employment or engagement concerned;
  - (b) any services or facilities that would be or are required by the person with the impairment in order to carry out the work referred to in paragraph (a) and that would not be or are not required by persons who do not have an impairment.
- (3) Nothing in section 66G renders unlawful discrimination by an authority or body to which that section refers against a person on the ground of the impairment of that person if, with respect to the work required to be performed in the course of the

practice of the profession, the carrying on of the trade or business or the engaging in of the occupation concerned, it is reasonable for the authority or body to conclude on such grounds as having regard to the circumstances of the case and having taken all reasonable steps to obtain relevant and necessary information concerning the impairment it is reasonable for the authority or body to rely on, that the person with the impairment would be unable to carry out that work.

*[Section 66Q inserted by No. 40 of 1988 s. 8; amended by No. 74 of 1992 s. 18.]*

**66R. Measures intended to achieve equality**

Nothing in Division 2 or 3 renders it unlawful to do an act a purpose of which is —

- (a) to ensure that persons who have an impairment have equal opportunities with other persons in circumstances in relation to which provision is made by this Act; or
- (b) to afford persons who have an impairment access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare.

*[Section 66R inserted by No. 40 of 1988 s. 8.]*

**66S. Exception — genuine occupational qualification**

Nothing in this Part 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 with a particular impairment 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

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visual images for which a person with a particular impairment is required for reasons of authenticity;

- (c) providing persons with a particular impairment with services for the purpose of promoting their welfare where those services can most effectively be provided by a person with the same impairment.

*[Section 66S inserted by No. 40 of 1988 s. 8.]*

**66T. Insurance**

Nothing in this Part renders it unlawful for a person to discriminate against a person with an impairment on the ground of that person's impairment with respect to the terms on which an annuity, a life assurance policy, a policy of insurance against accident or any other policy of insurance is offered to or may be obtained by the person with the impairment where the discrimination —

- (a) is based upon actuarial or statistical data from a source on which it is reasonable to rely or, where there is no such data, on such other data as may be available; and
- (b) is reasonable having regard to the data, if any, and other relevant factors.

*[Section 66T inserted by No. 40 of 1988 s. 8.]*

**66U. Regulations**

- (1) The Governor may make regulations providing that a provision of this Part shall not have effect in relation to a person who has an impairment by reason of suffering from an infectious disease.
- (2) Regulations under subsection (1) —
  - (a) may prescribe terms and conditions subject to which a provision of this Act shall not have effect; and
  - (b) may be expressed so as to provide that the provision shall not have effect in relation to such a person generally or in such circumstances as are prescribed or



to such an extent as is prescribed or in relation to such activities as are prescribed.

- (3) In this section “**infectious disease**” has the same meaning as in the *Health Act 1911*.

*[Section 66U inserted by No. 40 of 1988 s. 8.]*

## **Part IVB — Discrimination on the ground of age**

*[Heading inserted by No. 74 of 1992 s. 19.]*

### **Division 1 — General**

*[Heading inserted by No. 74 of 1992 s. 19.]*

#### **66V. Discrimination on ground of age**

- (1) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of age if, on the ground of —
- (a) the age of the aggrieved person;
  - (b) a characteristic that appertains generally to persons of the same age as the aggrieved person; or
  - (c) a characteristic that is generally imputed to persons of the same age as the aggrieved person,

the discriminator treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the discriminator treats or would treat a person who is not of that age.

- (2) For the purposes of sections 66ZE, 66ZF and 66ZG, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of age if, on the ground of —
- (a) the age of;
  - (b) a characteristic that appertains generally to persons of the same age as; or
  - (c) a characteristic that is generally imputed to persons of the same age as,

any relative or associate of the aggrieved person, the discriminator treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not

materially different, the discriminator treats or would treat a person who is not of such an age.

- (3) For the purposes of this Act, a person (in this subsection referred to as the “**discriminator**”) discriminates against another person (in this subsection referred to as the “**aggrieved person**”) on the ground of age if the discriminator requires the aggrieved person to comply with a requirement or condition —
- (a) with which a substantially higher proportion of persons who are not of the same age as the aggrieved person comply or are able to comply;
  - (b) which is not reasonable having regard to the circumstances of the case; and
  - (c) with which the aggrieved person does not or is not able to comply.

*[Section 66V inserted by No. 74 of 1992 s. 19.]*

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

*[Heading inserted by No. 74 of 1992 s. 19.]*

#### **66W. Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of the person’s age —
- (a) in the arrangements made for the purpose of determining who should be offered employment;
  - (b) in determining who should be offered employment; or
  - (c) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of the employee’s age —
- (a) in the terms or conditions of employment that the employer affords the employee;
  - (b) by denying the employee access, or limiting the employee’s access, to opportunities for promotion,

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transfer or training, or to any other benefits associated with employment;

(c) by dismissing the employee; or

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

- (3) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other person's age, in connection with employment to perform domestic duties within a private household in which the employer resides.

*[Section 66W inserted by No. 74 of 1992 s. 19.]*

**66X. Discrimination against commission agents**

- (1) It is unlawful for a principal to discriminate against a person on the ground of the person's age —
- (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 or conditions on which the person is engaged as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of the commission agent's age —
- (a) in the terms or conditions that the principal affords the commission agent as a commission agent;
  - (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 the position as a commission agent;
  - (c) by terminating the engagement; or

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

*[Section 66X inserted by No. 74 of 1992 s. 19.]*

**66Y. Discrimination against contract workers**

- (1) It is unlawful for a principal to discriminate against a contract worker on the ground of the contract worker's age —
  - (a) in the terms or conditions 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 the contract worker's access, to any benefit associated with the work in respect of which the contract with the employer is made; or
  - (d) by subjecting the contract worker to any other detriment.
- (2) Nothing in subsection (1) renders it unlawful for a person to discriminate against another person, on the ground of the other person's age, in connection with work to perform domestic duties within a private household in which the principal resides.

*[Section 66Y inserted by No. 74 of 1992 s. 19.]*

**66Z. Partnerships**

- (1) It is unlawful for 6 or more persons being persons who are proposing to form themselves into a partnership to discriminate against a person on the ground of the person's age —
  - (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.

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- (2) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a person on the ground of the person's age —
- (a) in determining who should be invited to become a partner in the partnership; or
  - (b) in the terms or conditions on which the person is invited to become a partner in the partnership.
- (3) It is unlawful for any one or more of the partners in a partnership consisting of 6 or more partners to discriminate against a partner in the partnership on the ground of the partner's age —
- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from being a partner in the partnership;
  - (b) by expelling the partner from the partnership; or
  - (c) by subjecting the partner to any other detriment.

*[Section 66Z inserted by No. 74 of 1992 s. 19.]*

**66ZA. Professional or trade organisations, etc.**

- (1) This section applies to an organisation of employees and to an organisation of employers.
- (2) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate against a person who is not a member of the organisation on the ground of the person's age —
- (a) by refusing or failing to accept the application of the person for membership; or
  - (b) in the terms or conditions on which the organisation is prepared to admit the person to membership.
- (3) It is unlawful for an organisation to which this section applies or for the committee of management of such an organisation or for a member of such a committee of management to discriminate

against a person who is a member of the organisation on the ground of the person's age —

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

*[Section 66ZA inserted by No. 74 of 1992 s. 19.]*

**66ZB. Qualifying bodies**

It is unlawful for an authority or body that is empowered to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or business or the engaging in of an occupation to discriminate against a person on the ground of the person's age —

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

*[Section 66ZB inserted by No. 74 of 1992 s. 19.]*

**66ZC. Employment agencies**

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

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

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

*[Section 66ZC inserted by No. 74 of 1992 s. 19.]*

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*[Heading inserted by No. 74 of 1992 s. 19.]*

**66ZD. Education**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of the person's age —
  - (a) by refusing or failing to accept the application of the person for admission as a student; or
  - (b) in the terms or conditions 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 the student's age —
  - (a) by denying the student access, or limiting the student's access, to any benefit provided by the educational authority;
  - (b) by expelling the student; or
  - (c) by subjecting the student to any other detriment.
- (3) It is unlawful for an educational authority or other person to discriminate against a person (in this subsection referred to as **“the aggrieved person”**) on the ground of the aggrieved person's age —
  - (a) by refusing or failing to accept the aggrieved person's application for a scholarship or like benefit provided by the educational authority or other person;
  - (b) by refusing or failing to award a scholarship or like benefit referred to in paragraph (a) to the aggrieved person; or
  - (c) in the terms or conditions on which the educational authority or other person is prepared to award a



scholarship or like benefit referred to in paragraph (a) to the aggrieved person.

- (4) Nothing in this section applies to or in respect of a refusal or failure to accept an application for admission as a student at an educational institution under a mature age admission scheme conducted by the educational institution, which application is made by a person whose age is below the minimum age fixed under that scheme for admission.

*[Section 66ZD inserted by No. 74 of 1992 s. 19.]*

**66ZE. Access to places and vehicles**

- (1) It is unlawful for a person (in this section referred to as the **“discriminator”**) to discriminate against another person (in this section referred to as the **“aggrieved person”**) on the ground of the aggrieved person’s age —
- (a) by refusing to allow the aggrieved person access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;
  - (b) in the terms on which the discriminator is prepared to allow the aggrieved person access to or the use of any such place or vehicle;
  - (c) by refusing to allow the aggrieved person the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not;
  - (d) in the terms on which the discriminator is prepared to allow the aggrieved person the use of any such facilities;  
or
  - (e) by requiring the aggrieved person to leave or cease to use any such place or vehicle or any such facilities.

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- (2) Nothing in this section applies to or in respect of bona fide benefits, including concessions, provided to a person by reason of his or her age.

*[Section 66ZE inserted by No. 74 of 1992 s. 19.]*

**66ZF. Goods, services and facilities**

- (1) It is unlawful for a person who, whether for payment or not, provides goods or services, or makes facilities available, to discriminate against another person on the ground of the other person's age —
- (a) by refusing to provide the other person with those goods or services or to make those facilities available to the other person;
  - (b) in the terms or conditions on which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person; or
  - (c) in the manner in which the first-mentioned person provides the other person with those goods or services or makes those facilities available to the other person.
- (2) Nothing in subsection (1) applies to or in respect of —
- (a) bona fide benefits, including concessions, provided 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.

*[Section 66ZF inserted by No. 74 of 1992 s. 19.]*

**66ZG. Accommodation**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's age —
- (a) by refusing the application of the other person for accommodation;

- (b) in the terms or conditions on which accommodation is offered to the other person; or
  - (c) by deferring the application of the other person for accommodation or according to the other person a lower order of precedence in any list of applicants for that accommodation.
- (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's age —
- (a) by denying the other person access, or limiting the other person's access, to any benefit associated with accommodation occupied by the other person;
  - (b) by evicting the other person from accommodation occupied by the other person; or
  - (c) by subjecting the other person to any other detriment in relation to accommodation occupied by the other person.
- (3) Nothing in this section applies to or in respect of —
- (a) the provision of accommodation in premises if —
    - (i) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
    - (ii) the accommodation provided in those premises is for no more than 3 persons other than a person referred to in subparagraph (i) or near relatives of such a person;
  - (b) accommodation provided by a religious body;
  - (c) accommodation provided by a charitable or other voluntary body solely for persons who are of a particular age;
  - (d) the provision of bona fide benefits, including concessions, to a person by reason of his or her age.

