

Queensland



ANTI-DISCRIMINATION ACT 1991

**Reprinted as in force on 9 July 1999
(includes amendments up to Act No. 33 of 1999)**

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This Act is reprinted as at 9 July 1999. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

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 reprints 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**
- **editorial changes made in earlier reprints.**

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[as amended by all amendments that commenced on or before 9 July 1999]

An Act to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct

Parliament's reasons for enacting this Act are—

1. The international community has long recognised the need to protect and preserve the principles of dignity and equality for everyone.

2. This is reflected in a number of international human rights instruments that the Commonwealth has ratified, including—

- the International Convention on the Elimination of All Forms of Racial Discrimination
- the Convention on the Elimination of All Forms of Discrimination Against Women
- the International Labour Organisation Convention No. 111—Discrimination (Employment and Occupation)
- the International Labour Organisation Convention No. 156—Workers with Family Responsibilities
- the International Covenant on Civil and Political Rights
- the Convention on the Rights of the Child
- the Declaration on the Rights of Mentally Retarded Persons
- the Declaration on the Rights of Disabled Persons.

3. The Parliament is supportive of the Commonwealth's ratification of these international instruments.

4. In fulfilling its obligations under these international instruments the Commonwealth has enacted certain human rights legislation.

5. The Parliament is satisfied that there is a need—

- (a) to extend the Commonwealth legislation; and
- (b) to apply anti-discrimination law consistently throughout the State; and
- (c) to ensure that determinations of unlawful conduct are enforceable in the courts of law.

6. The Parliament considers that—

- (a) everyone should be equal before and under the law and have the right to equal protection and equal benefit of the law without discrimination; and
- (b) the protection of fragile freedoms is best effected by legislation that reflects the aspirations and needs of contemporary society; and
- (c) the quality of democratic life is improved by an educated community appreciative and respectful of the dignity and worth of everyone.

7. It is, therefore, the intention of the Parliament to make provision, by the special measures enacted by the Act, for the promotion of equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct.

CHAPTER 1—PRELIMINARY

Short title

1. This Act may be cited as the *Anti-Discrimination Act 1991*.

Act binds Crown

3. This Act binds—
 - (a) the Crown in right of Queensland; and
 - (b) the Crown in all its other capacities so far as the legislative power of the Parliament allows.

Definitions

4. In this Act—

“**accommodation**” includes—

- (a) business premises; and
- (b) a house or flat; and
- (c) a hotel or motel; and
- (d) a boarding house or hostel; and
- (e) a caravan or caravan site; and
- (f) a mobile home or mobile home site; and
- (g) a camping site; and
- (h) a building or construction site.

“**advertisement**” includes every form of advertisement or notice, however displayed, and whether or not displayed to the public, and includes, for example, an advertisement—

- (a) in a newspaper or other publication; or
- (b) by television or radio; or
- (c) by display of notices, signs, labels or goods; or

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(d) by distribution of samples, circulars, catalogues, price lists or other material; or

(e) by exhibition of pictures, models or films.

“affairs”, in relation to a club, has the meaning given by section 53 of the Corporations Law.¹

“agent” means a person who has actual, implied or ostensible authority to act on behalf of another.

“attribute” means an attribute set out in section 7.

“club” means an association that—

(a) is established for social, literary, cultural, political, sporting, athletic, recreational, community service or any other similar lawful purposes; and

(b) carries out its purposes for the purpose of making a profit.

“commission” means the Anti-Discrimination Commission.

“commissioner” means the Anti-Discrimination Commissioner.

“committee of management”, in relation to a club or unincorporated association, means the group or body of people, by whatever name called, that manages the affairs of the club or association.

“complainant” means—

(a) in relation to a complaint (other than a representative complaint)—the person making the complaint; or

(b) in relation to a representative complaint—a person named in the complaint as a person on whose behalf the complaint is being made.

“contravention”, in relation to the Act, means—

(a) unlawful discrimination; or

(b) sexual harassment; or

(c) conduct prohibited by chapter 4 or 5.

“de facto spouse” means a person who lives with a person of the opposite

¹ Section 53 (Affairs of a body corporate)

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sex as a husband or wife of the person on a genuine domestic basis, although not legally married to the person.

“direct discrimination” has the meaning given by section 10.

“discriminate” means discriminate whether by direct discrimination or indirect discrimination.

“discrimination on the basis of an attribute” has the meaning given by section 8.

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

“educational institution” means a school, college, university or other institution at which any form of training or instruction is provided and includes—

- (a) a training institution within the meaning of the *Training Guarantee (Administration) Act 1990* (Cwlth); and
- (b) a place at which training or instruction is provided by an employer.

“exclude”, in relation to a student, means expel.

“forced retirement” includes engaging in conduct with a view to causing a person to retire from particular work because of the person’s age.

“guide dog” has the meaning given by section 3 of the *Guide Dogs Act 1972*.

“human rights” has the meaning given by section 3(1) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cwlth).

“Human Rights and Equal Opportunity Commission” means the commission of that name established by the *Human Rights and Equal Opportunity Commission Act 1986* (Cwlth).

“impairment”, in relation to a person, means—

- (a) the total or partial loss of the person’s bodily functions, including the loss of a part of the person’s body; or
- (b) the malfunction, malformation or disfigurement of a part of the person’s body; or
- (c) a condition or malfunction that results in the person learning more

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slowly than a person without the condition or malfunction; or

- (d) a condition, illness or disease that impairs a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour; or
- (e) the presence in the body of organisms capable of causing illness or disease; or
- (f) reliance on a guide dog, wheelchair or other remedial device; whether or not arising from an illness, disease or injury or from a condition subsisting at birth, and includes an impairment that—
- (g) presently exists; or
- (h) previously existed but no longer exists.

“indirect discrimination” has the meaning given by section 11.

“industrial agreement” has the meaning given by the *Industrial Relations Act 1999*.

“industrial relief” means relief under the *Industrial Relations Act 1999*, chapter 3.

“insurance” includes—

- (a) an annuity; and
- (b) life assurance; and
- (c) accident insurance; and
- (d) illness insurance.

“Magistrates Courts’ district” means the district appointed under the *Justices Act 1886* for the purposes of Magistrates Courts.

“marital status” means whether a person is—

- (a) single; or
- (b) married; or
- (c) married but living separately and apart from the person's spouse; or
- (d) divorced; or
- (e) widowed; or

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(f) a de facto spouse.

“member” means a member of the Tribunal.

“non-State school” has the meaning given by section 3(2) of the *Education (General Provisions) Act 1989*.

“non-State school authority” means a person or body administering a non-State school.

“parent” includes—

- (a) step-parent; and
- (b) adoptive parent; and
- (c) foster parent; and
- (d) guardian.

“parental status” means whether or not a person is a parent.

“position” includes a position as—

- (a) a worker; or
- (b) a partner.

“race” includes—

- (a) colour; and
- (b) descent or ancestry; and
- (c) ethnicity or ethnic origin; and
- (d) nationality or national origin.

“registrar” means the Registrar of the Tribunal.

“relation”, in relation to a person, means relation to the 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 person.

“respondent”, in relation to a complaint, means a person alleged in the complaint to have contravened the Act.

“services” includes—

- (a) access to and use of any place, vehicle or facilities that members

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of the public are permitted to use; and

- (b) banking and the supply of loans, finance or credit guarantees; and
- (c) recreation, including entertainment, sports, tourism and the arts; and
- (d) the supply of refreshments; and
- (e) services connected with transport and travel; and
- (f) services of any profession, trade or business; and
- (g) services provided by a public or local government; and
- (h) the provision of scholarships, prizes or awards;

but does not include—

- (i) superannuation; or
- (j) insurance.

“State” includes Territory.

“superannuation fund” means a superannuation or provident fund or scheme.

“superannuation fund conditions”, in relation to a superannuation fund, means the terms that relate to membership of, or benefits payable from, the superannuation fund.

“term” includes condition.

“tribunal” means the Anti-Discrimination Tribunal.

“work” includes—

- (a) work in a relationship of employment (including full-time, part-time, casual, permanent and temporary employment); and
- (b) work under a contract for services; and
- (c) work remunerated in whole or in part on a commission basis; and
- (d) work under a statutory appointment; and
- (e) work under an arrangement within the meaning of section 3(1) of the *Education (Student Work Experience) Act 1978*; and
- (ea) work under an industry placement under the *Vocational*

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Education and Training (Industry Placement) Act 1992; and

- (f) work on a voluntary or unpaid basis; and
- (g) work by a person with an impairment in a sheltered workshop, whether on a paid basis (including a token remuneration or allowance) or an unpaid basis; and
- (h) work under a guidance program, an apprenticeship training program or other occupational training or retraining program.

Meaning of unjustifiable hardship

5. Whether the supply of special services or facilities would impose unjustifiable hardship on a person depends on all the relevant circumstances of the case, including, for example—

- (a) the nature of the special services or facilities; and
- (b) the cost of supplying the special services or facilities and the number of people who would benefit or be disadvantaged; and
- (c) the financial circumstances of the person; and
- (d) the disruption that supplying the special services or facilities might cause; and
- (e) the nature of any benefit or detriment to all people concerned.

Example of application in the work area (section 35)—

Company R refuses to employ A who uses a wheelchair because there is no appropriate access to the place of employment. R may only discriminate against A on the basis of impairment if supplying access would be very expensive or would impose another significant hardship on R.

CHAPTER 2—DISCRIMINATION PROHIBITED BY THIS ACT (COMPLAINT)

PART 1—ACT’S ANTI-DISCRIMINATION PURPOSE

Act’s anti-discrimination purpose and how it is to be achieved

6.(1) One of the purposes of the Act is to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity, including work, education and accommodation.

(2) This purpose is to be achieved by—

- (a) prohibiting discrimination that is—
 - (i) on a ground set out in part 2; and
 - (ii) of a type set out in part 3; and
 - (iii) in an area of activity set out in part 4;

unless an exemption set out in part 4 or 5 applies; and

- (b) allowing a complaint to be made under chapter 7 against the person who has unlawfully discriminated; and
- (c) using the agencies and procedures established under chapter 7 to deal with the complaint.

PART 2—PROHIBITED GROUNDS OF DISCRIMINATION

Discrimination on the basis of certain attributes prohibited

7.(1) The Act prohibits discrimination on the basis of the following attributes—

- (a) sex;

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- (b) marital status;
- (c) pregnancy;
- (d) parental status;
- (e) breastfeeding;
- (f) age;
- (g) race;
- (h) impairment;
- (i) religion;
- (j) political belief or activity;
- (k) trade union activity;
- (l) lawful sexual activity;
- (m) association with, or relation to, a person identified on the basis of any of the above attributes.

(2) Breastfeeding is an attribute for which discrimination is prohibited only for the purposes of division 4 of part 4 (Goods and services area).

