

Queensland



EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT ACT 1992

**Reprinted as in force on 1 July 1992
(Act not amended up to this date)**

Reprint No. 1

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Information about this reprint

This Act is reprinted as at 1 July 1992. The opportunity has been taken, under section 7 of the *Reprints Act 1992*, to do the following—

- omit the enacting words as permitted by section 7(1)(a) of that Act;
- omit provisions that are no longer required as permitted by section 40 of that Act.

Also see Endnotes for—

- **details about when provisions commenced; and**
- **any provisions that have not commenced and are not incorporated in the reprint.**

Queensland



**EQUAL OPPORTUNITY IN PUBLIC
EMPLOYMENT ACT 1992**

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EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT ACT 1992

[reprinted as in force on 1 July 1992²]

An Act to provide for equal employment opportunity in the public sector

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Equal Opportunity in Public Employment Act 1992*³⁻⁴.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Definitions

3. In this Act—

“**agency**” includes—

- (a) a unit of the public sector; and
- (b) the Police Service; and
- (c) a person or body that is prescribed by regulation;

but does not include an agency that is exempted under section 25;

“**Anti-Discrimination Tribunal**” means the Anti-Discrimination Tribunal established under the *Anti-Discrimination Act 1991*;

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“chief executive”—

- (a) in relation to an agency that is a unit of the public sector because it is a department—means the chief executive in control of the department within the meaning of section 11 of the *Public Service Management and Employment Act 1988*; and
- (b) in relation to the Police Service—means the Commissioner of the Police Service within the meaning of the *Police Service Administration Act 1990*; and
- (c) in relation to any other agency—means the person who is the most senior person within the management of the agency;

“Commissioner for Public Sector Equity” means the Commissioner for Public Sector Equity appointed under section 5.2 of the *Public Sector Management Commission Act 1990*;

“department” has the meaning given in section 4(1) of the *Public Service Management and Employment Act 1988*;

“EEO management plan” means an equal employment opportunity management plan required by section 6;

“employee” means an individual appointed or engaged—

- (a) under a contract of service (including on a full-time, part-time, permanent, casual or temporary basis); or
- (b) under a statutory appointment;

“employment matters” means—

- (a) recruitment procedure, and selection criteria, for appointment or engagement of people as employees; or
- (b) promotion and transfer of employees; or
- (c) training and staff development for employees; or
- (d) terms and conditions of service and separation of employees; or
- (e) any other matter relating to the employment of employees;

“next reporting period”, in relation to a report, means the period of 1 year following the reporting period in relation to the report;

“Police Service” has the meaning given by section 1.4(1) of the *Police*

Service Administration Act 1990;

“Public Sector Management Commission” has the meaning given by the *Public Sector Management Commission Act 1990;*

“reporting period”, in relation to a report, means—

- (a) unless the Commissioner for Public Sector Equity authorises a different period under section 14(5)—the financial year before the making of the report; or
- (b) the period authorised by the Commissioner for Public Sector Equity under section 14(5);

“separation” includes voluntary and involuntary separation of a person from an agency;

“target group” means—

- (a) people of the Aboriginal race of Australia or people who are descendants of the indigenous inhabitants of the Torres Strait Islands; or
- (b) people who have migrated to Australia and whose first language is a language other than English, and the children of those people; or
- (c) people with a physical, sensory, intellectual or psychiatric disability (whether the disability presently exists or previously existed but no longer exists); or
- (d) women; or
- (e) a group of people that is prescribed by regulation;

“trade union” means—

- (a) an industrial organisation within the meaning of section 2.1(1) of the *Industrial Relations Act 1990* that is an association of employees; or
- (b) an organisation of employees registered under the *Industrial Relations Act 1988* of the Commonwealth;

“unit of the public sector” has the meaning given by section 1.3 of the *Public Sector Management Commission Act 1990;*

“unlawful discrimination” means discrimination that is unlawful under the *Anti-Discrimination Act 1991*;

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

PART 2—ACT’S EQUAL EMPLOYMENT OPPORTUNITY PURPOSE

Act’s equal employment opportunity purpose and how it is to be achieved

4.(1) The purpose of the Act is to promote equality of employment opportunity in the public sector.

(2) This purpose is to be achieved by—

- (a) requiring an agency to take the steps set out in Division 1 of Part 3 to develop an EEO management plan that will—
 - (i) enable members of the target groups to—
 - (A) compete for recruitment, selection, promotion and transfer in the agency and within other agencies; and
 - (B) pursue careers in the agency and other agencies;
as effectively as people who are not members of the target groups; and
 - (ii) eliminate unlawful discrimination by the agency or its employees against members of the target groups with respect to employment matters; and
- (b) requiring an agency to implement its EEO management plan in accordance with Division 3 of Part 3; and
- (c) establishing procedures to monitor compliance with these requirements.