*[Section 66ZG inserted by No. 74 of 1992 s. 19.]*

**66ZH. Land**

- (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of the other person's age —
  - (a) by refusing or failing to dispose of an estate or interest in land to the other person; or
  - (b) in the terms or conditions on which an estate or interest in land is offered to the other person.
- (2) Without limiting the generality of section 70(1), this section does not apply in relation to a disposal of an estate or interest in land —
  - (a) by will or by way of gift; or
  - (b) within a complex of residential premises (whether or not including hostel units) and appurtenant land, occupied or intended for occupation by persons of a particular age or particular ages.

*[Section 66ZH inserted by No. 74 of 1992 s. 19.]*

**66ZI. Clubs and incorporated associations**

- (1) It is unlawful for a club or incorporated association, the committee of management of a club or incorporated association or a member of the committee of management of a club or incorporated association to discriminate against a person who is not a member of the club or incorporated association on the ground of the person's age —
  - (a) by refusing or failing to accept the application of the person for membership; or
  - (b) in the terms or conditions on which the club or incorporated association is prepared to admit the person to membership.
- (2) It is unlawful for a club or incorporated association, the committee of management of a club or incorporated association or a member of the committee of management of a club or

incorporated association to discriminate against a person who is a member of the club or incorporated association on the ground of the member's age —

- (a) in the terms or conditions of membership that are afforded to that member;
  - (b) by refusing or failing to accept the application of that member for a particular class or type of membership;
  - (c) by denying that member access, or limiting the member's access, to any benefit provided by the club or incorporated association;
  - (d) by depriving that member of membership or varying the terms of membership; or
  - (e) by subjecting that member to any other detriment.
- (3) Nothing in subsection (1) or (2) applies to or in respect of a club or incorporated association —
- (a) that has as its principal object the provision of benefits for persons who are of a particular age; or
  - (b) so as to prevent —
    - (i) the retention by the club or incorporated association of different categories of membership for members of different ages; or
    - (ii) the provision of bona fide benefits, including concessions, to a person by reason of his or her age.
- (4) In determining whether the principal object of a club or incorporated association is as referred to in subsection (3)(a), regard shall be had to —
- (a) the essential character of the club or incorporated association;
  - (b) the extent to which the affairs of the club or incorporated association are so conducted that the persons primarily enjoying the benefits of membership are of the relevant age; and

- (c) any other relevant circumstance.

*[Section 66ZI inserted by No. 74 of 1992 s. 19.]*

**66ZJ. Discrimination in sport on ground of age**

- (1) It is unlawful for a person to discriminate against another person on the ground of the other person's age by excluding that person from a sporting activity.
- (2) In subsection (1), reference to a sporting activity includes a reference to an administrative, coaching, refereeing or umpiring activity in relation to any sport.
- (3) Subsection (1) does not apply to discrimination against a person if the relevant sporting activity is —
- (a) a competitive sporting activity; and
  - (b) so conducted that competition is only permitted between persons of a particular age.
- (4) Subsection (3) does not apply to or in relation to persons participating or wishing to participate in —
- (a) an administrative, coaching, refereeing or umpiring activity in relation to any sport; or
  - (b) any prescribed sporting activity.

*[Section 66ZJ inserted by No. 74 of 1992 s. 19.]*

**66ZK. Application forms, etc.**

If, by virtue of a provision of Division 2 or this Division, it would be unlawful, in particular circumstances, for a person to discriminate against another person, on the ground of the other person's age, in doing a particular act, it is unlawful for the first-mentioned person to request or require the other person to provide, in connection with or for the purposes of the doing of the act, information (whether by way of completing a form or otherwise) that persons who are not of that age would not, in circumstances that are the same or not materially different, be requested or required to provide.

*[Section 66ZK inserted by No. 74 of 1992 s. 19.]*

**66ZL. Superannuation schemes and provident funds**

- (1) It is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against another person on the ground of the other person's age —
- (a) by providing a scheme or fund that discriminates, or requires or authorises discrimination, against the other person or that would, if the other person were to become a member of that scheme or fund, discriminate, or require or authorise discrimination, against that person; or
  - (b) in the manner in which the first-mentioned person administers the scheme or fund,

except to the extent that —

- (c) the discrimination —
  - (i) happens because of the application of a standard in force under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth; or
  - (ii) is required in order to comply with, or obtain a benefit of, or avoid a penalty under, any other Act of the Commonwealth;
- (d) the discrimination —
  - (i) is based upon actuarial or statistical data from a source upon which it is reasonable to rely or, if there is no such data, on such other data as may be available; and
  - (ii) is reasonable having regard to the data referred to in subparagraph (i), if any, and other relevant factors;
- (e) if paragraph (c) does not apply and no data referred to in paragraph (d)(i) is available, the discrimination is reasonable having regard to any other relevant factors; or
- (f) the discrimination is based on an existing condition and —
  - (i) happens not more than 12 months after the commencement of the amending section; or

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- (ii) relates to a person who became a member of the scheme or fund before the commencement of the amending section or not more than 12 months after that commencement.

(2) In subsection (1)(f) and this subsection —

**“amending section”** means section 19 of the *Equal Opportunity Amendment Act 1992*<sup>1</sup>;

**“existing condition”** means a superannuation scheme or provident fund condition in existence at the commencement of the amending section.

*[Section 66ZL inserted by No. 74 of 1992 s. 19; amended by No. 42 of 1997 s. 4.]*

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*[Heading inserted by No. 74 of 1992 s. 19.]*

**66ZM. Exceptions to Division 2**

- (1) Nothing in Division 2 or 3 renders unlawful discrimination by an employer, principal or person against another person on the ground of the other person’s age in the terms and conditions on which —
  - (a) employment is offered or afforded;
  - (b) engagement is offered or afforded;
  - (c) contract work is allowed;
  - (d) access to or the use of places or vehicles is allowed; or
  - (e) goods, services or facilities are provided or made available,

as the case requires, if those terms and conditions are imposed in order to comply with health and safety considerations which are reasonable in the circumstances.

- (2) In determining for the purposes of subsection (1) what health and safety considerations are reasonable in all the circumstances, regard shall be had to all relevant circumstances



of the particular case, including the effect of the discrimination in question on the person against whom that discrimination takes place.

*[Section 66ZM inserted by No. 74 of 1992 s. 19; amended by No. 42 of 1997 s. 5.]*

**66ZN. Retirement**

- (1) Nothing in section 66W, 66X, 66Y or 66Z renders it unlawful to offer to a person who is an employee, commission agent, contract worker or partner, on the ground of the person's age, participation in a voluntary phased-in retirement scheme, voluntary retirement scheme, retirement incentives scheme, severance scheme or other like scheme.
- (2) Nothing in this Part renders it unlawful for a person to discriminate in accordance with an Act against a person who holds the office of —
  - (a) Judge within the meaning of the *Judges' Retirement Act 1937*;
  - (b) Master within the meaning of the *Supreme Court Act 1935*;
  - (c) District Court Judge within the meaning of the *District Court of Western Australia Act 1969*;
  - (d) Family Court Judge or acting Family Court Judge within the meaning of the *Family Court Act 1997*;
  - (e) Judge or magistrate within the meaning of the *Children's Court of Western Australia Act 1988*;
  - (f) magistrate within the meaning of the *Magistrates Court Act 2004*;
  - (g) President or Commissioner within the meaning of the *Industrial Relations Act 1979*;
  - (h) the Judge within the meaning of the *Liquor Licensing Act 1988*; or
  - (i) Solicitor-General or acting Solicitor-General within the meaning of the *Solicitor-General Act 1969*,

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on the ground of the person's age by requiring that person to retire from that office.

*[Section 66ZN inserted by No. 74 of 1992 s. 19; amended by No. 42 of 1997 s. 6; No. 41 of 1997 s. 31; No. 59 of 2004 s. 141.]*

**66ZO. Contracts with minors**

Nothing in Division 2 or 3 renders it unlawful for a person to refuse to enter into a contract with a person who is a minor if that contract would, if entered into, be unenforceable at common law.

*[Section 66ZO inserted by No. 74 of 1992 s. 19.]*

**66ZP. Measures intended to achieve equality**

Nothing in Division 2 or 3 renders it unlawful to do an act a purpose of which is —

- (a) to ensure that persons who are of a particular age have equal opportunities with other persons in circumstances in relation to which provision is made by this Act; or
- (b) to afford persons who are of a particular age access to facilities, services or opportunities to meet their special needs in relation to employment, education, training or welfare.

*[Section 66ZP inserted by No. 74 of 1992 s. 19.]*

**66ZQ. Exception — genuine occupational qualification**

Nothing in this Part applies to or in respect of any work or employment if 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 age 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 age is required for reasons of authenticity;

- (c) providing persons of a particular age with services for the purpose of promoting their welfare when those services can most effectively be provided by a person of a particular age.

*[Section 66ZQ inserted by No. 74 of 1992 s. 19.]*

**66ZR. Insurance**

Nothing in this Part renders it unlawful for a person to discriminate against a person who is of a particular age on the ground of the person's age with respect to the terms on which an annuity, a life assurance policy, a policy of insurance against accident or any other policy of insurance is offered to or may be obtained by the person of that age if that discrimination —

- (a) is based upon 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
- (b) is reasonable having regard to the data referred to in paragraph (a), if any, and other relevant factors.