Meaning of discrimination on the basis of an attribute

8. Discrimination on the basis of an attribute includes direct and indirect discrimination on the basis of—

- (a) a characteristic that a person with any of the attributes generally has; or
- (b) a characteristic that is often imputed to a person with any of the attributes; or
- (c) an attribute that a person is presumed to have, or to have had at any time, by the person discriminating; or
- (d) an attribute that a person had, even if the person did not have it at the time of the discrimination.

Example of paragraph (c)—

If an employer refused to consider a written application from a person called Viv because it assumed Viv was female, the employer would have discriminated on the basis of an attribute (female sex) that Viv (a male) was presumed to have.

PART 3—PROHIBITED TYPES OF DISCRIMINATION

Discrimination of certain types prohibited

9. The Act prohibits the following types of discrimination—

- (a) direct discrimination;
- (b) indirect discrimination.

Meaning of direct discrimination

10.(1) Direct discrimination on the basis of an attribute happens if a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different.

Example—

R refuses to rent a flat to C because—

- C is English and R doesn't like English people
- C's friend, B, is English and R doesn't like English people
- R believes that English people are unreliable tenants.

In each case, R discriminates against C, whether or not R's belief about C's or B's nationality, or the characteristics of people of that nationality, is correct.

(2) It is not necessary that the person who discriminates considers the treatment is less favourable.

(3) The person's motive for discriminating is irrelevant.

Example—

R refuses to employ C, who is Chinese, not because R dislikes Chinese people, but because R knows that C would be treated badly by other staff, some of whom are prejudiced against Asian people. R's conduct amounts to discrimination against C.

(4) If there are 2 or more reasons why a person treats, or proposes to treat, another person with an attribute less favourably, the person treats the other person less favourably on the basis of the attribute if the attribute is a substantial reason for the treatment.

(5) In determining whether a person treats, or proposes to treat a person

with an impairment less favourably than another person is or would be treated in circumstances that are the same or not materially different, the fact that the person with the impairment may require special services or facilities is irrelevant.

Meaning of indirect discrimination

11.(1) Indirect discrimination on the basis of an attribute happens if a person imposes, or proposes to impose, a term—

- (a) with which a person with an attribute does not or is not able to comply; and
- (b) with which a higher proportion of people without the attribute comply or are able to comply; and
- (c) that is not reasonable.

(2) Whether a term is reasonable depends on all the relevant circumstances of the case, including, for example—

- (a) the consequences of failure to comply with the term; and
- (b) the cost of alternative terms; and
- (c) the financial circumstances of the person who imposes, or proposes to impose, the term.

(3) It is not necessary that the person imposing, or proposing to impose, the term is aware of the indirect discrimination.

(4) In this section—

“**term**” includes condition, requirement or practice, whether or not written.

Example 1—

An employer decides to employ people who are over 190 cm tall, although height is not pertinent to effective performance of the work. This disadvantages women and people of Asian origin, as there are more men of non-Asian origin who can comply. The discrimination is unlawful because the height requirement is unreasonable, there being no genuine occupational reason to justify it.

Example 2—

An employer requires employees to wear a uniform, including a cap, for appearance reasons, not for hygiene or safety reasons. The requirement is not directly discriminatory, but it has a discriminatory effect against people who are required by religious or cultural beliefs to wear particular headdress.

PART 4—AREAS OF ACTIVITY IN WHICH DISCRIMINATION IS PROHIBITED

Division 1—Part's structure

Explanatory provision (structure)

12.(1) This part specifies the areas of activity in which discrimination is prohibited and the exemptions that apply in relation to those areas.

(2) Part 5 specifies general exemptions that apply to all the areas.

Division 2—Work and work-related areas

Subdivision 1—Prohibitions in work and work-related areas

Explanatory provision (prohibitions)

13.(1) A person must not discriminate in the work or work-related area if a prohibition in sections 14 to 23 applies.

(2) This Subdivision does not apply to discrimination in connection with superannuation or insurance.

(3) Discrimination in connection with superannuation or insurance is dealt with in sections 52 to 75.

Discrimination in the pre-work area

14.(1) A person must not discriminate—

- (a) in the arrangements made for deciding who should be offered work; or
- (b) in deciding who should be offered work; or
- (c) in the terms of work that is offered, including, for example, a term about when the work will end because of a person's age; or
- (d) in failing to offer work; or
- (e) by denying a person seeking work access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or
- (f) in developing the scope or range of such a program.

(2) Subsection (1) does not apply to discrimination on the basis of trade union activity if the *Industrial Relations Act 1999*, section 105 applies.

Discrimination in work area

15.(1) A person must not discriminate—

- (a) in any variation of the terms of work; or
- (b) in denying or limiting access to opportunities for promotion, transfer, training or other benefit to a worker; or
- (c) in dismissing a worker; or
- (d) by denying access to a guidance program, an apprenticeship training program or other occupational training or retraining program; or
- (e) in developing the scope or range of such a program; or
- (f) by treating a worker unfavourably in any way in connection with work.

(2) Subsection (1) does not apply to discrimination on the basis of trade union activity if the *Industrial Relations Act 1999*, section 105 applies.

(3) In this section—

“**dismissing**” includes ending the particular work of a person by forced retirement, failure to provide work or otherwise.

Discrimination by proposed partnership in pre-partnership area

16. Six or more people who propose to form themselves into a partnership must not discriminate—

- (a) in deciding who should be invited to become a partner; or
- (b) in the terms on which a person is invited to become a partner.

Discrimination by existing partnership in pre-partnership area

17. A partner in a partnership that consists of 6 or more people must not discriminate—

- (a) in deciding who should be invited to become a partner; or
- (b) in the terms on which a person is invited to become a partner.

Discrimination by existing partnership in partnership area

18. A partner in a partnership that consists of 6 or more people must not discriminate—

- (a) in any variation of the terms of the partnership; or
- (b) in denying or limiting access by another partner to any benefit arising from the partnership; or
- (c) in expelling another partner from the partnership; or
- (d) by treating another partner unfavourably in any way in connection with the partnership.

Discrimination by industrial, professional, trade or business organisation in pre-membership area

19.(1) An organisation of workers, employers, or people who carry on an industry, profession, trade or business must not discriminate—

- (a) in failing to accept a person’s application for membership of the

organisation; or

- (b) in the arrangements made for deciding who may join; or
- (c) in deciding who may join; or
- (d) in the terms on which a person may join.

(2) Subsection (1) does not apply to discrimination on the basis of trade union activity if the *Industrial Relations Act 1999*, chapter 12, part 9, division 2, or part 10 applies.

Discrimination by industrial, professional, trade or business organisation in membership area

20.(1) An organisation of workers, employers, or people who carry on an industry, profession, trade or business must not discriminate—

- (a) in any variation of the terms of membership of the organisation; or
- (b) in denying or limiting access to any benefit arising from the membership; or
- (c) in depriving a person of membership; or
- (d) by treating a person unfavourably in any way in connection with the membership.

(2) Subsection (1) does not apply to discrimination on the basis of trade union activity if the *Industrial Relations Act 1999*, chapter 12, part 9, division 2, or part 10 applies.

Discrimination by qualifying body in pre-qualification area

21. A person who has power to grant, renew or extend a qualification or authorisation that (whether by itself or together with other qualifications or authorisations) is needed for, or facilitates, the practice of a profession, or the carrying on of a trade or business must not discriminate—

- (a) in granting, renewing or extending a qualification or authorisation or failing to do so; or
- (b) in the terms on which a qualification or authorisation is granted, renewed or extended.

Discrimination by qualifying body in qualification area

22. A person who has power to grant, renew or extend a qualification or authorisation that (whether by itself or together with other qualifications or authorisations) is needed for, or facilitates, the practice of a profession, or the carrying on of a trade or business must not discriminate against another person—

- (a) in any variation of the terms on which a qualification or authorisation was granted, renewed or extended; or
- (b) in revoking or withdrawing a qualification or authorisation or failing to do so; or
- (c) by treating the other person unfavourably in any way in connection with the grant, renewal or extension of a qualification or authorisation.

Discrimination in employment agency area

23. A person who carries on a business (whether or not for reward or profit) of introducing people seeking work to employers must not discriminate—

- (a) by failing to supply a service of the business, whether to a person seeking work or an employer seeking a worker; or
- (b) in the terms on which a service is offered or supplied; or
- (c) in the way in which a service is supplied; or
- (d) by treating a person seeking work or an employer seeking a worker unfavourably in any way in connection with a service.

Subdivision 2—Exemptions for discrimination in work and work-related areas**Explanatory provision (exemptions)**

24. It is not unlawful to discriminate in the work or work-related area if an exemption in sections 25 to 36 or part 5 applies.

Genuine occupational requirements

25. A person may impose genuine occupational requirements for a position.

Examples of genuine requirements for a position—

Example 1—

Selecting an actor for a dramatic performance on the basis of age, race or sex for reasons of authenticity.

Example 2—

Using membership of a particular political party as a criterion for a position as an adviser to a political party or a worker in the office of a member of Parliament.

Example 3—

Considering only women applicants for a position involving body searches of women.

Residential domestic services

26.(1) It is not unlawful for a person to discriminate—

- (a) in the arrangements made for deciding who should be offered work; or
- (b) in deciding who should be offered work; or
- (c) in failing to offer work; or
- (d) in dismissing a worker;

if the work is to perform domestic services at the person's home.

(2) Subsection (1) does not apply to discrimination on the basis of race.

Residential childcare services

27.(1) It is not unlawful for a person to discriminate—

- (a) in the arrangements made for deciding who should be offered work; or
- (b) in deciding who should be offered work; or
- (c) in failing to offer work; or

(d) in dismissing a worker;

if the work is to care for the person's children at the person's home.

(2) Subsection (1) does not apply to discrimination on the basis of race.

Work with children

28. It is not unlawful to discriminate on the basis of lawful sexual activity against a person with respect to a matter that is otherwise prohibited under subdivision 1 if—

- (a) the work involves the care or instruction of minors; and
- (b) the discrimination is reasonably necessary to protect the physical, psychological or emotional wellbeing of minors having regard to all the relevant circumstances of the case, including the person's actions.

Educational or health-related institution with religious purposes

29.(1) It is not unlawful to discriminate with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination—

- (a) is in connection with work in, or a partnership operating, an educational or health-related institution under the direction or control of a body established for religious purposes; and
- (b) is in accordance with the doctrine of the religion concerned; and
- (c) is necessary to avoid offending the religious sensitivities of people of the religion.

(2) Subsection (1) does not apply to discrimination on the basis of age, race or impairment.

(3) To allay any doubt, subsection (1) does not affect a provision of an agreement with respect to work in, or a partnership operating, an institution under which the institution agrees not to discriminate in a particular way.

(4) In this section—

“**agreement**” includes an informal agreement, whether or not written.

