

Queensland



# **EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT ACT 1992**

**Reprinted as in force on 3 February 1997  
(includes amendments up to Act No. 37 of 1996)**

**Warning—see last endnote for uncommenced amendments**

**Reprint No. 1A**

**This reprint is prepared by  
the Office of the Queensland Parliamentary Counsel  
Warning—This reprint is not an authorised copy**

# Information about this reprint

This Act is reprinted as at 3 February 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

Queensland



**EQUAL OPPORTUNITY IN PUBLIC  
EMPLOYMENT ACT 1992**

**TABLE OF PROVISIONS**

Section		Page
<b>PART 1—PRELIMINARY</b>		
1	Short title .....	5
2	Commencement .....	5
3	Definitions .....	5
<b>PART 2—ACT'S EQUAL EMPLOYMENT OPPORTUNITY PURPOSE</b>		
4	Act's equal employment opportunity purpose and how it is to be achieved .....	8
5	Merit principle reinforced .....	9
<b>PART 3—EQUAL EMPLOYMENT OPPORTUNITY MANAGEMENT PLAN</b>		
<i>Division 1—Development</i>		
6	Agency to develop EEO management plan .....	9
7	Steps to be followed in ongoing development of EEO management plan .....	9
8	Agency may amend EEO management plan .....	11
<i>Division 2—Approval</i>		
9	Agency to give EEO management plan to public service commissioner . .	11
10	Agency to give amendment of EEO management plan to the commissioner .....	11
11	Commissioner must advise whether EEO management plan etc. supported .....	12
<i>Division 3—Implementation</i>		
12	Agency to give effect to EEO management plan .....	12

*Equal Opportunity in Public Employment Act  
1992*

---

13 Employment powers to be exercised having regard to EEO management plan . . . . . 12

***Division 4—Annual report***

14 Agency to give annual implementation and forward planning report . . . . . 12

***Division 5—Supervision***

***Subdivision A—Supervision by public service commissioner***

15 Commissioner may take action if dissatisfied with EEO management plan . . . . . 13

16 Agency to comply with recommendation unless Minister notified . . . . . 13

***Subdivision B—Supervision by tribunal***

17 Tribunal may recommend conciliation . . . . . 14

18 Otherwise tribunal must determine reference . . . . . 14

19 Tribunal may investigate a reference . . . . . 14

20 Legal representation with permission . . . . . 14

21 Tribunal’s powers at an investigation . . . . . 15

22 Conclusion of reference . . . . . 15

23 Recommendation may be to amend EEO management plan . . . . . 16

24 Agency to comply with recommendation . . . . . 16

***Division 6—Exemption***

25 Agency may be granted exemption . . . . . 16

**PART 4—MISCELLANEOUS**

26 Delegation by public service commissioner . . . . . 16

27 Regulations . . . . . 17

**ENDNOTES**

1 Index to endnotes . . . . . 18

2 Date to which amendments incorporated . . . . . 18

3 Key . . . . . 19

4 Table of earlier reprints . . . . . 19

5 List of legislation . . . . . 20

*Equal Opportunity in Public Employment Act*  
1992

---

6	List of annotations .....	20
7	Provisions that have not commenced and are not incorporated into reprint .....	21



*Equal Opportunity in Public Employment Act*  
1992

---

## **EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT ACT 1992**

[as amended by all amendments that commenced on or before 3 February 1997]

**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*.

#### **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*;

*Equal Opportunity in Public Employment Act  
1992*

---

**“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*



*Equal Opportunity in Public Employment Act  
1992*

---

*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*;

*Equal Opportunity in Public Employment Act  
1992*

---

**“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.

*Equal Opportunity in Public Employment Act  
1992*

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### **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—

*Equal Opportunity in Public Employment Act  
1992*

---

*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

*Equal Opportunity in Public Employment Act  
1992*

---

- (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 public service commissioner**

**9.** An entity that becomes an agency must give a copy of its EEO management plan to the public service commissioner within 1 year of becoming an agency or the longer period the commissioner allows.

**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 public service commissioner as soon as the amendment is made.

*Equal Opportunity in Public Employment Act  
1992*

---

**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 public service commissioner 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 public service commissioner 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.

*Equal Opportunity in Public Employment Act  
1992*

---

(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 public service commissioner 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 public service commissioner***

**Commissioner may take action if dissatisfied with EEO management plan**

15. If the public service commissioner 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—

*Equal Opportunity in Public Employment Act  
1992*

---

- (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 public service commissioner.

***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 public service commissioner 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 public service commissioner;
- (b) the agency concerned;
- (c) the agency's chief executive.



*Equal Opportunity in Public Employment Act*  
1992

---

### **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—

*Equal Opportunity in Public Employment Act  
1992*

---

- (a) the chief executive of the agency concerned and the public service commissioner;
- (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 public service commissioner 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.