*[Section 66ZR inserted by No. 74 of 1992 s. 19.]*

**66ZS. Acts done under statutory authority, etc.**

- (1) Nothing in this Part 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 written law which is in force when this Part comes into operation, not being —
    - (i) the rules of a society registered under the *Co-operative and Provident Societies Act 1903*;
    - (ii) the rules of a credit union within the meaning of the *Credit Unions Act 1979*<sup>3</sup>;

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- (iii) the rules of a society registered under the *Friendly Societies (Western Australia) Code 1999*; or
    - (iv) the rules of a society registered under the *Housing Societies Act 1976*;
  - or
  - (b) a provision of the *Minimum Conditions of Employment Act 1993*, an award or industrial agreement within the meaning of the *Industrial Relations Act 1979* or an award within the meaning of the *Industrial Relations Act 1988* of the Commonwealth insofar as that provision relates to the payment of wages or other remuneration to employees under the age of 21 or to the maintenance of a ratio between employees under a certain age and employees of or above that age, and it is lawful for a person to publish or display, or cause or permit to be published or displayed, an advertisement or notice relating to vacancies in employment for persons under the age of 21.
- (2) In subsection (1)(b), “**advertisement**” has the meaning given by section 68(2).
- (3) The Commissioner shall within the period of 2 years beginning on the commencement of section 19 of the *Equal Opportunity Amendment Act 1992*<sup>1</sup> or such longer period as may be prescribed —
- (a) undertake a review of written laws referred to in subsection (1) with a view to identifying circumstances where discrimination on the ground of age occurs, in substance or effect, against any person or class of persons; and
  - (b) furnish a report of the findings of the review undertaken under this subsection to the Minister.
- (4) Every body that has the administration of any written law, or has the capacity to enact any subsidiary legislation under any

written law, shall within 18 months of the coming into operation of section 19 of the *Equal Opportunity Amendment Act 1992*<sup>1</sup>, prepare and submit to the Commissioner a report stating —

- (a) whether any written law which it administers or subsidiary legislation that it has enacted contains any provision which discriminates on the ground of age; and
  - (b) if there is such a law, the nature of the discrimination, whether the body considers that the discrimination should be continued and the reasons why it so considers.
- (5) The Commissioner shall include details of the statements received by the Commissioner pursuant to subsection (4) in the report to be furnished pursuant to subsection (3).
- (6) Any body that pursuant to this section is required to prepare a statement shall include in any report that it is obliged to make under the *Financial Administration and Audit Act 1985* a statement as to whether it has complied with this section and shall continue to include a statement until such time as it has complied.

*[Section 66ZS inserted by No. 74 of 1992 s. 19; amended by No. 2 of 1999 s. 19(b); No. 12 of 2001 s. 48(3); No. 20 of 2002 s. 183.]*

## Part V — Other unlawful acts

### 67. Victimisation

- (1) It is unlawful for a person (in this section referred to as the “**victimiser**”) to subject, or threaten to subject, another person (in this subsection referred to as the “**person victimised**”) to any detriment on the ground that the person victimised —
- (a) has made, or proposes to make, a complaint under this Act;
  - (b) has brought, or proposes to bring, proceedings against the victimiser or any other person under this Act;
  - (c) has furnished, or proposes to furnish, any information, or has produced or proposes to produce, any documents to a person exercising or performing any function under this Act;
  - (d) has appeared, or proposes to appear, as a witness before the Tribunal in a proceeding commenced under this Act;
  - (e) has reasonably asserted, or proposes to assert, any rights of the person victimised or the rights of any other person under this Act; or
  - (f) has made an allegation that a person has done an act that is unlawful by reason of a provision of Part II, IIAA, IIA, IIB, III, IV, IVA or IVB,
- or on the ground that the victimiser believes that the person victimised has done, or proposes to do, an act or thing referred to in any of paragraphs (a) to (f).
- (2) Subsection (1)(f) does not apply if it is proved that the allegation was false and was not made in good faith.
- (3) Subject to subsection (2), the application or continued application of subsection (1) in a particular case shall not be affected by —
- (a) the failure of the person victimised to do any proposed act or thing referred to in any of the paragraphs of subsection (1); or

- (b) the withdrawal, failure to pursue, or determination of any complaint, proceeding or allegation under this Act.

*[Section 67 amended by No. 10 of 1998 s. 33(1); No. 2 of 2000 s. 28; No. 3 of 2002 s. 53; No. 55 of 2004 s. 304.]*

**68. Advertisements**

- (1) It is unlawful for a person to publish or display, or cause or permit to be published or displayed, an advertisement or notice that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of a provision of this Act.
- (2) For the purposes of subsection (1), “**advertisement**” includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way, and the reference to publish or display, in relation to an advertisement, shall be construed accordingly.

## **Part VI — General exceptions to this Act**

### **69. Acts done under statutory authority, etc.**

- (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 which is in force when this section comes into operation;
  - (b) an instrument made or approved under an Act referred to in paragraph (a) not being —
    - (i) the rules of a society registered under the *Co-operative and Provident Societies Act 1903*;
    - (ii) the rules of a credit union within the meaning of the *Credit Unions Act 1979*<sup>3</sup>;
    - (iii) the rules of a society registered under the *Friendly Societies (Western Australia) Code 1999*; or
    - (iv) the rules of a society registered under the *Housing Societies Act 1976*;
  - (c) an order of the Tribunal;
  - (d) an order of a court; or
  - (e) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment (including the payment by an employer of a salary, wage or other remuneration in excess of the amount fixed by such a court or tribunal and whether or not the payment of such salary, wage or other remuneration, but for this provision would constitute unlawful discrimination).
- (2) Subsection (1)(a), (b) and (e) shall, except to the extent that regulations made for the purposes of this subsection provide otherwise, cease to be in force at the expiration of 2 years after the coming into operation of this section.



- (3) Regulations made for the purposes of subsection (2) may provide generally in relation to the application of subsection (1)(a), (b) and (e) or may make provision in relation to specified Acts, instruments, orders or awards.

*[Section 69 amended by No. 74 of 1992 s. 20; No. 2 of 1999 s. 19(c); No. 12 of 2001 s. 48(3).]*

## **70. Charities**

- (1) Nothing in this Act affects —
- (a) a provision of a deed, will or other document, whether made before or after the date of assent to this Act, 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 that 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 Western Australia.

## **71. Voluntary bodies**

- (1) Nothing in this Act renders it unlawful for a voluntary body to discriminate against a person, on any one or more of the grounds of discrimination referred to in this Act, in connection with —
- (a) the admission of persons as members of the body; or
  - (b) the provision of benefits, facilities or services to members of the body.
- (2) Subsection (1) does not apply to discrimination on the ground of impairment or age by a voluntary body that is an incorporated association.

*[Section 71 amended by No. 40 of 1988 s. 9; No. 74 of 1992 s. 21.]*

**72. 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 selection or appointment of persons to perform duties or functions for the purposes of or in connection with, or otherwise to participate in any religious observance or practice; or
- (d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents of that religion.

**73. Educational institutions established for religious purposes**

- (1) Nothing in this Act renders it unlawful for a person to discriminate against another person on any one or more of the grounds of discrimination referred to in this Act in connection with employment as a member of the staff of an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.
- (2) Nothing in this Act renders it unlawful for a person to discriminate against another person on any one or more of the grounds of discrimination referred to in this Act in connection with a position as a contract worker that involves the doing of work in an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so

discriminates in good faith in order to avoid injury to the religious susceptibilities of adherents of that religion or creed.

- (3) Nothing in this Act renders it unlawful for a person to discriminate against another person on any one or more of the grounds of discrimination referred to in this Act, other than the grounds of race, impairment or age, in connection with the provision of education or training by an educational institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the first-mentioned person so discriminates in good faith in favour of adherents of that religion or creed generally, but not in a manner that discriminates against a particular class or group of persons who are not adherents of that religion or creed.

*[Section 73 amended by No. 40 of 1988 s. 10; No. 74 of 1992 s. 22.]*

**74. Establishments providing housing accommodation, etc., for aged persons**

- (1) In this section, “**institution**” means an establishment which provides housing accommodation and ancillary services for aged persons, whether under statute or otherwise.
- (2) Nothing in this Act affects —
- (a) any rule or practice of an institution which restricts admission thereto to applicants of any class, type, sex, race, age or religious or political conviction; or
  - (b) the provision of benefits, facilities or services to such persons as are admitted to such an institution.
- (3) Persons with an impairment or a particular class or type of impairment shall not be regarded as constituting a class or type of applicant for the purposes of subsection (2).
- (3a) Gender reassigned persons shall not be regarded as constituting a class or type of applicant for the purposes of subsection (2).

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- (4) Subsection (2)(b) does not apply to discrimination on the ground of age in the provision of benefits, facilities or services to such persons as are admitted to an institution referred to in subsection (2)(a).

*[Section 74 amended by No. 40 of 1988 s. 11; No. 74 of 1992 s. 23; No. 57 of 1997 s. 55(3); No. 2 of 2000 s. 28.]*

## **Part VII — The Commissioner for Equal Opportunity**

### **Division 1 — Office of Commissioner**

#### **75. Commissioner for Equal Opportunity**

- (1) There shall be a Commissioner for Equal Opportunity who shall be appointed by the Governor.
- (2) Subject to this Part, the Commissioner holds office for such period, not exceeding 7 years, as is specified in that person's instrument of appointment, and is eligible for re-appointment.

*[(3) repealed]*

- (4) A person who is a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of a Territory or of the Commonwealth shall not be appointed as the Commissioner.

- (5) The Commissioner —

- (a) is entitled to such terms and conditions of service; and
- (b) subject to the *Salaries and Allowances Act 1975*, shall be paid such remuneration and allowances,

as the Minister determines from time to time on the recommendation of the Minister for Public Sector Management<sup>5</sup>.

*[Section 75 amended by No. 74 of 1992 s. 24; No. 42 of 1997 s. 7.]*

#### **76. Vacation of office**

- (1) The Governor may terminate the appointment of the Commissioner if the Commissioner becomes permanently incapable of performing the duties of the office of Commissioner.

- (2) The Governor shall terminate the appointment of the Commissioner if the Commissioner —
- (a) engages in paid employment outside the duties of the office of Commissioner, otherwise than with the consent of the Minister;
  - (b) 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 a Territory or of the Commonwealth; or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit.
- (3) The Commissioner may resign from the office of Commissioner by writing delivered to the Governor.

**77. Existing rights, etc.**

Appointment as Commissioner does not render Part 3 of the *Public Sector Management Act 1994*, or any other Act applying to persons as officers of the Public Service of the State, applicable to that person, or affect or prejudice the application to that person of those provisions if they applied to that person at the time of appointment.

*[Section 77 amended by No. 32 of 1994 s. 19.]*

**78. Acting Commissioner**

- (1) The Minister may appoint a person to act as Commissioner —
- (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when the Commissioner is absent from duty or from Western Australia, or is, for any other reason, unable to perform the functions of the office of Commissioner,

- but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
  - (3) The Minister may —
    - (a) on the recommendation of the Minister for Public Sector Management <sup>5</sup>, determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Commissioner; and
    - (b) terminate such an appointment at any time.
  - (4) Where a person is acting as Commissioner in circumstances referred to in subsection (1)(b) and the office of Commissioner becomes vacant while that person is so acting, then, subject to subsection (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
  - (5) The appointment of a person to act as Commissioner ceases to have effect if the person resigns the appointment by writing delivered to the Minister.
  - (6) The validity of anything done by a person purporting to act pursuant to an appointment made under subsection (1) shall not be called in question on the ground that the occasion for the person's appointment had not arisen or had ceased, that there is a defect or irregularity in or in connection with the appointment, or that the appointment had ceased to have effect.

**79. Staff**

There may be appointed from time to time under and subject to Part 3 of the *Public Sector Management Act 1994* such officers as may be required for the purposes of assisting the

Commissioner in the effective performance of the Commissioner's functions under this Act.