Single sex accommodation

30.(1) It is not unlawful for a person to discriminate on the basis of sex against another person with respect to a matter that is otherwise prohibited under subdivision 1 if the other person is required to live in accommodation supplied by the first person and—

- (a) the accommodation is not equipped with separate sleeping accommodation for people of each sex; and
- (b) the accommodation is already occupied by a person or people of one sex and is not occupied by anyone of the opposite sex; and
- (c) the supply of separate sleeping accommodation for people of each sex would impose unjustifiable hardship on the first person.

(2) Whether the supply of separate sleeping accommodation for people of each sex would impose unjustifiable hardship on a person depends on all the relevant circumstances of the case, including, for example—

- (a) the nature of the accommodation; and
- (b) the cost of supplying the separate sleeping accommodation and the number of people who would benefit or be disadvantaged; and
- (c) the financial circumstances of the person; and
- (d) the disruption that supplying the separate sleeping accommodation might cause; and
- (e) the nature of any benefit or detriment to all people concerned.

Workers are to be married couple

31.(1) It is not unlawful for a person to discriminate on the basis of marital status—

- (a) in the arrangements made for deciding who should be offered work; or
- (b) in deciding who should be offered work; or
- (c) in the terms of work that is offered; or
- (d) in failing to offer work; or
- (e) in dismissing a worker;

if—

- (f) the work is for one of 2 positions that the person wants held concurrently by a married couple; and
- (g) the workers are required to live in accommodation supplied by the person.

(2) In this section—

“**married couple**” includes 2 people who are de facto spouses to each other.

Retiring age for partners

32.(1) It is not unlawful in deciding who should be invited to become a partner in a partnership for a person to discriminate on the basis of age against someone else through a requirement that the other person—

- (a) must not be more than a specified age; or
- (b) must retire from a partnership at a specified age.

(2) It is not unlawful in any variation of the terms of a partnership for a person to discriminate on the basis of age against someone else through a requirement that the other person—

- (a) must not be more than a specified age; or
- (b) must retire from a partnership at a specified age.

(3) This section has effect despite the *Industrial Relations Act 1999*, section 73(2)(k).

Youth wages

33. A person may remunerate a worker who is under 21 years of age according to the worker’s age.

Special terms if job capacity is restricted by impairment

34. A person may fix reasonable terms in relation to the holder or prospective holder of a position who, because of an impairment—

- (a) has a restricted capacity to do work genuinely and reasonably

required for the position; or

- (b) requires special conditions in order to be able to do the work.

Special services or facilities required

35.(1) It is not unlawful for a person to discriminate on the basis of impairment against another person with respect to a matter that is otherwise prohibited under subdivision 1 if—

- (a) the other person would require special services or facilities; and
(b) the supply of special services or facilities would impose unjustifiable hardship on the first person.

(2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5.

Circumstances of impairment

36.(1) It is not unlawful for a person to discriminate on the basis of impairment against another person with respect to a matter that is otherwise prohibited under subdivision 1 if the circumstances of the impairment would impose unjustifiable hardship on the first person.

(2) Whether the circumstances of the impairment would impose unjustifiable hardship on a person depends on all the relevant circumstances of the case, including, for example—

- (a) the nature of the impairment; and
(b) the nature of the work or partnership.

Division 3—Education area

Subdivision 1—Prohibitions in education area

Explanatory provision (prohibitions)

37. An educational authority must not discriminate in the education area if a prohibition in section 38 or 39 applies.

Discrimination by educational authority in prospective student area

38. An educational authority must not discriminate—

- (a) in failing to accept a person's application for admission as a student; or
- (b) in the way in which a person's application is processed; or
- (c) in the arrangements made for, or the criteria used in, deciding who should be offered admission as a student; or
- (d) in the terms on which a person is admitted as a student.

Discrimination by educational authority in student area

39. An educational authority must not discriminate—

- (a) in any variation of the terms of a student's enrolment; or
- (b) by denying or limiting access to any benefit arising from the enrolment that is supplied by the authority; or
- (c) by excluding a student; or
- (d) by treating a student unfavourably in any way in connection with the student's training or instruction.

*Subdivision 2—Exemptions for discrimination in education area***Explanatory provision (exemptions)**

40. It is not unlawful for an educational authority to discriminate in the education area if an exemption in sections 41 to 44 or part 5 applies.

Single sex, religion, etc. educational institution

41. An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment may exclude—

- (a) applicants who are not of the particular sex or religion; or
- (b) applicants who do not have a general, or the specific, impairment.

Non-State school authority

42.(1) It is not unlawful for a non-State school authority to discriminate against a person with respect to a matter that is otherwise prohibited under subdivision 1.

(2) Subsection (1) does not apply to discrimination on the basis of race or impairment.

Age-based admission scheme

43. An educational authority may select students for an education program on the basis of an admission scheme that has a minimum qualifying age.

Special services or facilities required

44.(1) Subject to the *Education (General Provisions) Act 1989*, it is not unlawful for an educational authority to discriminate on the basis of impairment against a person with respect to a matter that is otherwise prohibited under subdivision 1 if—

- (a) the person would require special services or facilities; and
- (b) the supply of special services or facilities would impose unjustifiable hardship on the educational authority.

(2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5.

Division 4—Goods and services area***Subdivision 1—Prohibition in goods and services area*****Explanatory provision (prohibition)**

45.(1) A person must not discriminate in the goods and services area if the prohibition in section 46 applies.

(2) This subdivision does not apply to discrimination in connection with

superannuation or insurance.

(3) Discrimination in connection with superannuation or insurance is dealt with in sections 52 to 75.

Discrimination in goods and services area

46.(1) A person who supplies goods or services (whether or not for reward or profit) must not discriminate against another person—

- (a) by failing to supply the goods or services; or
- (b) in the terms on which goods or services are supplied; or
- (c) in the way in which goods or services are supplied; or
- (d) by treating the other person unfavourably in any way in connection with the supply of goods and services.

(2) In this section, a reference to a person who supplies goods and services does not include an association that—

- (a) is established for social, literary, cultural, political, sporting, athletic, recreational, community service or any other similar lawful purposes; and
- (b) does not carry out its purposes for the purpose of making a profit.

Subdivision 2—Exemptions for discrimination in goods and services area

Explanatory provision (exemptions)

47. It is not unlawful to discriminate in the goods and services area if an exemption in sections 48 to 51 or part 5 applies.

Sites of cultural or religious significance

48. A person may restrict access to land or a building of cultural or religious significance by people who are not of a particular sex, age, race or religion if the restriction—

- (a) is in accordance with the culture concerned or the doctrine of the

religion concerned; and

- (b) is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion.

Age-based benefits

49. A person may supply benefits and concessions on the basis of age with respect to a matter that is otherwise prohibited under Subdivision 1.

Example 1—

A bus operator may give travel concessions to people under the age of 12 or over the age of 70.

Example 2—

The Government may supply, on an age basis, Seniors' Cards that give entitlements to concessions.

Children to be accompanied by an adult

50. A person may require, as a term of supplying goods and services to a minor, that a minor be accompanied by an adult if there would be a reasonable risk that a minor may cause a disruption or endanger himself or herself or others if not accompanied by an adult.

Example—

The operator of a rifle range may require a minor who wants to use the range to be accompanied by an adult.

Special services or facilities required

51.(1) It is not unlawful for a person to discriminate on the basis of impairment against another person with respect to a matter that is otherwise prohibited under Subdivision 1 if—

- (a) the other person would require special services or facilities; and
- (b) the supply of special services or facilities would impose unjustifiable hardship on the person supplying the goods or services.

(2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5.

Division 5—Superannuation area

Subdivision 1—Prohibitions in superannuation area

Explanatory provision (prohibitions)

52. A person must not discriminate in the superannuation area if a prohibition in sections 53 to 57 applies.

Discrimination in superannuation area (goods and services)

53. A person must not discriminate—

- (a) by failing to supply superannuation; or
- (b) in the terms on which superannuation is supplied; or
- (c) in the way in which superannuation is supplied.

Discrimination in superannuation area (prework)

54. A person must not discriminate against another person, who is seeking work with the person, in the terms of any work that is offered that relate to superannuation.

Discrimination in superannuation area (work)

55. A person must not discriminate against another person who works for the person—

- (a) in any variation of the terms of the work that relate to superannuation; or
- (b) in denying or limiting the other person's access to any benefit to a worker that relates to superannuation; or

- (c) by treating the other person unfavourably in any way in connection with superannuation.

Discrimination in superannuation area (pre-partnership)

56. A person must not discriminate against another person, who is invited to become a partner of the person in a partnership that consists, or will consist, of 6 or more people, in the terms relating to superannuation on which the other person is invited to become a partner.

Discrimination in superannuation area (partnership)

57. A partner in a partnership that consists of 6 or more people must not discriminate against another partner—

- (a) in any variation of the terms of the partnership that relate to superannuation; or
- (b) in denying or limiting the other partner's access to any benefit arising from the partnership that relates to superannuation; or
- (c) by treating the other partner unfavourably in any way in connection with superannuation.

Subdivision 2—Exemptions for discrimination in superannuation area

Explanatory provision (exemptions)

58. It is not unlawful to discriminate in the superannuation area if an exemption in sections 59 to 65 or part 5 applies.

Commonwealth exemption (sex or marital status)

59. It is not unlawful to discriminate on the basis of sex or marital status with respect to a matter that is otherwise prohibited under Subdivision 1 if the discrimination is permitted under the *Sex Discrimination Act 1984* (Cwlth).

Retention of existing superannuation fund conditions (age or impairment)

60.(1) It is not unlawful to discriminate on the basis of age or impairment by retaining an existing superannuation fund condition in relation to a person who became a member of the fund before the commencement of section 53.²

(2) In this section—

“existing superannuation fund condition” means a superannuation fund condition in existence at the commencement of section 53.

New superannuation fund conditions—actuarial or statistical data (age or impairment)

61. It is not unlawful for a person to discriminate on the basis of age or impairment by imposing a superannuation fund condition after the commencement of section 53 in relation to another person, irrespective of—

- (a) whether the superannuation fund was in existence before the commencement of section 53; and
- (b) when the other person became, or becomes, a member of the fund;

if—

- (c) the condition is based on reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and
- (d) the condition is reasonable having regard to the data and any other relevant factors.

New superannuation fund conditions—other data (age or impairment)

62. It is not unlawful for a person to discriminate on the basis of age or impairment by imposing a superannuation fund condition after the commencement of section 53 in relation to another person, irrespective of—

² Section 53 (Discrimination in superannuation area (goods and services))

Anti-Discrimination Act 1991

- (a) whether the superannuation fund was in existence before the commencement of section 53; and
- (b) when the other person became, or becomes, a member of the fund;

if—

- (c) there is no reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and
- (d) the condition is based on other reasonable data from a source on which it is reasonable for the person to rely; and
- (e) the condition is reasonable having regard to the other data and any other relevant factors.