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

## **PART 4—MISCELLANEOUS**

### **Delegation by public service commissioner**

**26.(1)** The public service commissioner may delegate the commissioner's powers under this Act to an employee of the office of the public service.

*Equal Opportunity in Public Employment Act*  
1992

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(2) However, the commissioner may not delegate the commissioner's powers under sections 15 and 25.<sup>1</sup>

### **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.

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<sup>1</sup> Section 15 (Commissioner may take action if dissatisfied with EEO management plan)  
Section 25 (Agency may be granted exemption)

## ENDNOTES

### 1 Index to endnotes

		Page
2	Date to which amendments incorporated . . . . .	18
3	Key . . . . .	19
4	Table of earlier reprints . . . . .	19
5	List of legislation . . . . .	19
6	List of annotations . . . . .	20
7	Provisions that have not commenced and are not incorporated into reprint . .	21

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 3 February 1997. Future amendments of the Equal Opportunity in Public Employment Act 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

*Equal Opportunity in Public Employment Act  
1992*

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### 3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

### 4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	none	1 July 1992

### 5 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

pt 3, div 5 not yet proclaimed in force

remaining provisions commenced 16 May 1992 (SL No. 92 gaz 15 May 1992

p 466)

*Equal Opportunity in Public Employment Act  
1992*

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**Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

s 147 sch 2 amdts 3–8 commenced 1 December 1996 (1996 SL No. 361)

remaining provisions not yet proclaimed into force

## 6 List of annotations

### Definitions

- s 3 def “agency” sub 1996 No. 37 s 147 sch 2  
 def “chief executive” om 1996 No. 37 s 147 sch 2  
 def “Commissioner for Public Sector Equity” om 1996 No. 37 s 147 sch 2  
 def “department” om 1996 No. 37 s 147 sch 2  
 def “Police Service” om 1996 No. 37 s 147 sch 2  
 def “Public Sector Management Commission” om 1996 No. 37 s 147 sch 2  
 def “reporting period” sub 1996 No. 37 s 147 sch 2  
 def “unit of the public sector” om 1996 No. 37 s 147 sch 2

**Agency to give EEO management plan to public service commissioner**  
 s 9 sub 1996 No. 37 s 147 sch 2

**Agency to give amendment of EEO management plan to the commissioner**  
 s 10 amd 1996 No. 37 s 147 sch 2

**Commissioner must advise whether EEO management plan etc. supported**  
 s 11 amd 1996 No. 37 s 147 sch 2

**Agency to give annual implementation and forward planning report**  
 s 14 amd 1996 No. 37 s 147 sch 2

### **PART 3—EQUAL EMPLOYMENT OPPORTUNITY MANAGEMENT PLAN**

#### **Division 5—Supervision**

**Subdivision A—Supervision by public service commissioner**  
 sdiv hdg amd 1996 No. 37 s 147 sch 2

**Commissioner may take action if dissatisfied with EEO management plan**  
 s 15 amd 1996 No. 37 s 147 sch 2

**Agency to comply with recommendation unless Minister notified**  
 s 16 amd 1996 No. 37 s 147 sch 2

**Tribunal may recommend conciliation**  
 s 17 amd 1996 No. 37 s 147 sch 2

**Legal representation with permission**  
 s 20 amd 1996 No. 37 s 147 sch 2

**Conclusion of reference**  
 s 22 amd 1996 No. 37 s 147 sch 2

**Agency may be granted exemption**  
s 25            amd 1996 No. 37 s 147 sch 2

**Delegation by public service commissioner**  
s 26            sub 1996 No. 37 s 147 sch 2

**PART 5—AMENDMENT OF THE PUBLIC SECTOR MANAGEMENT  
COMMISSION ACT 1990**  
pt 5 (ss 28–30) om (see RA s 40)

## 7            **Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Public Service Act 1996 No. 37, s 147 sch 2 amdts 1–2 read as follows—**

**1. Section 3, definitions “agency”, “chief executive”, “Commissioner for Public Sector Equity”, “department”, “Police Service”, “Public Sector Management Commission”, “reporting period” and “unit of the public sector”—**

*omit.*

**2. Section 3—**

*insert—*

‘ **“agency”** includes—

- (a) a public sector unit; and
- (b) the police service; and
- (c) an entity prescribed under a regulation;

but does not include an agency exempted under section 25.<sup>2</sup>

**“reporting period”**, for a report, means—

- (a) the financial year before the making of the report; or

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<sup>2</sup> Section 25 (Agency may be granted exemption)

- (b) if the public service commissioner authorises a different period under section 14(5)<sup>3</sup>—the authorised period.’.

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<sup>3</sup> Section 14 (Agency to give annual implementation and forward planning report)