*[Section 79 amended by No. 32 of 1994 s. 19.]*

### **Division 2 — Functions of the Commissioner**

#### **80. General functions of Commissioner**

For the purposes of eliminating discrimination on the ground of sex, marital status, pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment or age eliminating discrimination against gender reassigned persons on gender history grounds, eliminating, as far as possible, sexual harassment and racial harassment at work, in educational institutions or related to accommodation, and promoting recognition and acceptance within the community of the principle of equality of men and women and of persons of all races and of all persons regardless of their religious or political conviction, the Commissioner may —

- (a) carry out investigations, research and inquiries relating to discrimination or sexual or racial harassment of the kinds rendered unlawful under this Act;
- (b) acquire and disseminate knowledge on all matters relating to the —
  - (i) elimination of discrimination on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment or age and elimination of discrimination against gender reassigned persons on gender history grounds;
  - (ii) elimination of sexual harassment and racial harassment at work, in educational institutions or related to accommodation; and
  - (iii) achievement of the principle of equality of men and women and of persons of all races and all



persons regardless of their religious or political convictions, their impairments or their ages;

- (c) arrange and coordinate consultations, inquiries, discussions, seminars and conferences;
- (d) review, from time to time, the laws of the State;
- (e) consult with governmental, business, industrial and community groups in order to ascertain means of improving services and conditions affecting a person or persons who are subject to discrimination on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment or age or who being a gender reassigned person or persons are subject to discrimination on gender history grounds or who are subject to sexual or racial harassment;
- (f) develop programmes and policies promoting the achievement of the principle of equality between men and women, persons of all races and all persons regardless of religious or political conviction, impairment or age;
- (fa) subject to section 167, publish any written reports compiled in the exercise of the powers conferred on the Commissioner by this section and section 82;
- (g) perform —
  - (i) any function conferred on the Commissioner by any other written law;
  - (ii) any function conferred on the Commissioner under any arrangement in force under section 7;
  - (iii) any function conferred on the Commissioner under any Act of the Commonwealth, being a function that is declared by the Minister, by notice published in the *Gazette*, to be complementary to other functions of the Commissioner;

and

- (h) do anything conducive or incidental to the performance of the functions conferred or imposed on the Commissioner under this section.

*[Section 80 amended by No. 40 of 1988 s. 12; No. 74 of 1992 s. 25; No. 57 of 1997 s. 55(4); No. 10 of 1998 s. 33(2); No. 2 of 2000 s. 28; No. 3 of 2002 s. 54.]*

**81. Reference by the Minister to the Commissioner**

- (1) The Minister may refer to the Commissioner 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.

- (2) The Commissioner shall conduct an examination into any matter referred by the Minister under subsection (1) and shall report to the Minister the findings and conclusions of such examination.

**82. Review of legislation, etc.**

The Commissioner shall, as soon as possible after the day of the coming into operation of this section, undertake a review of —

- (a) the written law 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 the findings of the review to the Minister.

**83. Making of complaints to Commissioner**

- (1) A complaint alleging that a person has committed a contravention of this Act, other than a contravention in respect of which a specific penalty is imposed, may be lodged in writing with the Commissioner by —
- (a) a person on the person's own behalf or on the person's own behalf and the behalf of other persons;
  - (b) 2 or more persons on their own behalf or on behalf of themselves and other persons; or
  - (c) a trade union of which a person or persons aggrieved by the alleged contravention is a member or are members on behalf of that person or those persons.
- (1a) A complaint alleging that a person has committed, in relation to a person having an impairment, a contravention of this Act, other than a contravention in respect of which a specific penalty is imposed, may be lodged in writing with the Commissioner in accordance with subsection (1) or —
- (a) where the person having the impairment is unable to write or sign his or her name, by a person authorised to lodge the complaint by the person having the impairment; or
  - (b) where the person having the impairment is unable to authorise a person to lodge the complaint, by any person who satisfies the Commissioner of the proper interest of that person in the care and protection of the person having the impairment.
- (2) A person may lodge a complaint in writing with the Commissioner in respect of any refusal, neglect or failure to obey or comply with an order or interim order of the Tribunal.
- (3) A complaint under subsection (1) or (1a) may be lodged either as a complaint other than a representative complaint or as a representative complaint.

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- (4) A complaint made under subsection (1) or (1a) shall be lodged within 12 months after the date on which the contravention of this Act which is the subject of that complaint is alleged to have been committed.
- (5) Notwithstanding subsection (4), the Commissioner, on good cause being shown, may accept a complaint which is lodged more than 12 months after the date referred to in that subsection.
- (6) In this section, “**trade union**” means an organisation of employees or an organisation of employers.

*[Section 83 amended by No. 40 of 1988 s. 13; No. 55 of 2004 s. 305.]*

**83A. Withdrawal and lapse of complaints**

- (1) A complainant may at any time between the lodging of the relevant complaint and the final disposal of that complaint under this Division withdraw that complaint by notice in writing served on the Commissioner.
- (2) If, in the opinion of the Commissioner, a complainant is not pursuing, or has abandoned, the relevant complaint, the Commissioner may by warning in writing served on the complainant advise the complainant that that complaint will, unless within a period of 21 days after that service the complainant serves on the Commissioner notice in writing that the complainant wishes the Commissioner to continue to investigate or otherwise deal with that complaint under this Division, lapse at the end of that period.
- (3) If a person on whom a warning is served by the Commissioner under subsection (2) does not within the period of 21 days after that service serve on the Commissioner notice referred to in that subsection, the relevant complaint lapses at the end of that period.
- (4) If a complaint —
  - (a) is withdrawn under subsection (1); or

- (b) lapses under subsection (3),  
the complaint shall not be pursued afresh unless —
  - (c) the person seeking to pursue the complaint afresh satisfies the Commissioner that there is good cause for that pursuit to take place; and
  - (d) that pursuit takes place within a period of 6 months from the withdrawal or lapse of the complaint.
- (5) Notwithstanding anything in this section, if the Commissioner is satisfied within the meaning of subsection (4)(c) in respect of a complaint, the person seeking to pursue the complaint afresh may do so without lodging another complaint under section 83.  
*[Section 83A inserted by No. 74 of 1992 s. 26.]*

**84. Investigation of complaints by Commissioner**

The Commissioner shall investigate each complaint lodged with the Commissioner under section 83.

**85. Application for interim order**

The Commissioner, at any time after a complaint is lodged with the Commissioner under section 83 and before the Commissioner dismisses the complaint, resolves the complaint by conciliation or refers the complaint to the Tribunal under section 93, as the case may be, may apply to the Tribunal for the making of an interim order under section 126 or for the variation or revocation of any such order.

**86. Power to obtain information and documents**

- (1) Where the Commissioner has reason to believe that a person is capable of furnishing information (in this subsection referred to as “**relevant information**”) or producing documents (in this subsection referred to as “**relevant documents**”) relevant to an investigation under this Division, the Commissioner may, by notice in writing served on the person, require the person, at

such place, and within such period or on such date and at such time, as are specified in the notice —

- (a) to furnish to the Commissioner, by writing signed by the person or, in the case of a body corporate, by an officer of the body corporate, such relevant information (if any) as is specified in the notice; and
  - (b) to produce to the Commissioner such relevant documents (if any) as are specified in the notice.
- (2) Where documents are produced to the Commissioner in accordance with a requirement under subsection (1), the Commissioner —
- (a) may take possession of, and may make copies of, or take extracts from, the documents;
  - (b) may retain possession of the documents for such period as is necessary for the purposes of the investigation to which the documents relate; and
  - (c) during that period shall permit a person who would be entitled to inspect any one or more of the documents if they were not in the possession of the Commissioner to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.

*[Section 86 amended by No. 40 of 1988 s. 14.]*

**87. Directions to attend compulsory conference**

- (1) For the purpose of investigating a complaint, and endeavouring to resolve the complaint in accordance with section 91, the Commissioner may, by notice in writing, direct the persons referred to in subsection (2) to attend, at a time and place specified in the notice, a conference presided over by the Commissioner or a person appointed by the Commissioner.
- (2) Directions under subsection (1) to attend a conference in relation to a complaint shall be given —
  - (a) to the complainant, or all the complainants, as the case requires;

- (b) to the person who is alleged to have contravened the Act; and
  - (c) to any other person who, in the opinion of the Commissioner, is likely to be able to provide information relevant to the investigation or whose presence at the conference is, in the opinion of the Commissioner, likely to be conducive to resolving the complaint in accordance with section 91.
- (3) A person who has been given a direction under subsection (1) to attend a conference is entitled to be paid by the State a reasonable sum for the person's attendance at the conference.
  - (4) The Commissioner may, in a notice given to a person under subsection (1), require the person to produce such documents at the conference as are specified in the notice.

*[Section 87 amended by No. 40 of 1988 s. 15.]*

**88. Compulsory conference**

- (1) The person presiding at a compulsory conference held under this Division may require a person attending the conference to produce a document.
- (2) A conference under this Division shall be held in private and, subject to this Act, shall be conducted in such manner as the person presiding at the conference thinks fit.
- (3) Subject to subsection (4), a body of persons, whether corporate or unincorporate, that is directed under section 87 to attend a conference shall be deemed to attend if an officer or employee of that body attends on behalf of that body.
- (4) Except with the consent of the person presiding at a conference under this Division —
  - (a) a natural person is not entitled to be represented at the conference by another person; and

- (b) a body of persons, whether corporate or unincorporate, is not entitled to be represented at the conference by a person other than an officer or employee of that body.

**89. Commissioner may dismiss certain complaints**

- (1) Where, at any stage of an investigation, the Commissioner is satisfied that a complaint is frivolous, vexatious, misconceived, lacking in substance or relates to an act that is not unlawful by reason of a provision of this Act, the Commissioner may, by notice in writing addressed to the complainant, dismiss the complaint.
- (2) The Commissioner shall, in a notice under subsection (1), advise the complainant of —
  - (a) the reason for dismissing the complaint; and
  - (b) the rights of the complainant under section 90.

*[Section 89 amended by No. 40 of 1988 s. 16.]*

**90. Reference of complaint to Tribunal at requirement of complainant**

- (1) Where the Commissioner has given a complainant a notice under section 89, the complainant may, within 21 days after the receipt of that notice, by notice in writing served on the Commissioner, require the Commissioner to refer the complaint to the Tribunal.
- (2) On receipt of a notice under subsection (1), the Commissioner shall refer the complaint to the Tribunal together with a report relating to the investigation made by the Commissioner into the complaint.

*[Section 90 amended by No. 40 of 1988 s. 17.]*

**91. Resolution of complaint by conciliation**

- (1) Where the Commissioner is of the opinion that a complaint other than a complaint that the Commissioner has dismissed



under section 89, may be resolved by conciliation, the Commissioner shall endeavour to resolve the complaint by conciliation.