New superannuation fund conditions—no data (age or impairment)

63. It is not unlawful for a person to discriminate on the basis of age or impairment by imposing a superannuation fund condition after the commencement of section 53 in relation to another person, irrespective of—

- (a) whether the superannuation fund was in existence before the commencement of section 53; and
- (b) when the other person became, or becomes, a member of the fund;

if—

- (c) there is no reasonable actuarial, statistical or other data from a source on which it is reasonable for the person to rely; and
- (d) the condition is reasonable having regard to any other relevant factors.

Application of Commonwealth occupational superannuation standard

64. It is not unlawful to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination happens because of the application of a standard

prescribed under the *Occupational Superannuation Standards Act 1987* (Cwlth) or *Superannuation Industry (Supervision) Act 1993* (Cwlth).

Compliance etc. with Commonwealth legislation

65. It is not unlawful to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination happens in order—

- (a) to comply with a Commonwealth Act (other than the *Occupational Superannuation Standards Act 1987* or *Superannuation Industry (Supervision) Act 1993*); or
- (b) to obtain a benefit or avoid a penalty under such an Act.

Division 6—Insurance area

Subdivision 1—Prohibitions in insurance area

Explanatory provision (prohibitions)

66. A person must not discriminate in the insurance area if a prohibition in sections 67 to 71 applies.

Discrimination in insurance area (goods and services)

67. A person must not discriminate—

- (a) by failing to supply insurance; or
- (b) in the terms on which insurance is supplied; or
- (c) in the way in which insurance is supplied.

Discrimination in insurance area (prework)

68. A person must not discriminate against another person, who is seeking work with the person, in the terms of any work that is offered that relate to insurance.

Discrimination in insurance area (work)

69. A person must not discriminate against another person who works for the person—

- (a) in any variation of the terms of the work that relate to insurance; or
- (b) in denying or limiting the other person's access to any benefit to a worker that relates to insurance; or
- (c) by treating the person unfavourably in any way in connection with insurance.

Discrimination in insurance area (pre-partnership)

70. A person must not discriminate against another person, who is invited to become a partner of the person in a partnership that consists, or will consist, of 6 or more people, in the terms relating to insurance on which the other person is invited to become a partner.

Discrimination in insurance area (partnership)

71. A partner in a partnership that consists of 6 or more people must not discriminate against another partner—

- (a) in any variation of the terms of the partnership that relate to insurance; or
- (b) in denying or limiting the other partner's access to any benefit arising from the partnership that relates to insurance; or
- (c) by treating the other partner unfavourably in any way in connection with insurance.

Subdivision 2—Exemptions for discrimination in insurance area**Explanatory provision (exemptions)**

72. It is not unlawful to discriminate in the insurance area if an exemption in sections 73 to 75 or part 5 applies.

Commonwealth exemption (sex)

73. It is not unlawful to discriminate on the basis of sex with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination is permitted under the *Sex Discrimination Act 1984* (Cwlth).

Actuarial or statistical data (age or impairment)

74. It is not unlawful for a person to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination—

- (a) is based on reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and
- (b) is reasonable having regard to the data and any other relevant factors.

No actuarial or statistical data (age or impairment)

75. It is not unlawful for a person to discriminate on the basis of age or impairment with respect to a matter that is otherwise prohibited under subdivision 1 if—

- (a) there is no reasonable actuarial or statistical data from a source on which it is reasonable for the person to rely; and
- (b) the discrimination is reasonable having regard to any other relevant factors.

Division 7—Disposition of land area***Subdivision 1—Prohibition in disposition of land area*****Explanatory provision (prohibition)**

76. A person must not discriminate in the disposition of land area if the prohibition in section 77 applies.

Discrimination in disposition of land area

77. A person must not discriminate against another person—

- (a) by failing to dispose of an interest in land to the other person; or
- (b) in the terms on which an interest in land is offered to the other person.

Subdivision 2—Exemptions for discrimination in disposition of land area

Explanatory provision (exemptions)

78. It is not unlawful to discriminate in the disposition of land area if an exemption in section 79 or 80 or part 5 applies.

Disposition by will or gift

79. It is not unlawful to discriminate with respect to a matter that is otherwise prohibited under subdivision 1 if the discrimination is by way of a testamentary disposition or gift.

Sites of cultural or religious significance

80. It is not unlawful to discriminate on the basis of sex, age, race or religion with respect to a matter that is otherwise prohibited under subdivision 1 if—

- (a) the relevant interest in land is an interest in land or a building of cultural or religious significance; and
- (b) the discrimination—
 - (i) is in accordance with the culture concerned or the doctrine of the religion concerned; and
 - (ii) is necessary to avoid offending the cultural or religious sensitivities of people of the culture or religion.

Division 8—Accommodation area***Subdivision 1—Prohibitions in accommodation area*****Explanatory provision (prohibitions)**

81. A person must not discriminate in the accommodation area if a prohibition in sections 82 to 85 applies.

Discrimination in pre-accommodation area

82. A person must not discriminate against another person—

- (a) by failing to accept an application for accommodation; or
- (b) by failing to renew or extend the supply of accommodation; or
- (c) in the way in which an application is processed; or
- (d) in the terms on which accommodation is offered, renewed or extended.

Discrimination in accommodation area

83. A person must not discriminate against another person—

- (a) in any variation of the terms on which accommodation is supplied; or
- (b) in denying or limiting access to any benefit associated with the accommodation; or
- (c) in evicting the other person from the accommodation; or
- (d) by treating the other person unfavourably in any way in connection with the accommodation.

Discrimination by refusing to allow reasonable alterations

84. A person must not discriminate by refusing to allow another person with an impairment to alter accommodation to meet the other person's special needs if—

- (a) the alteration is at the expense of the other person; and
- (b) the alteration does not require an alteration to the premises of another occupier; and
- (c) the action required to restore the accommodation to its previous condition is reasonably practicable; and
- (d) the other person undertakes to restore the accommodation to its previous condition before leaving it, and it is reasonably likely that the other person will do so.

Discrimination by refusing to allow guide dog

85.(1) A person must not discriminate by doing any of the following—

- (a) refusing to rent accommodation to another person with a visual, hearing or mobility impairment because the other person has a dog to assist the other person in relation to the impairment;
- (b) requiring the other person to keep the dog elsewhere;
- (c) requesting or requiring the other person to pay an extra charge because the dog lives at the accommodation.

(2) This section does not affect the liability of the person with the dog for any damage caused by the dog.

Subdivision 2—Exemptions for discrimination in accommodation area

Explanatory provision (exemptions)

86. It is not unlawful to discriminate in the accommodation area if an exemption in sections 87 to 92 or Part 5 applies.

Shared accommodation

87. It is not unlawful for a person to discriminate in deciding who is to reside in accommodation that—

- (a) forms part of, and is intended to continue to form part of, the main home of the person or a near relative; and

- (b) is for no more than 3 people other than a person mentioned in paragraph (a) or near relatives of such a person.

Accommodation for workers

88. A person who supplies accommodation for the person's workers may provide accommodation of different standards to different workers if—

- (a) it is not reasonable to expect the person to supply accommodation of the same standard for all workers; and
- (b) the standard of the accommodation supplied to each worker is determined having regard to—
 - (i) the number of people in the worker's household; or
 - (ii) the class of work performed, or the nature of the position held, by the worker.

Accommodation for students

89. An educational authority that operates, or proposes to operate, an educational institution wholly or mainly for students of a particular sex or religion, or who have a general or specific impairment, may provide accommodation wholly or mainly for—

- (a) students of the particular sex or religion; or
- (b) students who have a general, or the specific, impairment.

Accommodation with religious purposes

90. It is not unlawful to discriminate with respect to a matter that is otherwise prohibited under Subdivision 1 if—

- (a) the accommodation concerned is under the direction or control of a body established for religious purposes; and
- (b) the discrimination—
 - (i) is in accordance with the doctrine of the religion concerned;
 - and

- (ii) is necessary to avoid offending the religious sensitivities of people of the religion.

Accommodation with charitable purposes

91. It is not unlawful to discriminate on the basis of sex, marital status or age with respect to a matter that is otherwise prohibited under Subdivision 1 if—

- (a) the accommodation concerned is under the direction or control of a body established for charitable purposes; and
- (b) the discrimination is in accordance with the particular purposes for which the accommodation was established by the body.

Special services or facilities required

92.(1) A person may discriminate on the basis of impairment against another person with respect to a matter that is otherwise prohibited under Subdivision 1 if—

- (a) the other person would require special services or facilities; and
- (b) the supply of special services or facilities would impose unjustifiable hardship on the first person.

(2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5.

Division 9—Club membership and affairs area

Subdivision 1—Prohibitions in club membership and affairs area

Explanatory provision (prohibitions)

93. A club must not discriminate in the club membership and affairs area if a prohibition in section 94 or 95 applies.

Discrimination by club in prospective membership area

94. A club must not discriminate—

- (a) in determining the terms of a particular category or type of membership of the club; or
- (b) in failing to accept a person's application for membership of the club; or
- (c) in the way in which a person's application is processed; or
- (d) in the arrangements made for deciding who should be offered membership; or
- (e) in the terms on which a person is admitted as a member.

Discrimination by club in membership and affairs area

95. A club must not discriminate—

- (a) in any variation of the terms of membership of the club; or
- (b) in failing to accept a member's application for a different category or type of membership; or
- (c) by denying or limiting access to any benefit, arising from membership, that is supplied by the club; or
- (d) in depriving a member of membership; or
- (e) by treating a member unfavourably in any way in connection with the membership or the affairs of the club.

Subdivision 2—Exemptions for discrimination in club membership and affairs area**Explanatory provision (exemptions)**

96. It is not unlawful to discriminate in the club membership and affairs area if an exemption in sections 97 to 100 or Part 5 applies.

Club established for minority cultures and disadvantaged people

97. A club may exclude applicants for membership of the club who are not members of the group of people with an attribute for whom the club was established if the club operates wholly or mainly—

- (a) to preserve a minority culture; or
- (b) to prevent or reduce disadvantage suffered by people of that group.

Reasonable sex discrimination permitted

98. It is not unlawful for a club to discriminate on the basis of sex by limiting access to any benefit, arising from membership, that is provided by the club if—

- (a) it is not practicable for males and females to enjoy the benefit at the same time; and
- (b) either of the following subparagraphs apply—
 - (i) access to the same or an equivalent benefit is supplied for the use of males and females separately; or
 - (ii) access arrangements offer males and females a reasonably equivalent opportunity to enjoy the benefit.

Reasonable risk of injury

99. A club may exclude an applicant for membership who is a minor if there is a reasonable risk of injury to a minor or other people.

Special services or facilities required

100.(1) It is not unlawful for a club to discriminate on the basis of impairment in failing to accept a person's application for membership if—

- (a) the person would require special services or facilities; and
- (b) the supply of special services or facilities would impose unjustifiable hardship on the club.

(2) Whether the supply of special services or facilities would impose unjustifiable hardship depends on the circumstances set out in section 5.