Merit principle reinforced

5. Nothing in this Act is to be taken to require any action incompatible with the principle that recruitment, selection, promotion and transfer are to be dealt with on the basis of merit.

PART 3—EQUAL EMPLOYMENT OPPORTUNITY MANAGEMENT PLAN

Division 1—Development

Agency to develop EEO management plan

6.(1) An agency must develop an EEO management plan to ensure that appropriate action is taken by the agency—

- (a) to promote equal employment opportunity for; and
- (b) to eliminate unlawful discrimination by it against;

members of the target groups with respect to employment matters.

(2) An agency must begin to develop its EEO management plan—

- (a) in the case of a person or body that is an agency when this section commences—immediately; or
- (b) in the case of a person or body that becomes an agency after this section commences—as soon as the person or body becomes an agency.

Steps to be followed in ongoing development of EEO management plan

7. An agency must take the following steps in developing its EEO management plan on an ongoing basis—

Step 1—Issue policy statement and keep employees informed

Inform employees of the agency's EEO policy and the results of monitoring and evaluating the implementation of the agency's EEO management plan in accordance with Step 8.

Step 2—Nominate person to have EEO responsibility

Give responsibility for the development, implementation and continuous review of the EEO management plan to a person who has, or persons who have, sufficient authority and status within the management of the agency to enable the person or persons to properly do this.

Step 3—Consult with trade unions

Consult with the trade unions that have members who are, or will be, affected by the EEO management plan about the development and implementation of the plan.

Step 4—Consult with employees

Consult with the agency's employees, particularly employees who are members of the target groups, about the development and implementation of the EEO management plan.

Step 5—Collect statistics

Collect and record statistics and related information about the number of employees who are members of the target groups and the salary stream and level of these employees.

Step 6—Review policies and practices

Examine the agency's policies and practices in relation to employment matters to identify—

- (a) any patterns (including those identified statistically) of inequality of opportunity for members of the target groups; and
- (b) any policy or practice that unlawfully discriminates against members of the target groups.

Step 7—Set objectives and implementation strategy

Set qualitative and quantitative objectives consistent with the purposes of this Act and develop a strategy for implementing the EEO management plan to achieve the objectives.

Step 8—Assess implementation

Monitor and evaluate the implementation of the EEO management plan to assess whether the objectives have been achieved.

Agency may amend EEO management plan

8. An agency may, from time to time, amend its EEO management plan.

Division 2—Approval

Agency to give EEO management plan to the commissioner

9. An agency must give a copy of its EEO management plan to the Commissioner for Public Sector Equity—

- (a) in the case of a person or body that is an agency when this section commences—by 30 June 1992; or
- (b) in the case of a person or body that becomes an agency after the commencement of this section—
 - (i) within 1 year of becoming an agency; or
 - (ii) by such later day fixed by the Commissioner for Public Sector Equity.

Agency to give amendment of EEO management plan to the commissioner

10. An agency must give a copy of an amendment of its EEO management plan to the Commissioner for Public Sector Equity as soon as the amendment is made.

Commissioner must advise whether EEO management plan etc. supported

11. Within 3 months of being given an agency's EEO management plan or an amendment to the plan, the Commissioner for Public Sector Equity must advise the agency whether or not the plan or amendment is supported.

Division 3—Implementation

Agency to give effect to EEO management plan

12. An agency must take any action necessary to implement its EEO management plan.

Employment powers to be exercised having regard to EEO management plan

13. A person who exercises powers with respect to employment matters in an agency must have regard to the agency's EEO management plan in exercising the powers.

Division 4—Annual report

Agency to give annual implementation and forward planning report

14.(1) An agency must give the Commissioner for Public Sector Equity an annual report on—

- (a) the implementation during the reporting period of its EEO management plan; and
- (b) the agency's forward plan for the next reporting period.

(2) An agency must give the commissioner its report within 3 months of the end of its reporting period.

(3) The report on the implementation during the reporting period of an agency's EEO management plan is to include details of the action taken during the reporting period to comply with the steps set out in section 7.

(4) The report on the agency's forward plan for the next reporting period is to include—

- (a) details of the qualitative and quantitative objectives set for the next reporting period and the action to be taken to achieve the objectives; and
- (b) a copy of any consequential amendment of the EEO management plan.

(5) At the request of an agency, the Commissioner for Public Sector Equity may authorise the agency to give the commissioner the report on its EEO management plan's implementation during a specified earlier period.

Division 5—Supervision

Subdivision A—Supervision by commissioner

Commissioner may take action if dissatisfied with EEO management plan

15. If the Commissioner for Public Sector Equity is dissatisfied with any matter relating to—

- (a) the preparation, implementation or outcome of an agency's EEO management plan; or
- (b) an agency's annual report under section 14;

the Commissioner may do either or both of the following—

- (c) recommend to the agency's chief executive the action that the agency should take to overcome that dissatisfaction;
- (d) refer the matter to the Anti-Discrimination Tribunal.