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

**92. Representation in conciliation proceedings**

- (1) A complainant or respondent in conciliation proceedings before the Commissioner —
- (a) is entitled to appear personally or, subject to section 91(2), by an agent other than a solicitor or counsel; or
  - (b) may, by leave of the Commissioner, be represented by a solicitor or counsel.
- (2) No person other than a solicitor or counsel is entitled to demand or receive any fee or reward for representing a party in conciliation proceedings before the Commissioner.

**93. Reference of complaints to the Tribunal**

- (1) Without prejudice to the Commissioner's powers under section 89, where the Commissioner —
- (a) is of the opinion that a complaint cannot be resolved by conciliation;
  - (b) has endeavoured to resolve a complaint by conciliation but has not been successful in such endeavours; or
  - (c) is of the opinion that the nature of a complaint is such that it should be referred to the Tribunal,

the Commissioner shall refer the complaint to the Tribunal together with a report relating to the investigation made by the Commissioner into the complaint.

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- (2) When a complaint is referred to the Tribunal under subsection (1), the Commissioner —
- (a) shall, if the complainant requests the Commissioner to do so, either personally or by counsel or representative assist the complainant in the presentation of the case of the complainant to the Tribunal; and
  - (b) may, if the complainant requests the Commissioner to do so and the Commissioner considers it appropriate in all the circumstances (including the financial circumstances of the complainant) to do so, make such contribution towards the cost of witness and other expenses as is necessary to enable the complainant to call or give, or to call and give, evidence before the Tribunal.
- (2a) The Commissioner may, in making a contribution under subsection (2)(b), make the contribution subject to such conditions as the Commissioner thinks fit.
- (2b) If a condition to which the making of a contribution is subjected under subsection (2a) requires the complainant to repay to the Commissioner in circumstances specified in that condition the whole or any part of the contribution made under subsection (2)(b) and those circumstances arise, the Commissioner may recover that whole or part from the complainant by action in a court of competent jurisdiction as a debt due to the Commissioner.
- (3) Evidence of anything said or done in the course of conciliation proceedings under section 91 shall not be admissible in subsequent proceedings before the Tribunal.

*[Section 93 amended by No. 40 of 1988 s. 18; No. 74 of 1992 s. 27.]*

**93A. Commissioner may assist complainants on appeal to Supreme Court**

- (1) The Commissioner may, on the application of a complainant who has received assistance under section 93(2) and if the Commissioner considers it appropriate in all the circumstances (including the financial circumstances of the complainant) to do so —
- (a) arrange for the provision of legal representation; or
  - (b) grant such financial assistance as is necessary to enable the complainant to call or give, or to call and give, evidence,

before the Supreme Court, or both, to enable the complainant to make or defend an appeal to the Supreme Court against a decision of the Tribunal.

- (2) The Commissioner may, in granting an application under subsection (1), make that grant subject to such conditions as the Commissioner thinks fit.
- (3) If a condition to which the grant of an application is subjected under subsection (2) requires the complainant to pay to the Commissioner in circumstances specified in that condition the whole or any part of any expense incurred by the Commissioner in the exercise of a power referred to in subsection (1)(a) or (b) and those circumstances arise, the Commissioner may recover that whole or part from the complainant by action in a court of competent jurisdiction as a debt due to the Commissioner.

*[Section 93A inserted by No. 74 of 1992 s. 28; amended by No. 55 of 2004 s. 306.]*

**94. Delegation by Commissioner**

- (1) The Commissioner may, by instrument in writing, delegate to an officer of the Public Service of the State the exercise of such one or more of his functions under sections 83(5), 84, 87 and 91 as may be specified in the instrument of delegation.

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- (2) During a vacancy in the office of Commissioner, the Minister may, by instrument in writing, revoke wholly or in part a delegation under this section.
- (3) Any act or thing done or suffered by a person pursuant to a delegation under this section has the same force and effect as if done or suffered by the Commissioner.

*[Section 94 amended by No. 40 of 1988 s. 19.]*

**95. Annual report**

- (1) The Commissioner shall include in the Commissioner's annual report required to be made under the *Financial Administration and Audit Act 1985* a report on —
  - (a) the Commissioner's work and activities for that period;
  - (b) the administration of the functions of the Commissioner under this Act during that period; and
  - (c) the research undertaken by the Commissioner during that period and any recommendations that the Commissioner considers appropriate for the elimination or modification of legislative provisions that discriminate, on a ground referred to in this Act, against any person or class of persons.

*[(2) repealed]*

*[Section 95 amended by No. 98 of 1985 s. 3; No. 40 of 1988 s. 20.]*

## **Part VIII — The Role of the State Administrative Tribunal**

*[Heading inserted by No. 55 of 2004 s. 307.]*

### **Division 1 — Constituting the Tribunal**

*[Heading inserted by No. 55 of 2004 s. 307.]*

#### **96. Presiding member**

- (1) When the Tribunal is exercising its jurisdiction under this Act, its presiding member has to be either a judicial member or a senior member.
- (2) Terms used in subsection (1) relating to members of the Tribunal have the meanings given to them in section 3(1) of the *State Administrative Tribunal Act 2004*.

*[Section 96 inserted by No. 55 of 2004 s. 308.]*

*[97-106. Repealed by No. 55 of 2004 s. 309.]*

### **Division 2 — Functions**

*[Heading amended by No. 55 of 2004 s. 310.]*

#### **107. Jurisdiction of Tribunal**

- (1) The Minister may refer any matter to the Tribunal for inquiry as a complaint under this Act.
- (2) The Tribunal shall carry out the functions conferred and imposed on the Tribunal in Part IX in accordance with the provisions of that Part.
- (3) Subject to subsection (3a), the Tribunal shall hold an inquiry into each complaint or matter referred to it under section 90(2), 93(1) or subsection (1).

- (3a) The Tribunal shall not hold, or shall discontinue, as the case requires, an inquiry into —
- (a) a complaint referred to it under section 90(2) or 93(1) if the complainant notifies the Tribunal that the complainant; or
  - (b) a matter referred to it under subsection (1) if the Minister notifies the Tribunal that the Minister, does not wish that inquiry to be held or to continue.
- (4) The Tribunal may perform —
- (a) any function conferred on the Tribunal under any arrangement in force under section 7; and
  - (b) any function conferred on the Tribunal under any Act of the Commonwealth, being a function that is declared by the Minister, by notice published in the *Gazette*, to be complementary to other functions of the Tribunal.
- (5) No fee is payable in respect of a proceeding commenced before the Tribunal under this Act.

*[Section 107 amended by No. 74 of 1992 s. 30; No. 55 of 2004 s. 311.]*

**108. Commissioner’s reference under section 93(1)**

For the purposes of a proceeding before the Tribunal that is commenced by a reference under section 93(1) the Commissioner is excluded from the definition of “applicant” in the *State Administrative Tribunal Act 2004* section 3(1) and the complainant is the applicant instead.

*[Section 108 inserted by No. 55 of 2004 s. 312.]*

*[109-112. Repealed by No. 55 of 2004 s. 312.]*

**113. Officer assisting the Tribunal**

- (1) The Tribunal may make arrangements with the Commissioner for an officer of the Commissioner to appear at an inquiry to assist the Tribunal.

- (2) An officer of the Commissioner assisting the Tribunal at an inquiry in accordance with arrangements made under subsection (1) shall, in relation to that inquiry, be subject to the control and direction of the Tribunal.

**114. Determination of representative complaints**

At any inquiry held in respect of a representative complaint, the Tribunal shall determine, as a preliminary matter, whether that complaint shall be dealt with as a representative complaint.

**115. Matter to be considered in determination of representative complaints**

- (1) The Tribunal shall 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.
- (2) In considering whether a complaint is made in good faith as a representative complaint, the Tribunal shall satisfy itself —
- (a) that —
- (i) the complainant is a member of a class of persons, the members of which class have been affected, or may reasonably be likely to be affected, by the conduct of the respondent;
  - (ii) the complainant has in fact been affected by the conduct of the respondent;
  - (iii) the class is so numerous that joinder of all its members is impracticable;
  - (iv) there are questions of law or fact common to all members of the class;
  - (v) the claims of the complainant are typical of the claims of the class;
  - (vi) multiple complaints would be likely to produce varying determinations which could have incompatible or inconsistent results for the individual members of the class; and

(vii) the respondent has acted on grounds apparently applying to the class as a whole;

or

(b) that notwithstanding that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint.

*[Section 115 amended by No. 57 of 1997 s. 55(5).]*

**116. Amendment of complaint by Tribunal**

Where the Tribunal is satisfied —

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

**117. Ordinary complaint not precluded by representative complaint**

Nothing in this Act shall prevent a person from lodging a complaint, other than a representative complaint, under section 83, notwithstanding that the conduct in respect of which the complaint is lodged has also been the conduct in respect of which a representative complaint has been lodged.

*[118-121. Repealed by No. 55 of 2004 s. 313.]*



**122. Tribunal may prohibit publication of evidence**

- (1) The Tribunal may direct that —
- (a) any evidence given before it;
  - (b) the contents of any document produced to the Tribunal; or
  - (c) any information that might enable a person who has appeared before the Tribunal to be identified,

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

- (2) Nothing in this section shall be taken to derogate from the Tribunal's powers or duties under the *State Administrative Tribunal Act 2004*.
- (3) A person shall not contravene a direction given by the Tribunal under this section.

Penalty:

- (a) in the case of a natural person — \$1 000; or
- (b) in the case of a body corporate — \$5 000.

*[Section 122 amended by No. 74 of 1992 s. 32; No. 55 of 2004 s. 314.]*

**123. Proof of exceptions**

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

*[124, 125. Repealed by No. 55 of 2004 s. 315.]*

**126. Interim orders**

The Tribunal may, on the application of the Commissioner under section 85, or on the application of a party to an investigation at any time after the lodging of the complaint into

which that investigation is held, make an interim order to preserve —

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

pending determination of the matter that is the subject of the complaint.

*[Section 126 amended by No. 40 of 1988 s. 26; No. 55 of 2004 s. 316.]*

**127. Decisions of Tribunal**

After holding an inquiry, the Tribunal may —

- (a) dismiss the complaint that is the subject of the inquiry; or
- (b) find the complaint substantiated and do any one or more of the following —
  - (i) except in respect of a representative complaint or a matter referred to the Tribunal for inquiry as a complaint pursuant to section 107(1), order the respondent to pay to the complainant damages not exceeding \$40 000 by way of compensation for any loss or damage suffered by reason of the respondent's conduct;
  - (ii) make an order enjoining the respondent from continuing or repeating any conduct rendered unlawful by this Act;
  - (iii) except in respect of a representative complaint or a matter referred to the Tribunal for inquiry as a complaint pursuant to section 107(1), order the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;
  - (iv) make an order declaring void in whole or in part and either ab initio or from such other time as is

specified in the order any contract or agreement made in contravention of this Act; or

- (v) decline to take any further action in the matter.