Division 10—Administration of State laws and programs area

Discrimination in administration of State laws and programs area

101. A person who—

- (a) performs any function or exercises any power under State law or for the purposes of a State Government program; or
- (b) has any other responsibility for the administration of State law or the conduct of a State Government program;

must not discriminate in—

- (c) the performance of the function; or
- (d) the exercise of the power; or
- (e) the carrying out of the responsibility.

Division 11—Local government area

Discrimination by local government member

102.(1) A member of a local authority must not discriminate against another member in the performance of official functions.

(2) Subsection (1) does not apply to discrimination on the basis of political belief or activity.

PART 5—GENERAL EXEMPTIONS FOR DISCRIMINATION

Explanatory provision (exemptions)

103. It is not unlawful to discriminate with respect to a matter that is otherwise prohibited under part 4 if an exemption in sections 104 to 113 applies.

Welfare measures

104. A person may do an act to benefit the members of a group of people with an attribute for whose welfare the act was designed if the purpose of the act is not inconsistent with this Act.

Example 1—

It is not unlawful for a bus operator to give travel concessions to pensioners or to give priority in seating to people who are pregnant or frail.

Example 2—

It is not unlawful to restrict special accommodation to women who have been victims of domestic violence or to frail, older people.

Example 3—

It is not unlawful to establish a high security patrolled car park exclusively for women that would reduce the likelihood of physical attacks.

Equal opportunity measures

105.(1) A person may do an act to promote equal opportunity for a group of people with an attribute if the purpose of the act is not inconsistent with this Act.

(2) Subsection (1) applies only until the purpose of equal opportunity has been achieved.

Acts done in compliance with legislation etc.

106.(1) A person may do an act that is necessary to comply with, or is specifically authorised by—

- (a) an existing provision of another Act; or
- (b) an order of a court; or
- (c) an existing provision of an order or award of a court or tribunal having power to fix minimum wages and other terms of employment; or
- (d) an existing provision of an industrial agreement; or
- (e) an order of the Anti-Discrimination Tribunal.

(2) In this section—

“existing provision” means a provision in existence at the commencement of this section.

Compulsory retirement age under legislation etc.

106A.(1) This Act has no effect on the imposition of a compulsory retirement age on—

- (a) a Supreme Court Judge; or
- (b) a District Court Judge; or
- (c) a Magistrate; or
- (d) a member of the Land Court; or
- (e) the President of the Industrial Court; or
- (f) an industrial commissioner; or
- (g) the Commissioner of Fire Service; or
- (h) a fire officer within the meaning of the *Fire Service Act 1990*;³ or
- (i) the chief executive of Queensland Railways; or
- (j) an employee of Queensland Railways; or
- (k) a police officer; or
- (l) a staff member within the meaning of Statute No. 14 (Staff

³ Act renamed as *Fire and Rescue Act* by 1996 No. 42, section 5.

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tenure) made under the *University of Queensland Act 1965*⁴ while provisions under the Statute about compulsory retirement age are in force; or

- (m) a director of a public company or subsidiary of a public company; or
- (n) another person prescribed by regulation.

(2) Subsection (1) applies if the compulsory retirement age is imposed on or before 30 June 1994 under—

- (a) an Act; or
- (b) an award, certified agreement, enterprise flexibility agreement or industrial agreement within the meaning of the *Industrial Relations Act 1999*;⁵ or
- (c) a policy, standard or other instrument of a previous unit of the public sector applying to an employee of the unit.

(3) *If the compulsory retirement age is imposed under something mentioned in subsection (2)(b) or (c), then, by force of this subsection, a person mentioned in subsection (1) is required, and is taken always to have been required, to retire in accordance with the compulsory retirement age imposed.*

(4) *In this section—*

“previous unit of the public sector” means an entity that was a unit of the public sector on 30 June 1994 under the repealed *Public Sector Management Commission Act 1990*.

Public health

107. A person may do an act that is reasonably necessary to protect public health.

⁴ See now *University of Queensland Act 1998*, section 69 (University statutes and rules).

⁵ Now see *Acts Interpretation Act 1954*, s 14H and *Workplace Relations Act 1997*.

Workplace health and safety

108. A person may do an act that is reasonably necessary to protect the health and safety of people at a place of work.

Religious bodies

109. The Act does not apply in relation to—

- (a) the ordination or appointment of priests, ministers of religion or members of a religious order; or
- (b) the training or education of people seeking ordination or appointment as priests, ministers of religion or members of a religious order; or
- (c) the selection or appointment of people to perform functions in relation to, or otherwise participate in, any religious observance or practice; or
- (d) unless section 29 (Educational or health-related institution with religious purposes) or section 90 (Accommodation with religious purposes) applies—an act by a body established for religious purposes if the act is—
 - (i) in accordance with the doctrine of the religion concerned; and
 - (ii) necessary to avoid offending the religious sensitivities of people of the religion.

Charities

110. A person may include a discriminatory provision in a document that provides exclusively for charitable benefits, and may do an act that is required to give effect to such a provision.

Sport

111.(1) A person may restrict participation in a competitive sporting activity—

- (a) to either males or females, if the restriction is reasonable having regard to the strength, stamina or physique requirements of the

activity; or

- (b) to people who can effectively compete; or
- (c) to people of a specified age or age group; or
- (d) to people with a specific or general impairment.

(2) Subsection (1)(a) does not apply to a sporting activity for children who are less than 12 years of age.

(3) In this section—

“**competitive sporting activity**” does not include—

- (a) the coaching of people engaged in a sporting activity; or
- (b) the umpiring or refereeing of a sporting activity; or
- (c) the administration of a sporting activity; or
- (d) a sporting activity prescribed by regulation.

Legal incapacity

112. A person may discriminate against another person because the other person is subject to a legal incapacity if the incapacity is relevant to the transaction in which they are involved.

Example—

It is not unlawful for a person to refuse to enter into a contract with a minor, or a person whose estate is being managed under schedule 5 of the *Mental Health Act 1974*, if the contract cannot be legally enforced.

Tribunal

113.(1) The tribunal, on application by—

- (a) a person, on the person’s own behalf, or on behalf of the person and another person or other people; or
- (b) 2 or more people, on their own behalf, or on behalf of themselves and another person or other people; or
- (c) a person or people included in a class of people on behalf of the people in that class;

may grant an exemption to the person, people or class of people from the operation of a specified provision of the Act.

(2) When requested by the tribunal, the commissioner may inquire into an application and report the results of the inquiry and make a recommendation about the application to the tribunal.

(3) An exemption—

- (a) may be granted subject to such terms as the tribunal provides; and
- (b) may be granted so that it applies only in such circumstances, or in connection with such activities, as the tribunal determines; and
- (c) is to be granted for a specified period of not more than 5 years.

(4) An exemption under subsection (1) may be renewed for further periods of not more than 5 years, on application by the person or people to whom, or in respect of whom, the exemption was granted.

PART 6—DISCRIMINATION BY WORKER, AGENT, MEMBER ETC. ALSO PROHIBITED

Discrimination by worker or agent

114. If discrimination by a person or body is unlawful under this chapter, discrimination by a worker or agent of such a person or body is also unlawful.

Discrimination by member of industrial, professional, trade or business organisation

115. If discrimination by an organisation of workers, employers, or people who carry on an industry, profession, trade or business is unlawful under this chapter, discrimination by a member of such an organisation is also unlawful.

Discrimination by club's committee of management etc.

116. If discrimination by a club is unlawful under this chapter, discrimination by—

- (a) a committee of management of a club; or
- (b) a member of such a committee;

is also unlawful.

CHAPTER 3—SEXUAL HARASSMENT PROHIBITED BY THIS ACT (COMPLAINT)

PART 1—ACT'S FREEDOM FROM SEXUAL HARASSMENT PURPOSE

Act's freedom from sexual harassment purpose and how it is to be achieved

117.(1) One of the purposes of the Act is to promote equality of opportunity for everyone by protecting them from sexual harassment.

(2) This purpose is to be achieved by—

- (a) prohibiting sexual harassment; and
- (b) allowing a complaint to be made under chapter 7 against a person who has sexually harassed; and
- (c) using the agencies and procedures established under chapter 7 to deal with the complaint.

PART 2—PROHIBITION OF SEXUAL HARASSMENT**Sexual harassment**

118. A person must not sexually harass another person.

Meaning of sexual harassment

119. Sexual harassment happens if a person—

- (a) subjects another person to an unsolicited act of physical intimacy; or
- (b) makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or
- (c) makes a remark with sexual connotations relating to the other person; or
- (d) engages in any other unwelcome conduct of a sexual nature in relation to the other person;

and the person engaging in the conduct described in paragraphs (a), (b), (c) or (d) does so—

- (e) with the intention of offending, humiliating or intimidating the other person; or
- (f) in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

Examples of subsection (1)(a)—

- Physical contact such as patting, pinching or touching in a sexual way.
- Unnecessary familiarity such as deliberately brushing against a person.

Example of subsection (1)(b)—

- Sexual propositions.

Examples of subsection (1)(c)—

- Unwelcome and uncalled for remarks or insinuations about a person's sex or private life.
- Suggestive comments about a person's appearance or body.

Examples of subsection (1)(d)—

- Offensive telephone calls.
- Indecent exposure.

Meaning of relevant circumstances

120. The circumstances that are relevant in determining whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct include—

- (a) the sex of the other person; and
- (b) the age of the other person; and
- (c) the race of the other person; and
- (d) any impairment that the other person has; and
- (e) the relationship between the other person and the person engaging in the conduct; and
- (f) any other circumstance of the other person.

CHAPTER 4—ASSOCIATED OBJECTIONABLE CONDUCT (COMPLAINT)

PART 1—ACT'S FREEDOM FROM ASSOCIATED OBJECTIONABLE CONDUCT PURPOSE

Act's freedom from associated objectionable conduct purpose and how it is to be achieved

121.(1) One of the purposes of the Act is to promote equality of opportunity for everyone by prohibiting certain objectionable conduct that is inconsistent with the other purposes of the Act.

- (2) This purpose is to be achieved by—
- (a) prohibiting certain conduct; and
 - (b) allowing a complaint to be made under chapter 7 against a person who has engaged in that conduct; and
 - (c) using the agencies and procedures established under chapter 7 to deal with the complaint.

PART 2—REQUESTING AND ENCOURAGING CONTRAVENTION OF THE ACT

Request or encouragement of contravention

122. A person must not request or encourage another person to contravene the Act.

Liability for contravention

123. If—

- (a) a person requests or encourages another person to contravene the Act; and
- (b) the other person acts, or attempts to act, on the request or encouragement;

both are jointly and severally civilly liable for the contravention, and a proceeding under the Act may be taken against either or both.

PART 3—UNLAWFUL REQUESTS FOR INFORMATION

Unnecessary information

124.(1) A person must not ask another person, either orally or in writing, to supply information on which unlawful discrimination might be based.

(2) Subsection (1) does not apply to a request that is necessary to comply with, or is specifically authorised by—

- (a) an existing provision of another Act; or
- (b) an order of a court; or
- (c) an existing provision of an order or award of a court or tribunal having power to fix minimum wages and other terms of employment; or
- (d) an existing provision of an industrial agreement; or
- (e) an order of the Anti-Discrimination Tribunal.