Agency to comply with recommendation unless Minister notified

16. An agency must comply with a recommendation given to its chief executive under section 15 unless the chief executive—

- (a) gives the Minister administering the agency written notice of the

chief executive's reason for not complying with the recommendation; and

- (b) gives a copy of the notice to the Commissioner for Public Sector Equity.

Subdivision B—Supervision by tribunal

Tribunal may recommend conciliation

17. If the Anti-Discrimination Tribunal believes that a reference given to it under section 15 may be resolved by conciliation, the tribunal may recommend that the chief executive concerned and the Commissioner for Public Sector Equity try to resolve the reference in that way.

Otherwise tribunal must determine reference

18. The Anti-Discrimination Tribunal must determine a reference given to it under section 15 unless the reference is resolved by conciliation because of a recommendation under section 17.

Tribunal may investigate a reference

19. The Anti-Discrimination Tribunal may hold an investigation into a reference.

Legal representation with permission

20. During an investigation into a reference, any of the following may be represented by counsel or a solicitor with the Anti-Discrimination Tribunal's permission—

- (a) the Commissioner for Public Sector Equity;
- (b) the agency concerned;
- (c) the agency's chief executive.

Tribunal's powers at an investigation

21.(1) For the purposes of an investigation, the Anti-Discrimination Tribunal may require the agency concerned and its chief executive—

- (a) to answer any question; or
- (b) to give the tribunal any information; or
- (c) to produce to the tribunal any document or other thing; or
- (d) to give the tribunal a copy of any document.

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

- (a) be in writing; and
- (b) specify or describe the information, document or thing required; and
- (c) specify a reasonable time for compliance.

(3) The agency or chief executive required to do something by the tribunal under subsection (1) must comply with the requirement even though—

- (a) compliance with a similar requirement in proceedings in a court of law might be excused on the grounds of public interest; or
- (b) the agency or chief executive might be able to claim privilege (other than privilege on the ground of self-incrimination).

(4) The agency or chief executive required to do something by the tribunal under subsection (1) may comply with the requirement even though the agency or chief executive is subject to a duty of secrecy or other restriction on disclosure.

Conclusion of reference

22. At the conclusion of a reference, the Anti-Discrimination Tribunal must give a report (with or without recommendations) to either or both of the following—

- (a) the chief executive of the agency concerned and the Commissioner for Public Sector Equity;
- (b) the Minister administering the agency concerned.

Recommendation may be to amend EEO management plan

23. In a report under section 22, the Anti-Discrimination Tribunal may recommend that an agency amend its EEO management plan in a particular way.

Agency to comply with recommendation

24. An agency must comply with a recommendation given in a report under section 22.

Division 6—Exemption

Agency may be granted exemption

25.(1) On request by an agency, the Commissioner for Public Sector Equity may grant an agency an exemption from the operation of a provision of this Act.

(2) The exemption may be revoked, wholly or partly, by the Commissioner for Public Sector Equity.

(3) The exemption, or a revocation of the exemption, is to be in, or evidenced by, writing signed by the Commissioner for Public Sector Equity.

PART 4—MISCELLANEOUS

Delegation of powers by commissioner

26. The Commissioner for Public Sector Equity may delegate the commissioner's powers under this Act (other than powers under sections 15 and 25) to a member of—

- (a) the Public Sector Management Commission; or
- (b) the staff of the commission.

Regulations

27. The Governor in Council may make regulations, not inconsistent with the Act, with respect to any matter that—

- (a) is required or permitted to be prescribed by the Act; or
- (b) is necessary or convenient to be prescribed for carrying out or giving effect to the Act.

ENDNOTES

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2 Date to which amendments incorporated

This is the day mentioned in section 5(c) of the *Reprints Act 1992*. However, no amendments have commenced operation before that day. Future amendments of the *Equal Opportunity in Public Employment Act 1992* may be made in accordance with this reprint because of section 49 of the *Reprints Act 1992*.

3 List of legislation

Equal Opportunity in Public Employment Act 1992 No 10

date of assent 27 March 1992

ss 1–2 commenced on date of assent

Div 5 of Pt 3 not yet proclaimed in force

remaining provisions commenced 16 May 1992 (SL No 92 Gaz 15 May 1992
p 466)

4 List of annotations

Key to abbreviations in list of annotations

RA	=	<i>Reprints Act 1992</i>
amd	=	amended
ins	=	inserted
om	=	omitted
renum	=	renumbered
sub	=	substituted
Pt hdg	=	Part heading
Div hdg	=	Division heading
Sdiv hdg	=	Subdivision heading
hdg prec	=	heading preceding
prov hdg	=	provision heading
cl	=	clause
orig	=	original
pres	=	present

Provisions not included in reprint, or amended by amendments not included in reprint, are underlined

PART 5—AMENDMENT OF THE PUBLIC SECTOR MANAGEMENT COMMISSION ACT 1990

Pt 5 (ss 28–30) om (see s 40 RA)