*[128-133. Repealed by No. 55 of 2004 s. 317.]*

**134. Appeals**

- (1) A party aggrieved by a decision or order made under section 126 or 127 of the Tribunal, or by an interim order made under section 126, may appeal under section 105 of the *State Administrative Tribunal Act 2004*.
- (1a) An appeal may be brought on any ground that involves a question of law, a question of fact or a question of mixed law and fact.

*[(2)-(4) repealed]*

- (5) The Tribunal and any member of the Tribunal shall not be liable to any costs in respect of the decision or order of the Tribunal or the appeal.

*[Section 134 amended by No. 74 of 1992 s. 33; No. 55 of 2004 s. 318.]*

**Division 3 — Power of Tribunal to grant exemptions**

**135. Tribunal may grant exemptions**

- (1) The Tribunal may, on application by a person, by order, grant to the person an exemption from the operation of a specified provision of Part II, IIAA, IIA, IIB, III, IV, IVA or IVB.
- (2) The Tribunal may, on application by a person to whom an exemption from a provision of Part II, IIAA, IIA, IIB, III, IV, IVA or IVB has been granted under subsection (1), by order, grant to the person a further exemption from the operation of that provision.

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- (3) The Tribunal shall cause notice of an application for an exemption, a further exemption or the variation of an exemption or further exemption to be given by newspaper advertisement or otherwise, in such form and manner as the Tribunal may direct.

*[(4) repealed]*

- (5) Section 113 applies to an application under this section in the same way as that section applies to an inquiry.

- (6) An exemption or further exemption —

- (a) may be granted subject to such terms and conditions as are specified in the order;
- (b) may be varied either on the application of the person to whom the exemption is granted or at the instance of the Tribunal;
- (c) may be expressed to apply only in such circumstances, or in relation to such activities, as are specified in the order; and
- (d) shall be granted for a period specified in the order not exceeding 5 years.

*[Section 135 amended by No. 10 of 1998 s. 33(3) and (4); No. 2 of 2000 s. 28; No. 3 of 2002 s. 55; No. 55 of 2004 s. 319.]*

**136. Notice of decisions to be published**

- (1) The Tribunal shall, not later than one month after it makes a decision under section 135, cause to be published in the *Gazette* a notice of the making of the decision —
- (a) setting out its findings on material questions of fact;
  - (b) referring to the evidence on which those findings were based; and
  - (c) giving the reasons for the making of the decision.

*[(2) repealed]*

- (3) Any failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

*[Section 136 amended by No. 55 of 2004 s. 320.]*

**137. Effect of exemption orders**

Nothing in Parts II, IIAA, IIA, IIB, III, IV, IVA and IVB renders it unlawful for a person who has been granted an exemption from a provision of one of those Parts, or a person in the employment or under the direction or control of a person who has been granted such an exemption, to do an act in accordance with the provisions of the order by which the exemption was granted.

*[Section 137 amended by No. 10 of 1998 s. 33(5); No. 2 of 2000 s. 28; No. 3 of 2002 s. 56.]*

## **Part IX — Equal opportunity in public employment**

### **Division 1 — General**

#### **138. Interpretation**

In this Part —

**“authority”** means a person, group of persons, authority or body specified in section 139(1)(a) to (d) or declared by regulations to be an authority for the purposes of this Part;

**“management plan”** means an equal opportunity management plan referred to in section 145.

#### **139. Application of Part IX**

- (1) This Part applies to and in respect of the following authorities —
  - (a) the Public Service of the State;
  - (b) The Western Australian Government Railways Commission;
  - (c) the Western Power Corporation established by the *Electricity Corporation Act 1994*;
  - (d) every public authority within the meaning of subsection (3); and
  - (e) such authorities, bodies, persons, or groups of persons as the Governor may by regulation declare to be authorities for the purposes of this Part.
- (2) Notwithstanding subsection (1), the Governor may by regulation declare that a person, group of persons, authority or body which would otherwise be an authority for the purposes of this Part shall not be an authority for the purposes of this Part.
- (3) In subsection (1)(d), **“public authority”** means State trading concern, State instrumentality, State agency, or any public

statutory body, corporate or unincorporate established by or under a law of the State.

*[Section 139 amended by No. 89 of 1994 s. 109; No. 58 of 1999 s. 101; No. 24 of 2000 s. 14(13).]*

**140. Objects of Part IX**

The objects of this Part are —

- (a) to eliminate and ensure the absence of discrimination in employment on the ground of sex, marital status, pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment or age;
  - (aa) to eliminate and ensure the absence of discrimination in employment against gender reassigned persons on gender history grounds; and
  - (b) to promote equal employment opportunity for all persons,
- in the authorities to which this Part applies.

*[Section 140 amended by No. 40 of 1988 s. 27; No. 74 of 1992 s. 34; No. 2 of 2000 s. 28; No. 3 of 2002 s. 57.]*

**141. Exercise of functions of authorities**

The functions conferred or imposed on an authority under this Part shall be exercised —

- (a) in the case of the Public Service, by the chief executive officer <sup>6</sup> in respect of the department of which that person is the chief executive officer <sup>6</sup>;
- (b) in the case of an authority other than the Public Service, by the authority or by such person, if any, as may be prescribed by regulations.

**Division 2 — The Director of Equal Opportunity in Public Employment**

**142. The Director**

- (1) There shall be a Director of Equal Opportunity in Public Employment who shall be appointed by the Governor.
- (2) Subject to this Part, the Director holds office for such period, not exceeding 4 years, as is specified in the instrument of the Director's appointment and on the expiration of that term the person is eligible for reappointment.
- (3) Sections 75(3) to 79 apply to and in respect of the appointment and office of the Director in the same way as they apply to and in respect of the appointment and office of the Commissioner.
- (4) The Director is entitled to such terms and conditions of service, including remuneration and travelling and other allowances, as the Minister determines from time to time on the recommendation of the Minister for Public Sector Management<sup>5</sup>.

*[Section 142 amended by No. 74 of 1992 s. 35.]*

**143. Functions of Director**

- (1) The functions of the Director are —
  - (a) to advise and assist authorities in relation to management plans, including the development of guidelines to assist authorities in preparing management plans;
  - (b) to evaluate the effectiveness of management plans in achieving the objects of this Part; and
  - (c) to make reports and recommendations to the Minister as to —
    - (i) the operation of management plans; and
    - (ii) such matters as the Director thinks appropriate relating to the objects of this Part.



- (2) The Director may exercise such other functions as are conferred or imposed on the Director by or under this Part.
- (3) The Director may, in the exercise, of the Director's functions, consult, as the Director thinks fit, with persons or bodies who are concerned with any or all of the objects of this Act.
- (4) The Director may do all such supplemental, incidental and consequential acts as may be necessary or expedient for the exercise of the Director's functions.

**144. Annual report of Director**

- (1) The Director shall, on or before 30 September in each year, prepare and present to the Minister a report on —
  - (a) the work and activities of the Director for the period of 12 months ending on the preceding 30 June; and
  - (b) the administration of the functions of the Director under this Act during the period referred to in paragraph (a).
- (2) The Minister shall cause the report presented to the Minister under subsection (1) to be laid before both Houses of Parliament as soon as is practicable after its receipt by the Minister.

*[Section 144 inserted by No. 74 of 1992 s. 36.]*

**Division 3 — Equal employment opportunity management plans**

**145. Preparation and implementation of management plans**

- (1) Each authority shall prepare and implement an equal 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;

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- (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) to (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 without delay and —
- (a) in the case of an authority referred to in section 139(1)(a), (b), (c) or (d), other than an authority which is an institution of tertiary education, on or before such day as is specified in the regulations in respect of that authority and if no day is so specified in respect of an authority on or before the day that is 3 years after the day when this Part comes into operation; and

- (b) in the case of an institution of tertiary education or an authority the subject of regulations under section 139(1)(e), on or before such day as is specified in the regulations.
- (5) An authority may, from time to time, amend its management plan.
- (6) Each authority shall send a copy of its management plan, and any amendment of the plan, to the Director as soon as practicable after the management plan or the amendment, as the case may be, has been prepared.

**146. Annual report to Director**

- (1) Each authority shall report to the Director at least once in each year after the date on which the implementation of its management plan commenced.
- (2) A report under subsection (1) shall specify —
  - (a) the activities and programmes undertaken —
    - (i) to eliminate and ensure the absence of discrimination in employment on the ground of sex, marital status, pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment or age;
    - (ia) to eliminate and ensure the absence of discrimination in employment against gender reassigned persons on gender history grounds; and
    - (ii) to promote equal opportunity for all persons, during the period to which the report relates;
  - (b) the results achieved by the activities and programmes referred to in paragraph (a), including redistributive effects in the workforce; and

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- (c) the proposed activities and specific aims set for the year following the period to which the report relates.

*[Section 146 amended by No. 40 of 1988 s. 29; No. 74 of 1992 s. 37; No. 2 of 2000 s. 28; No. 3 of 2002 s. 58.]*

**147. Investigation by Director**

- (1) Where the Director is dissatisfied with any matter relating to the preparation or implementation of a management plan by an authority or any failure or omission of an authority with respect to the preparation or implementation of a management plan, the Director may hold an investigation into the matter.
- (2) Except as otherwise provided by this Division, an investigation shall be held in such manner as the Director determines.

*[Section 147 amended by No. 55 of 2004 s. 321.]*

*[148. Repealed by No. 55 of 2004 s. 322.]*

**149. Representation in investigation proceedings**

An authority in respect of which an investigation is held under this Division is not entitled to be represented by counsel or a solicitor during the holding of the investigation.

*[Section 149 amended by No. 55 of 2004 s. 323.]*

**150. Powers of Director on an investigation**

- (1) For the purposes of an investigation, the Director may require an authority —
- (a) to answer any question;
  - (b) to give the Director a statement of information;
  - (c) to produce to the Director any document or other thing;  
or
  - (d) to give the Director 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) 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 authority; or
  - (c) any duty of secrecy or other restriction on disclosure applying to the authority.
- (4) Notwithstanding subsection (3), the Director shall set aside a requirement under subsection (1) if it appears to the Director that the authority of whom the requirement is made has a ground of privilege whereby in proceedings in a court of law, the authority might resist a like requirement and it does not appear to the Director that the authority consents to compliance with the requirement.

*[Section 150 amended by No. 55 of 2004 s. 324.]*

**151. Incriminatory statements**

- (1) Where, under section 150, 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 155.
- (2) Subsection (1) applies whether the person required to give a statement objects to giving it or not.

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**152. Conclusion of investigation**

At the conclusion of an investigation held under this Division, the Director may do either or both of the following —

- (a) make recommendations 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 matter investigated.

*[Section 152 amended by No. 55 of 2004 s. 325.]*

**153. Direction to amend management plan**

- (1) On receipt of a report from the Director under section 152, the Minister may, by notice 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).