(3) It is a defence to a proceeding for a contravention of subsection (1) if the respondent proves, on the balance of probabilities, that the information was reasonably required for a purpose that did not involve discrimination.

(4) In this section—

“existing provision” means a provision in existence at the commencement of this section.

Example—

An employer would contravene the Act by asking applicants for all jobs whether they have any impairments, but may ask applicants for a job involving heavy lifting whether they have any physical condition that indicates they should not do that work.

CHAPTER 5—ASSOCIATED HIGHLY OBJECTIONABLE CONDUCT (COMPLAINT AND PENALTY)

PART 1—ACT’S FREEDOM FROM ASSOCIATED HIGHLY OBJECTIONABLE CONDUCT PURPOSE

Act’s freedom from associated highly objectionable conduct purpose and how it is to be achieved

125.(1) One of the purposes of the Act is to promote equality of opportunity for everyone by prohibiting and penalising certain highly objectionable conduct that is inconsistent with the other purposes of the Act.

(2) This purpose is to be achieved by—

- (a) prohibiting certain conduct; and
- (b) allowing a complaint under chapter 7 to be made against a person who has engaged in that conduct; and
- (c) making that conduct an offence; and
- (d) using the agencies and procedures established under chapter 7 to deal with the complaint or offence.

PART 2—INCITEMENT TO RACIAL OR RELIGIOUS HATRED

Incitement to racial or religious hatred

126. A person must not, by advocating racial or religious hatred or hostility, incite unlawful discrimination or another contravention of the Act.

Maximum penalty—

- (a) in the case of an individual—35 penalty units;
- (b) in the case of a corporation—170 penalty units.

PART 3—DISCRIMINATORY ADVERTISING

Discriminatory advertisements

127.(1) A person must not publish or display an advertisement, or authorise its publication or display, if the advertisement indicates that a person intends to act in a way that contravenes the Act.

Maximum penalty—

- (a) in the case of an individual—35 penalty units;
- (b) in the case of a corporation—170 penalty units.

(1A) To remove any doubt, subsection (1) does not apply to an advertisement so far as it advertises for a worker who is under 21 years of age, whether by specifying a particular age, a particular age group or otherwise.

Example—

An employer may advertise for an 18 year old sales assistant or for a 15 to 17 year old sales assistant.

(2) It is a defence to a complaint made under the Act for a contravention of subsection (1) if the respondent proves, on the balance of probabilities, that the respondent took reasonable precautions to prevent the publication or display happening.

(3) It is an excuse to an offence against subsection (1) if the defendant took reasonable precautions to prevent the publication or display happening.

Inducement

128. A person must not knowingly or recklessly make a false or misleading statement to another person in order to induce the publication or display of an unlawful advertisement.

Maximum penalty—

- (a) in the case of an individual—35 penalty units;
- (b) in the case of a corporation—170 penalty units.

PART 4—VICTIMISATION

Victimisation

129. A person must not victimise another person.

Maximum penalty—

- (a) in the case of an individual—45 penalty units or imprisonment for 3 months;
- (b) in the case of a corporation—170 penalty units.

Meaning of victimisation

130.(1) Victimisation happens if a person (the “**respondent**”) does an act, or threatens to do an act, to the detriment of another person (the “**complainant**”)—

- (a) because the complainant, or a person associated with, or related to, the complainant—
 - (i) refused to do an act that would amount to a contravention of the Act; or
 - (ii) in good faith, alleged, or intends to allege, for the purposes of a proceeding under the Act, that a person committed an act that would amount to a contravention of the Act; or
 - (iii) is, has been, or intends to be, involved in a proceeding under the Act against any person; or
- (b) because the respondent believes that the complainant, or a person associated with, or related to, the complainant is doing, has done, or intends to do one of the things mentioned in paragraph (a)(i), (ii) or (iii).

(2) In this section, a reference to involvement in a proceeding under the Act includes—

- (a) making a complaint under the Act and continuing with the complaint, whether by investigation, conciliation, hearing or otherwise; and
- (b) involvement in a prosecution for an offence against the Act; and
- (c) supplying information and producing documents to a person who is performing a function under the Act; and
- (d) appearing as a witness in a proceeding under the Act.

Victimisation continues even if proceedings etc. do not

131. The application or continued application of section 129 (Victimisation) is not affected by—

- (a) the failure or otherwise of the complainant or the person associated with, or related to, the complainant, to do 1 of the things mentioned in section 130(1)(a)(i),(ii) or (iii) (Meaning of victimisation); or
- (b) the withdrawal, failure to pursue, or determination of a proceeding under the Act.

CHAPTER 6—LIABILITY FOR CONTRAVENTIONS OF WORKERS AND AGENTS (COMPLAINT)

Act's vicarious liability purpose and how it is to be achieved

132.(1) One of the purposes of the Act is to promote equality of opportunity for everyone by making a person liable for certain acts of the person's workers or agents.

(2) This purpose is to be achieved by making a person civilly liable for a contravention of the Act by the person's workers or agents.

Vicarious liability

133.(1) If any of a person's workers or agents contravenes the Act in the course of work or while acting as agent, both the person and the worker or agent, as the case may be, are jointly and severally civilly liable for the contravention, and a proceeding under the Act may be taken against either or both.

(2) It is a defence to a proceeding for a contravention of the Act arising under subsection (1) if the respondent proves, on the balance of probabilities, that the respondent took reasonable steps to prevent the worker or agent contravening the Act.

CHAPTER 7—ENFORCEMENT**PART 1—WHAT THE ANTI-DISCRIMINATION
COMMISSION MAY DO***Division 1—The complaint process**Subdivision 1—All complaints***Who may complain**

134.(1) Any of the following people may complain to the commissioner about an alleged contravention of the Act—

- (a) a person who was subjected to the alleged contravention; or
- (b) an agent of the person; or
- (c) a person authorised in writing by the commissioner to act on behalf of a person who was subjected to the alleged contravention

and who is unable to make or authorise a complaint.

(2) Two or more people may make a complaint jointly.

Complaint may allege more than 1 contravention

135. A person may make a complaint alleging more than 1 contravention of the Act.

Example—

C applies to real estate agent R to rent a house and is asked to fill out a form which includes a question about his country of birth. C is not offered a house, and believes this is on the basis of his national origin. C may make a complaint about being required to answer a question about his national origin contrary to section 124 (Unnecessary information), or a complaint about unlawful discrimination under section 82 (Discrimination in pre-accommodation area), or both.

Making a complaint

136. A complaint must—

- (a) be in writing; and
- (b) set out reasonably sufficient details to indicate an alleged contravention of the Act; and
- (c) be lodged with, or sent by post to, the commissioner.

Unfair agreements not to complain are not binding

137.(1) The commissioner may accept a complaint from a person who had previously agreed with another person not to complain, if the commissioner is of the reasonable opinion that it is fair to accept the complaint.

(2) In assessing whether it is fair to accept the complaint, the commissioner is to consider all the relevant circumstances of the case including—

- (a) the knowledge of the parties who made the agreement; and
- (b) what the person who wishes to complain received in return for the agreement.

Time limit on making complaints

138.(1) Subject to subsection (2), a person is only entitled to make a complaint within 1 year of the alleged contravention of the Act.

(2) The commissioner has a discretion to accept a complaint after 1 year has expired if the complainant shows good cause.

Commissioner must reject frivolous etc. complaints

139. The commissioner must reject a complaint if the commissioner is of the reasonable opinion that the complaint is—

- (a) frivolous or vexatious; or
- (b) misconceived or lacking in substance.

Commissioner may reject or stay complaints dealt with elsewhere

140.(1) The commissioner may reject or stay a complaint if there are concurrent proceedings in a court or tribunal in relation to the act or omission that is the subject of the complaint.

(2) A time limit for doing anything under the Act in relation to a complaint does not run while a complaint is stayed.

Time limit on acceptance or rejection of complaints

141.(1) The commissioner must decide whether to accept or reject a complaint within 28 days of receiving the complaint.

(2) The commissioner must promptly notify the complainant of the decision.

Reasons for rejected complaints

142.(1) If a complaint is rejected, it lapses and the complainant is not entitled to make a further complaint relating to the act or omission that was the subject of the complaint.

(2) If a complaint is rejected, the complainant may, within 28 days of receiving notice of the rejection, ask the commissioner for written reasons.

(3) If requested, the commissioner must promptly give the complainant written reasons for the rejection.

Respondent is to be notified of accepted complaint

143. If a complaint is accepted, the commissioner must promptly notify the respondent in writing of the substance of the complaint.

Interim orders protecting complainant's interests (before reference to Tribunal)

144.(1) At any time before a complaint is referred to the tribunal, the complainant or the commissioner may apply to the tribunal for an order prohibiting a person from doing an act that might prejudice—

- (a) the investigation or conciliation of the complaint; or
- (b) an order that the tribunal might make after a hearing.

(2) A party or the commissioner may apply to the tribunal for an order varying or revoking an order made under subsection (1).

(3) A party or the commissioner may enforce an order made under this section by filing a copy of it with a court of competent jurisdiction.

(4) The order is then enforceable as if it were an order of the court.

(5) The tribunal may apply the rules of the Supreme Court (with any necessary changes) in relation to an application made under this section.

Anonymity

145.(1) If, any time before a complaint is referred to the tribunal, the commissioner is of the reasonable opinion that the preservation of anonymity of a person who is, or has been, involved in a proceeding under the Act is necessary to protect the work security, privacy or any human right of the person, the commissioner may give a direction prohibiting the disclosure of the person's identity.

(2) A person must comply with a direction.

Maximum penalty—

- (a) in the case of an individual—35 penalty units;

(b) in the case of a corporation—170 penalty units.

(3) It is an excuse to an offence against subsection (2) if the defendant has a reasonable excuse.

(4) In this section, a reference to involvement in a proceeding under the Act includes—

- (a) making a complaint under the Act and containing with the complaint, whether by investigation, conciliation, hearing or otherwise; and
- (b) being a respondent to such a complaint; and
- (c) involvement in a prosecution for an offence against the Act; and
- (d) supplying information and producing documents to a person who is performing a function under the Act; and
- (e) appearing as a witness in a proceeding under the Act.

Subdivision 2—Representative complaints

Representative complaints

146.(1) If a complaint alleges that a number of people were subjected to the alleged contravention by the respondent, the commissioner must determine whether the complaint should be dealt with by the commissioner as a representative complaint.

(2) The tribunal may subsequently make its own determination under section 194.⁶

Criteria for determining whether prima facie representative complaint

147.(1) The commissioner may deal with a complaint as a representative complaint if the commissioner is satisfied that—

- (a) the complainant is a member of a class of people, the members of which have been affected, or are reasonably likely to be affected by, the respondent's conduct; and

⁶ Section 194 (Representative complaints)

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- (b) the complainant has been affected by the respondent's conduct; and
- (c) the class is so numerous that joinder of all of its members is impracticable; and
- (d) there are questions of law or fact common to all members of the class; and
- (e) the material allegations in the complaint are the same as, or similar or related to, the material allegations in relation to the other members of the class; and
- (f) the respondent has acted on grounds apparently applying to the class as a whole.

(2) If the commissioner is satisfied that—

- (a) the complaint is made in good faith as a representative complaint; and
- (b) the justice of the case demands that the matter be dealt with by means of a representative complaint;

the commissioner may deal with the complaint as a representative complaint even if the criteria set out in subsection (1) have not been satisfied.

Amendment resulting in representative complaint

148. If the commissioner is satisfied that a complaint could be dealt with as a representative complaint if the class of complainants is increased, reduced or was otherwise altered, the commissioner may amend the complaint so that the complaint can be dealt with as a representative complaint.

Amendment resulting in nonrepresentative complaint

149. If the commissioner is satisfied that a complaint has been wrongly made as a representative complaint, the commissioner may amend the complaint by removing the names of any of the complainants so that the complaint can be dealt with as a complaint otherwise than as a representative complaint.

Directions about conduct of representative complaint

150. The commissioner may give directions concerning the conduct of a representative complaint while it is being dealt with by the commissioner.

Representative complainant must choose

151.(1) A complainant in relation to a representative complaint must choose whether to—

- (a) proceed before the commissioner as a party to the representative complaint; or
- (b) make an individual complaint.

(2) An election under subsection (1) does not prevent a complainant making a subsequent election under section 199.⁷

Nonrepresentative complaint not precluded by representative complaint

152. If a representative complaint is made in respect of certain conduct, a person who is not a complainant in relation to the representative complaint, may make a complaint (other than a representative complaint) in respect of the conduct.

*Subdivision 3—Complaints by dismissed workers***Dismissed worker lodges complaint first**

153. If, but for this section—

- (a) a worker is dismissed in circumstances entitling the worker to—
 - (i) lodge a complaint with the commissioner under the Act; and
 - (ii) apply for industrial relief; and
- (b) the worker does not apply for industrial relief before lodging a complaint;

⁷ Section 199 (Representative complainant must choose)

the worker may only proceed with the complaint and may not later apply for industrial relief in respect of the circumstances.

Dismissed worker applies for industrial relief first

154. If—

- (a) a worker is dismissed in circumstances entitling the worker to—
 - (i) lodge a complaint with the commissioner under the Act; and
 - (ii) apply for industrial relief; and
- (b) the worker applies for industrial relief before lodging a complaint;

the worker may proceed with both the complaint and the application for industrial relief, but the tribunal may not make an order in respect of the complaint requiring the reinstatement or re-employment of the worker.

Division 2—The investigation process

Investigation of complaints

155.(1) The commissioner must initiate an investigation if—

- (a) requested to do so by the Minister; or
- (b) the tribunal becomes aware of circumstances that may constitute a contravention of the Act and refers the matter to the commissioner; or
- (c) the commissioner accepts a complaint under section 141.⁸

(2) The commissioner may initiate an investigation if—

- (a) during the course of carrying out the commission's functions, a possible case of a contravention of the Act against a group or class of people is discovered, the matter is of public concern and the Minister agrees; or
- (b) an allegation is made that an offence against the Act has been committed; or

⁸ Section 141 (Time limit on acceptance or rejection of complaints)

(c) during the course of carrying out the commissioner's functions, a possible offence against the Act is discovered.

(3) In conducting an investigation, the commissioner has the same powers as the commissioner has in dealing with a complaint of a contravention of the Act.

(4) If, after conducting an investigation, the commissioner is satisfied that a contravention of the Act happened or is likely to happen, the commissioner is to try to resolve the matter by conciliation.

(5) If the matter investigated under subsection (1)(a), (1)(b) or (2)(a) cannot be resolved by conciliation, the commissioner may refer the matter to the tribunal as if it were a complaint.

(6) If the commissioner refers the matter to the tribunal under subsection (5), the commissioner is the complainant.

Commissioner may obtain information and documents

156.(1) If the commissioner has reason to believe that a person—

- (a) published or displayed an advertisement that contravenes the Act; or
- (b) is able to provide information or produce documents relevant to an investigation;

the commissioner may direct the person in writing—

- (c) to give to the commissioner by writing signed by the person, or, in the case of a body corporate, by an officer of the body corporate, the specified information; or
- (d) to give to the commissioner the specified documents or documents of a specified class;

at such place, and within such reasonable period or on such reasonable day and at such time, as are specified in the direction.

(2) If documents are given to the commissioner, the commissioner—

- (a) may take possession of, and may copy or take extracts from, the documents; and
- (b) may retain possession of the documents for such reasonable

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period as is necessary for the investigation to which the documents relate; and

- (c) during that period must allow a person who, if they were not in the possession of the commissioner, would be entitled to inspect any of the documents, to inspect that document at all reasonable times.

(3) The commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction.

(4) The direction is then enforceable as if it were an order of the court.

(5) A person is not required to give information or a document if the person objects on the ground of legal professional privilege that the person would be entitled to claim if—

- (a) the person were a witness in a prosecution for an offence in the Supreme Court; and
- (b) the person were required to give the information or document in the prosecution.

Commissioner may obtain actuarial, statistical or other data

157.(1) If a person has done an act of discrimination that would, but for section 61, 62, 63, 74 or 75,⁹ be unlawful, the commissioner may direct the person to give the commissioner, within 21 days after service of the direction, any source of the actuarial, statistical or other data on which the act of discrimination was based.

(2) The commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction.

(3) The direction is then enforceable as if it were an order of the court.

⁹ Section 61 (New superannuation fund conditions—actuarial or statistical data (age or impairment))

Section 62 (New superannuation fund conditions—other data (age or impairment))

Section 74 (Actuarial or statistical data (age or impairment))

Section 75 (No actuarial or statistical data (age or impairment))

Division 3—The conciliation process

Conciliation of complaints

158. If the commissioner believes that a complaint may be resolved by conciliation, the commissioner must try to resolve it in that way.

Attendance at conciliation conference

159.(1) The commissioner may direct a person to take part in a conciliation conference.

(2) The commissioner may enforce the direction by filing a copy of it with a court of competent jurisdiction.

(3) The direction is then enforceable as if it were an order of the court.

Party fails to attend conference

160.(1) If a complainant, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may dismiss the complaint and direct the complainant to pay costs to the respondent.

(2) If a respondent, without reasonable excuse, does not comply with a direction to attend a conciliation conference, the commissioner may direct the respondent to pay costs to the complainant.

(3) A party may enforce a direction as to costs by filing a copy of it with a court of competent jurisdiction.

(4) The direction is then enforceable as if it were an order of the court.

Conference to be held in private

161. A conciliation conference must be held in private.

Interpreter may be used

162. A person has a right to use a professional or voluntary interpreter at a conciliation conference.

Representative may be used with permission

163. A person may be represented by another person at a conciliation conference, with the commissioner's permission.

Resolution by conciliation

164.(1) If the complaint is resolved by conciliation, the commissioner must record the terms of the agreement and have the document signed by the complainant and the respondent.

(2) The commissioner must provide a copy of the document to each party and file the document with the tribunal.

(3) The agreement is then enforceable as if it were an order of the tribunal.

Division 4—Unconciliated complaints**Complaints which are not resolved by conciliation**

165.(1) If the commissioner believes that a complaint cannot be resolved by conciliation, the commissioner must promptly tell the complainant and the respondent by written notice.

(2) The obligation in subsection (1) arises whether or not conciliation has been attempted.

Complainant may obtain referral of unconciliated complaint

166.(1) A complainant is entitled to require the commissioner to refer a complaint to the tribunal by making a written request within 28 days of being notified that the complaint cannot be resolved by conciliation.

(2) The tribunal may extend the time limit if—

- (a)** the complainant asks the tribunal for an extension within the 28 days; and
- (b)** the tribunal considers that there are reasonable grounds for the request; and

- (c) the tribunal considers that the extension will not cause undue hardship to the respondent.

Complainant or respondent may seek referral after 6 months

167.(1) If the commissioner has not finished dealing with a complaint 6 months after informing the complainant and the respondent that the complaint has been accepted, either the complainant or the respondent may, by written notice, request the commissioner to refer the complaint to the tribunal.

(2) The commissioner may defer acting on a request for up to 28 days, if there is a significant prospect that the matter can be resolved by conciliation within that period.

(3) If the matter is not resolved at the end of 28 days, the procedures in subsection (4) or (5) apply.

(4) If the respondent requests the commissioner to refer the complaint—

- (a) the commissioner must ask the complainant whether the complainant agrees to the complaint being referred; and
- (b) if the complainant agrees in writing—the commissioner must refer the complaint to the tribunal; and
- (c) if the complainant does not agree in writing within 28 days—the complaint lapses, and the complainant cannot make a further complaint relating to the act or omission that was the subject of the complaint; and
- (d) the commissioner may extend the 28 day period, but only if the complainant asks, in writing, for an extension before the 28 days have passed.

(5) If the complainant requests the commissioner in writing, to refer the complaint, the commissioner must comply.

(6) If the commissioner refers the complaint to the tribunal, the commissioner must promptly give the respondent a copy of the complaint.

Division 5—Lapsed or withdrawn complaints or authorisation**Frivolous etc. complaint lapses**

168.(1) If, at any time after a complaint is accepted and before it is referred to the tribunal, the commissioner is of the reasonable opinion that the complaint is—

- (a) frivolous or vexatious; or
- (b) misconceived or lacking in substance;

the commissioner must tell the complainant in writing that the complaint will lapse unless the complainant is able to show to the commissioner's satisfaction within 28 days that the complaint is not frivolous or vexatious or misconceived or lacking in substance.

(2) If, at the end of 28 days, the commissioner is of the reasonable opinion that the complaint is—

- (a) frivolous or vexatious; or
- (b) misconceived or lacking in substance;

the commissioner must write to the complainant and respondent as soon as practicable to tell them that the complaint has lapsed.

(3) The complaint then lapses.

Complaint may lapse if complainant loses interest

169.(1) If the commissioner is of the reasonable opinion that a complainant has lost interest in continuing with a complaint, the commissioner must tell the complainant in writing that the complaint will lapse unless the complainant indicates that the complainant wishes to continue with it.

(2) If the complainant does not give the indication within 28 days, the complaint lapses, and the commissioner must write to the complainant and the respondent as soon as practicable to tell them that the complaint has lapsed.

(3) Within 28 days of being notified that the complaint has lapsed, the complainant may apply to the tribunal to review the commissioner's

decision.

(4) If the tribunal is satisfied that the complainant has a genuine interest in continuing with the complaint, the commissioner must resume dealing with the complaint.

(5) The complainant cannot make a further complaint relating to the act or omission that was the subject of the complaint.