*[Section 153 amended by No. 55 of 2004 s. 326.]*

## **Part X — Miscellaneous**

### **154. Effect of contravention of Act**

- (1) A contravention of this Act shall attract no sanction or consequence, whether criminal or civil, except to the extent expressly provided by this Act or the *State Administrative Tribunal Act 2004*.
- (2) Nothing in subsection (1) prevents an action for defamation.  
*[Section 154 amended by No. 55 of 2004 s. 327.]*

### **155. Obstruction**

A person shall not, without lawful excuse, wilfully obstruct, hinder or resist the Commissioner, an officer of the Commissioner, the Director or an officer of the Director in the exercise or the performance of a function under this Act.

Penalty:

- (a) in the case of a natural person — \$1 000; or
- (b) in the case of a body corporate — \$5 000.

*[Section 155 amended by No. 55 of 2004 s. 328.]*

### **156. Failure to provide actuarial or statistical data**

Where a person has engaged in an act of discrimination that would, but for section 34(4), 35AR(aa), 66P, 66T, 66ZL or 66ZR, be unlawful, the Commissioner may, by notice in writing served on the person, require the person within 28 days after service of the notice on the person, to disclose to the Commissioner the source of the actuarial or statistical data on which the act of discrimination was based and, where the Commissioner makes such a requirement of a person, the person shall not, without reasonable excuse, fail to comply with the requirement.

Penalty:

- (a) in the case of a natural person — \$1 000; or

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- (b) in the case of a body corporate — \$5 000.

*[Section 156 amended by No. 40 of 1988 s. 30; No. 74 of 1992 s. 38; No. 2 of 2000 s. 28.]*

**157. Failure to attend conciliation proceedings or conference**

- (1) A person who has been given a notice under section 91 to appear before the Commissioner for the purpose of endeavouring to resolve a complaint by conciliation shall not, without reasonable excuse, fail to appear as required by the notice.

Penalty:

- (a) in the case of a natural person — \$1 000; or
- (b) in the case of a body corporate — \$5 000.

- (2) A person who has been given a direction under section 87 to attend a conference shall not, without reasonable excuse —

- (a) fail to attend as required by the direction; or
- (b) fail to attend and report from day to day unless excused, or released from further attendance, by the person presiding at the conference.

Penalty:

- (a) in the case of a natural person — \$1 000; or
- (b) in the case of a body corporate — \$5 000.

**158. Failure to furnish information, etc.**

A person shall not, without reasonable excuse, refuse or fail —

- (a) to furnish information; or
- (b) to produce a document,

when so required pursuant to section 86.

Penalty:

- (a) in the case of a natural person — \$1 000; or
- (b) in the case of a body corporate — \$5 000.



**159. False or misleading information**

A person shall not furnish information or make a statement to the Commissioner or to any other person exercising or performing functions under this Act, knowing that the information or statement is false or misleading in a material particular.

Penalty:

- (a) in the case of a natural person — \$2 500; or
- (b) in the case of a body corporate — \$10 000.

*[Section 159 amended by No. 78 of 1995 s. 147.]*

**160. Liability of persons involved in unlawful acts**

A person who causes, instructs, induces, aids, or permits another person to do an act that is unlawful under this Act shall for the purposes of this Act be taken also to have done the act.

**161. Vicarious liability**

- (1) Subject to subsection (2), where an employee or agent of a person does, in connection with the employment of the employee or with the duties of the agent as an agent —
  - (a) an act that would, if it were done by the person, be unlawful under this Act (whether or not the act done by the employee or agent is unlawful under this Act); or
  - (b) an act that is unlawful under this Act,

this Act applies in relation to that person as if that person had also done the act.

- (2) Subsection (1) does not apply in relation to an act of a kind referred to in paragraph (a) or (b) of that subsection done by an employee or agent of a person if it is established that the person took all reasonable steps to prevent the employee or agent from doing acts of the kind referred to in that paragraph.

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**162. Acts done on behalf of bodies**

- (1) Where, for the purposes of this Act, it is necessary to establish that a body corporate has done an act on a particular ground, it is sufficient to establish that a person who acted on behalf of the body corporate in the matter so acted on that ground.
- (2) Where a person attends a conference under Division 2 of Part VII, or appears before the Tribunal on behalf of a body or persons, whether corporate or unincorporate, any conduct by that person when so attending or appearing shall be deemed, for the purposes of this Act, to be conduct of the body.

*[Section 162 amended by No. 40 of 1988 s. 31.]*

**163. References to employer**

- (1) A reference in this Act to an employer shall be read and construed in relation to employment in a department within the meaning of the *Public Sector Management Act 1994*<sup>7</sup> as a reference to the chief executive officer of that department and any thing determined or done with respect to —
  - (a) the offer of any such employment;
  - (b) the terms and conditions on which any such employment is afforded;
  - (c) the opportunities afforded for promotion, transfer, training or other benefits associated with any such employment; or
  - (d) dismissal from any such employment,or with respect to any other matter concerning employment, by an officer or employee in any such department who is authorised to determine and do things in that respect shall be deemed to have been determined or done by the chief executive officer.
- (2) A reference in this Act to an employer shall be read and construed in relation to employment in the Police Force of

Western Australia as a reference to the Commissioner of Police and anything determined or done with respect to —

- (a) the offer of any such employment;
- (b) the terms and conditions on which any such employment is afforded;
- (c) the opportunities afforded for promotion, transfer, training or other benefits associated with any such employment; or
- (d) dismissal from any such employment,

or with respect to any other matter concerning employment, by an officer or employee in the Police Department<sup>8</sup> or the Police Force of Western Australia who is authorised to determine and do things in that respect shall be deemed to have been determined or done by the Commissioner of Police.

- (3) The Governor may make regulations providing that a reference in this Act to an employer shall, in relation to employment in an authority specified in the regulations, be read and construed as a reference to the officer or employee of that authority specified in respect of that authority in the regulations and any thing determined or done with respect to —

- (a) the offer of any such employment;
- (b) the terms and conditions on which any such employment is afforded;
- (c) the opportunities afforded for promotion, transfer, training or other benefits associated with any such employment; or
- (d) dismissal from any such employment,

or with respect to any other matter concerning employment, by an officer or employee in any such authority who is authorised to determine and do things in that respect shall be deemed to have been determined or done by the officer or employee specified in the regulations.

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- (4) In subsection (3), “**authority**” means an authority to which Part IX applies other than the Public Service of the State and the Police Force of Western Australia.

*[Section 163 amended by No. 32 of 1994 s. 19.]*

**164. Self-incrimination**

It is not a reasonable excuse for the purposes of section 158 for a person to refuse or fail to furnish information or produce a document that the furnishing of the information or the production of the document might incriminate the person, but evidence of the furnishing of the information or the production of the document is not admissible in evidence against the person in any civil or criminal proceeding before a court, other than a proceeding for an offence under section 159.

**165. Particulars of certain complaints not to be communicated**

- (1) Subject to subsection (2), where a complaint alleging that a person has done an act that is unlawful under Division 4 of Part II is lodged with the Commissioner under section 83, a person shall not make a record of, or divulge or communicate to any other person, any particulars of that complaint until the Commissioner has commenced to investigate the complaint.

Penalty:

- (a) in the case of a natural person — \$1 000; or  
(b) in the case of a body corporate — \$5 000.
- (2) Nothing in subsection (1) prohibits —
- (a) the Commissioner, a member of the Tribunal, a member of the staff assisting the Commissioner or a person acting under the direction or authority of the Tribunal or of the Commissioner or pursuant to a delegation under section 94 from making a record of, or divulging or communicating, any particulars of a complaint in the performance of a duty under or in connection with this Act or the *State Administrative Tribunal Act 2004* or in

- the performance or exercise of a function or power under this Act or that Act;
- (b) a person from divulging or communicating any particulars of a complaint to —
- (i) the complainant or a person on whose behalf the complaint was made;
  - (ii) the person alleged to have done the act to which the complaint relates;
  - (iii) the legal representative of a person referred to in subparagraph (i) or (ii); or
  - (iv) the employer or principal of the person referred to in subparagraph (i) or (ii);
- (c) a person who has made a complaint in respect of a particular matter from divulging or communicating any particulars of the complaint to —
- (i) a person to whom, or an officer of a body to which, the complainant is making a complaint or application in respect of the same matter;
  - (ii) an officer of a tribunal in which the complainant is instituting proceedings, or to which the complainant is making an application, in respect of the same matter;
  - (iii) a near relative of the complainant; or
  - (iv) a person from whom the complainant is seeking or receiving professional treatment, counselling or advice;
- (d) a person (in this paragraph referred to as the “**relevant person**”) on whose behalf a complaint has been made in respect of a particular matter from divulging or communicating any particulars of the complaint to —
- (i) a person to whom, or an officer of a body to which, the relevant person is making a complaint or application in respect of the same matter;

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- (ii) an officer of a tribunal in which the relevant person is instituting proceedings, or to which the relevant person is making an application, in respect of the same matter;
- (iii) a near relative of the relevant person; or
- (iv) a person from whom the relevant person is seeking or receiving professional treatment, counselling or advice;

or

- (e) an authority or person to whom particulars of a complaint may be divulged or communicated under paragraph (b), (c) or (d) from making a record of those particulars.

*[Section 165 amended by No. 40 of 1988 s. 32; No. 55 of 2004 s. 329.]*

**166. Protection from civil actions**

- (1) The Commissioner or a person acting under the direction or authority of the Commissioner or pursuant to a delegation under section 94 is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function, or in the exercise or purported exercise of any power or authority, conferred on the Commissioner.
- (2) Where —
  - (a) a complaint has been made to the Commissioner; or
  - (b) a submission has been made, a document or information has been furnished, or evidence has been given, to the Commissioner,

a person is not liable to an action, suit or other proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the complaint or submission was

made, the document or information was furnished or the evidence was given.

*[Section 166 amended by No. 55 of 2004 s. 330.]*

**167. Non-disclosure of private information**

- (1) A person who is, or has at any time been, the Commissioner or a member of the staff assisting the Commissioner or is, or has at any time been, authorised to perform or exercise any function of the Commissioner or any function on behalf of the Commissioner, being a function conferred on the Commissioner under this Act, shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act or in the performance or exercise of such a function —
- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorised;
  - (b) make use of any such information as is mentioned in paragraph (a); or
  - (c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$2 500.

- (2) A person who is, or has at any time been, the Commissioner or is, or has at any time been, authorised to perform or exercise any function of the Commissioner or any function on behalf of the Commissioner, being a function conferred on the Commissioner under this Act, shall not be required —
- (a) to divulge or communicate to a court any information relating to the affairs of another person acquired by the first-mentioned person by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorised; or

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- (b) to produce in a court a document relating to the affairs of another person of which the first-mentioned person has custody, or to which that person has access, by reason of that person's office or employment under or for the purposes of this Act or by reason of that person being or having been so authorised,

except where it is necessary to do so for the purposes of this Act or the *State Administrative Tribunal Act 2004*.

- (2a) This section also extends to a person who has at any time been —
  - (a) a member of;
  - (b) a member of the staff assisting; or
  - (c) a person authorised to perform or exercise any function of,

the tribunal that was known as the Equal Opportunity Tribunal.

- (3) Nothing in this section prohibits a person from divulging or communicating information, or producing a document, that is, or is included in a class of information that is or a class of documents that are, required or permitted by an Act to be divulged, communicated or produced, as the case may be.
- (4) In this section —
  - “**court**” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;
  - “**produce**” includes permit access to.

*[Section 167 amended by No. 78 of 1995 s. 147; No. 55 of 2004 s. 331.]*

**168. Information stored otherwise than in written form**

Where information is recorded or stored by means of a mechanical, electronic or other device, any duty imposed by this Act to produce the document recording that information shall be



construed as a duty to provide a document containing a clear reproduction in writing of the information.

**169. Regulations**

- (1) The Governor may make regulations 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) 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 VII;
  - (c) the manner of serving any notice or other document;
  - [(d) *deleted*]and
  - (e) exempting —
    - (i) any person or class of persons;
    - (ii) any activity or class of activity; or
    - (iii) any other matter or circumstance, specified in the regulations,from this Act or such parts of this Act as may be so specified.
- (3) Regulations made under this Act may provide that contravention of or failure to comply with a regulation constitutes an offence and provide for penalties not exceeding a fine of \$500 for offences against the regulations.

*[Section 169 amended by No. 74 of 1992 s. 39; No. 55 of 2004 s. 332.]*

## Notes

- <sup>1</sup> This is a compilation of the *Equal Opportunity Act 1984* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Equal Opportunity Act 1984</i>	83 of 1984	7 Dec 1984	8 Jul 1985 (see s. 2 and <i>Gazette</i> 5 Jul 1985 p. 2387)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3 <sup>9</sup>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Equal Opportunity Amendment Act 1988</i> <sup>10</sup>	40 of 1988	30 Nov 1988	s. 14-26, 28 and 31-33: 30 Nov 1988 (see s. 2(2)); balance: 20 Jan 1989 (see s. 2(1) and <i>Gazette</i> 13 Jan 1989 p. 61)
<i>Equal Opportunity Amendment Act 1992</i> <sup>11, 12</sup>	74 of 1992	11 Dec 1992	s. 4-8, 10-31, 33-35 and 37-40: 8 Jan 1993 (see s. 2(2)); balance (subject to s. 9(2) and (3) and s. 36(2)): 11 Dec 1992 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Energy Corporations (Transitional and Consequential Provisions) Act 1994</i> s. 109	89 of 1994	15 Dec 1994	1 Jan 1995 (see s. 2(2) and <i>Gazette</i> 23 Dec 1994 p. 7069)
<i>Sentencing (Consequential Provisions) Act 1995</i> s. 147	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<b>Reprint of the <i>Equal Opportunity Act 1984</i> as at 16 Apr 1996</b> (includes amendments listed above except those in the <i>Sentencing (Consequential Provisions) Act 1995</i> )			
<i>Local Government (Consequential Amendments) Act 1996</i> s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Vocational Education and Training Act 1996</i> s. 71(1)	42 of 1996	16 Oct 1996	1 Jan 1997 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301)
<i>Electoral Legislation Amendment Act 1996</i> s. 28	43 of 1996	16 Oct 1996	9 Nov 1996 (see s. 2(2) and <i>Gazette</i> 8 Nov 1996 p. 6265)
<i>Acts Amendment and Repeal (Family Court) Act 1997</i> s. 31	41 of 1997	9 Dec 1997	26 Sep 1998 (see s. 2 and <i>Gazette</i> 25 Sep 1998 p. 5295)
<i>Equal Opportunity Amendment Act (No. 3) 1997</i>	42 of 1997	9 Dec 1997	s. 4: 1 Dec 1993 (see s. 2(2)); balance: 6 Jan 1998 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 55	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 33	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Friendly Societies (Western Australia) Act 1999</i> s. 19	2 of 1999	25 Mar 1999	24 May 1999 (see s. 2 and <i>Gazette</i> 21 May 1999 p. 1999)
<b>Reprint of the <i>Equal Opportunity Act 1984</i> as at 7 May 1999</b> (includes amendments listed above except those in the <i>Friendly Societies (Western Australia) Act 1999</i> )			
<i>School Education Act 1999</i> s. 247	36 of 1999	2 Nov 1999	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<i>Gas Corporation (Business Disposal) Act 1999</i> s. 101	58 of 1999	24 Dec 1999	16 Dec 2000 (see s. 2(5) and <i>Gazette</i> 15 Dec 2000 p. 7201)
<i>Gender Reassignment Act 2000</i> s. 28	2 of 2000	12 Apr 2000	19 Dec 2001 (see s. 2 and <i>Gazette</i> 18 Dec 2001 p. 6489)
<i>Statutes (Repeals and Minor Amendments) Act 2000</i> s. 14(13)	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<b>Reprint of the <i>Equal Opportunity Act 1984</i> as at 21 Jul 2000</b> (includes amendments listed above except those in the <i>School Education Act 1999</i> , <i>Gas Corporation (Business Disposal) Act 1999</i> and the <i>Gender Reassignment Act 2000</i> )			
<i>Building Societies Amendment Act 2001</i> s. 48	12 of 2001	13 Jul 2001	13 Jul 2001 (see s. 2)

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Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Lesbian and Gay Law Reform) Act 2002 Pt. 8</i> <sup>13</sup>	3 of 2002	17 Apr 2002	21 Sep 2002 (see s. 2 and <i>Gazette</i> 20 Sep 2002 p. 4693)
<i>Labour Relations Reform Act 2002 s. 183</i>	20 of 2002	8 Jul 2002	1 Aug 2002 (see s. 2 and <i>Gazette</i> 26 Jul 2002 p. 3459)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 33, 112</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 43</i> <sup>14, 15</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)

**Reprint 4: The Equal Opportunity Act 1984 as at 1 Apr 2005** (includes amendments listed above except those in the *Courts Legislation Amendment and Repeal Act 2004*)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Short title	Number and Year	Assent	Commencement
<i>Housing Societies Repeal Act 2005 s. 26</i> <sup>16</sup>	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3) and (4))
<i>Electricity Corporations Act 2005 s. 139</i> <sup>17</sup>	18 of 2005	13 Oct 2005	To be proclaimed (see s.2(2))

<sup>2</sup> Repealed by the *Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Act 1986 s. 4* of the Commonwealth (No. 126 of 1986). Now see the *Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth.

<sup>3</sup> Repealed by the *Financial Institutions (Western Australia) Act 1992 s. 22(1)*.

<sup>4</sup> The *Uniform Building By-laws 1974* were repealed in *Gazette* 28 July 1989 p. 2280.

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- <sup>5</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference in a written law to the Public Service Commissioner or Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*). This reference was amended under the *Reprints Act 1984* s. 7(5)(a).
- <sup>6</sup> Under the *Acts Amendment (Public Service) Act 1987* s. 31(1)(f) a reference in a written law to “Permanent Head” is, unless the contrary intention appears, to be construed as if it had been amended to be a reference to “chief executive officer”. This reference was amended under the *Reprints Act 1984* s. 7(5)(a).
- <sup>7</sup> Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is to be read as a reference to the *Public Sector Management Act 1994*. The reference was changed under the *Reprints Acts 1984* s. 7(3)(g).
- <sup>8</sup> Now known as the Police Service.
- <sup>9</sup> The *Acts Amendment (Financial Administration and Audit) Act 1985* s. 4 is a savings and transitional provision that is of no further effect.
- <sup>10</sup> The *Equal Opportunity Amendment Act 1988* s. 33 is a transitional provision that is of no further effect.
- <sup>11</sup> The *Equal Opportunity Amendment Act 1992* s. 36(2) is a saving provision that is of no further effect.
- <sup>12</sup> The *Equal Opportunity Amendment Act 1992* s. 9(2) and (3) read as follows:  
“
- (2) To the extent that it affects the application of the principal Act to conduct by a person who was, at the time of the conduct, a Member of Parliament, subsection (1) is deemed to have come into operation immediately after the commencement of the principal Act.
- (3) Where a contravention of the principal Act is alleged to have been committed before the day on which this Act receives the Royal Assent and it would not have been a contravention but for subsection (2), the reference in section 83(4) of the principal Act to the date on which the contravention is alleged to have been committed is to be regarded as a reference to the day on which this Act received the Royal Assent.
- ”.
- <sup>13</sup> The *Acts Amendment (Lesbian and Gay Law Reform) Act 2002* s. 51(3) reads as follows:

“

- (3) Despite the repeal of section 34(1) by this section, that subsection continues to have effect for 12 months from the date of that repeal.

”

<sup>14</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>15</sup> The *State Administrative Tribunal Regulations 2004* r. 48 reads as follows:

“

**48. Equal Opportunity Act 1984**

Unless the context otherwise requires, where in an arrangement made under the *Equal Opportunity Act 1984* section 7 there is a reference to the Equal Opportunity Tribunal that reference is to be read and construed as a reference to the State Administrative Tribunal.

”

<sup>16</sup> On the date as at which this compilation was prepared, the *Housing Societies Repeal Act 2005* s. 26 had not come into operation. It reads as follows:

“

**26. Equal Opportunity Act 1984 amended**

- (1) The amendments in this section are to the *Equal Opportunity Act 1984*.
- (2) Section 35N(1) is amended as follows:
- (a) after paragraph (b) by inserting —  
“ or ”;
  - (b) after paragraph (c) by deleting “; or” and inserting a full stop;
  - (c) by deleting paragraph (d).
- (3) Section 66ZS(1)(a) is amended as follows:
- (a) after subparagraph (ii) by inserting —  
“ or ”;
  - (b) after subparagraph (iii) by deleting “or”;
  - (c) by deleting subparagraph (iv).
- (4) Section 69(1)(b) is amended as follows:
- (a) after subparagraph (ii) by inserting —  
“ or ”;

- (b) after subparagraph (iii) by deleting “or”;
- (c) by deleting subparagraph (iv).

”

<sup>17</sup> On the date as at which this compilation was prepared, the *Electricity Corporations Act 2005* s. 139, which gives effect to Sch. 5 Div. 8 had not come into operation. It reads as follows:

“

**139. Amendments to other Acts**

The Acts mentioned in Schedule 5 are amended as set out in that Schedule.

”

Schedule 5 Division 8 reads as follows:

“

**Division 8 — *Equal Opportunity Act 1984***

**43. The Act amended**

The amendments in this Division are to the *Equal Opportunity Act 1984*.

**44. Section 139 amended**

Section 139(1)(c) is deleted and the following paragraph is inserted instead —

“

- (c) each of the bodies established by section 4(1) of the *Electricity Corporations Act 2005*, namely —
  - (i) the Electricity Generation Corporation;
  - (ii) the Electricity Networks Corporation;
  - (iii) the Electricity Retail Corporation; and
  - (iv) the Regional Power Corporation;

”

”