Complainant may withdraw complaint

170.(1) The commissioner must not continue to deal with a complaint if the complainant, or the person who authorised the complaint to be made, gives written notice that the person does not want to continue with the complaint.

(2) The complaint then lapses.

(3) The commissioner must write to the respondent as soon as practicable to tell the respondent that the complaint has lapsed.

Commissioner may withdraw authorisation

171.(1) The commissioner may withdraw an authorisation for a person to act on behalf of another person who could not make a complaint if the commissioner believes there is good reason to do so.

(2) The commissioner may, in writing, authorise another person to act on behalf of the complainant.

(3) If no further authorisation has been requested within 28 days of the withdrawal of the original authorisation—

(a) the complaint lapses; and

(b) the commissioner must tell the complainant and the respondent in writing that the complaint has lapsed.

Division 6—Miscellaneous**Commissioner may extend time limits**

172. The commissioner may extend a time limit specified in this part for the doing of anything (whether by a party or the commissioner) if the commissioner is of the reasonable opinion that—

- (a) the extension will not cause undue hardship to any party; and
- (b) there are reasonable grounds for granting the extension.

Authentication of documents

173. A document requiring authentication by the commission or commissioner is sufficiently authenticated if signed by the commissioner.

Judicial notice of commissioner’s signature

174. Judicial notice must be taken of the signature of the commissioner if it appears on a document issued by the commission or commissioner.

**PART 2—WHAT THE ANTI-DISCRIMINATION
TRIBUNAL MAY DO*****Division 1—The pre-hearing process******Subdivision 1—All complaints*****Time limit on referred complaints**

175.(1) The tribunal must accept a complaint that is referred to it by the commissioner, unless the complaint was made to the commissioner more than 1 year after the alleged contravention of the Act.

- (2) If the complaint was made more than 1 year after the alleged

contravention, the tribunal may deal with the complaint if the tribunal considers that, on the balance of fairness between the parties, it would be reasonable to do so.

Constitution of tribunal

176. The tribunal is constituted by 1 member for the purpose of conducting a hearing.

Tribunal may join a person as a party

177. The tribunal may join a person as a party to a proceeding by giving the person reasonable written notice.

Complaints may be amended

178. The tribunal may allow a complainant to amend a complaint.

Complaints may be dealt with jointly

179. The tribunal may deal with 2 or more complaints jointly if they arise out of substantially the same events.

Tribunal powers prior to a hearing (conference)

180.(1) Before it hears a complaint, the tribunal may order a person to—

- (a) confer with a member of the tribunal for any purpose related to a proceeding; or
- (b) make a written submission;

at such place, and within such reasonable period or on such reasonable day and at such time, as is specified in the order.

(2) The tribunal may enforce the order by filing a copy of it with a court of competent jurisdiction.

(3) The order is then enforceable as if it were an order of the court.

Tribunal powers prior to a hearing (information and documents)

181.(1) Before it hears a complaint, the tribunal may order a person in writing to—

- (a) give a specified document, or documents of a specified class, to the tribunal; or
- (b) give to the tribunal in writing signed by the person, or, in the case of a body corporate, by an officer of the body corporate, the specified information;

at such place, and within such reasonable period or on such reasonable day and at such time, as is specified in the order.

(2) If documents are given to the tribunal, the tribunal—

- (a) may take possession of, and may copy or take extracts from, the documents; and
- (b) may retain possession of the documents for such period as is reasonably necessary; and
- (c) during the period, must allow a person who, if the documents were not in the possession of the tribunal would be entitled to inspect any of them, to inspect that document at all reasonable times.

(3) The tribunal may enforce the order by filing a copy of it with a court of competent jurisdiction.

(4) The order is then enforceable as if it were an order of the court.

(5) A person is not required to give information or a document if the person objects on the ground of legal professional privilege that the person would be entitled to claim if—

- (a) the person were a witness in a prosecution for an offence in the Supreme Court; and
- (b) the person were required to give the information or document in the prosecution.

Attendance at conference

182.(1) If a complainant, without reasonable excuse, does not comply

with an order to attend a conference, the tribunal may dismiss the complaint and order the complainant to pay costs to the respondent.

(2) If a respondent, without reasonable excuse, does not comply with an order to attend a conference, the tribunal may order the respondent to pay costs to the complainant.

(3) A party may enforce an order as to costs by filing a copy of it with a court of competent jurisdiction.

(4) The order is then enforceable as if it were an order of the court.

Conference to be held in private

183. A conference must be held in private unless the tribunal directs otherwise.

Interpreter may be used

184. A person has a right to use a professional or voluntary interpreter in a tribunal proceeding.

Solicitor or counsel assisting the tribunal

185. The tribunal may make arrangements for a solicitor or counsel to appear at a proceeding to assist the tribunal.

Officer assisting the tribunal

186.(1) The tribunal may make arrangements for an officer of the commission to appear at a proceeding to assist the tribunal.

(2) An officer assisting the tribunal is subject to the tribunal's direction and control.

Representative may be used in certain cases

187. A complainant or a respondent may be represented before the tribunal by a solicitor, or counsel or an agent—

(a) if the tribunal has made arrangements under section 185 for a

solicitor or counsel to appear to assist it; or

- (b) in any other case—with the leave of the tribunal.

Tribunal to refer complaint for conciliation

188. If the tribunal considers, either before or during a hearing, that a complaint could be resolved by conciliation, the tribunal may—

- (a) attempt to conciliate the complaint; or
(b) refer the complaint to the commissioner for an attempt at conciliation.

Resolution before tribunal order

189.(1) If the complainant and the respondent resolve the complaint before it has been determined by the tribunal, they must record the terms of the agreement in a document signed by the complainant and the respondent and file the document with the tribunal.

- (2) The tribunal must provide a copy of the document to each party.

(3) The agreement is then enforceable as if it were an order of the tribunal.

Interim orders protecting complainant's interests (tribunal)

190.(1) When a complaint has been referred to the tribunal, the complainant may apply to the tribunal for an order prohibiting a person from doing an act that might prejudice an order that the tribunal might make after a hearing.

- (2) A party may apply to the tribunal for an order varying or revoking an order made under subsection (1).

(3) A party may enforce an order made under this section by filing a copy of it with a court of competent jurisdiction.

- (4) The order is then enforceable as if it were an order of the court.

(5) The tribunal may apply the rules of the Supreme Court (with any necessary changes) in relation to an application made under this section.

Anonymity

191.(1) If the tribunal is of the reasonable opinion that the preservation of anonymity of a person who has been involved in a proceeding under the Act is necessary to protect the work security, privacy or any human right of the person, the tribunal may make an order prohibiting the disclosure of the person's identity.

(2) A person must comply with an order.

Maximum penalty—

- (a) in the case of an individual—35 penalty units;
- (b) in the case of a corporation—170 penalty units.

(3) In this section, a reference to involvement in a proceeding under the Act includes—

- (a) making a complaint under the Act and continuing with the complaint, whether by investigation, conciliation, hearing or otherwise; and
- (b) being a respondent to such a complaint; and
- (c) involvement in a prosecution for an offence against the Act; and
- (d) giving information or documents to a person who is performing a function under the Act; and
- (e) appearing as a witness in a proceeding under the Act.

Publication of evidence may be restricted

192.(1) The tribunal may order that any oral or documentary evidence must not be published, except as directed by the tribunal.

(2) A person must not contravene an order.

Maximum penalty—

- (a) in the case of an individual—35 penalty units;
- (b) in the case of a corporation—170 penalty units.

(3) It is an excuse to an offence against subsection (2) if the defendant has a reasonable excuse.

Complainant may withdraw complaint

193.(1) The tribunal is not to continue to deal with a complaint if the complainant, or the person who authorised the complaint to be made, gives written notice that the person does not want to continue with the complaint.

(2) The complaint then lapses.

(3) The commissioner is to write to the respondent as soon as practicable to tell the respondent that the complaint has lapsed.

Subdivision 2—Representative complaints**Representative complaints**

194. If a complaint alleges that the respondent contravened the Act against a number of people, the tribunal must determine, as a preliminary matter, whether the complaint should be dealt with by it as a representative complaint.

Criteria for determining whether representative complaint

195.(1) The tribunal may deal with a complaint as a representative complaint if the tribunal is satisfied that—

- (a) the complainant is a member of a class of people, the members of which have been affected, or are reasonably likely to be affected by, the respondent's conduct; and
- (b) the complainant has been affected by the respondent's conduct; and
- (c) the class is so numerous that joinder of all of its members is impracticable; and
- (d) there are questions of law or fact common to all members of the class; and
- (e) the material allegations in the complaint are the same as, or similar or related to, the material allegations in relation to the other members of the class; and
- (f) the respondent has acted on grounds apparently applying to the

class as a whole.

(2) If the tribunal is satisfied that—

- (a) the complaint is made in good faith as a representative complaint; and
- (b) the justice of the case demands that the matter be dealt with by means of a representative complaint;

the tribunal may deal with the complaint as a representative complaint even if the criteria set out in subsection (1) have not been satisfied.

Amendment resulting in representative complaint

196. If the tribunal is satisfied that a complaint could be dealt with as a representative complaint if the class of complainants was increased, reduced or otherwise altered, the tribunal may amend the complaint so that the complaint can be dealt with as a representative complaint.

Amendment resulting in nonrepresentative complaint

197. If the tribunal is satisfied that a complaint has been wrongly made as a representative complaint, the tribunal may amend the complaint by removing the names of any of the complainants so that the complaint can be dealt with as a complaint otherwise than as a representative complaint.

Directions about conduct of representative complaint

198. The tribunal may give directions concerning the conduct of a representative complaint.

Representative complainant must choose

199. A complainant in relation to a representative complaint must choose whether to—

- (a) proceed before the tribunal as a party to the representative complaint; or
- (b) make an individual complaint.

Nonrepresentative complaint not precluded by representative complaint

200. If a representative complaint is made in respect of certain conduct, a person who is not a complainant in relation to the representative complaint, may make a complaint (other than a representative complaint) in respect of the conduct.

Division 2—The hearing process**Tribunal's powers relating to attendance at hearing and evidence**

201.(1) The tribunal may order any person in writing—

- (a) to attend a hearing until excused; or
- (b) to give evidence, on oath or affirmation; or
- (c) to give to the tribunal a document, or class of documents, specified in the order.

(2) If documents are given to the tribunal, the tribunal—

- (a) may take possession of, and may copy or take extracts from, the documents; and
- (b) may retain possession of the documents for such period as is reasonably necessary; and
- (c) during that period, must allow a person who, if the documents were not in the possession of the tribunal, would be entitled to inspect any of them, to inspect that document at all reasonable times.

(3) The tribunal may enforce the order by filing a copy of it with a court of competent jurisdiction.

(4) The order is then enforceable as if it were an order of the court.

(5) A person is not required to give evidence or a document if the person objects on the ground of legal professional privilege that the person would be entitled to claim if—

- (a) the person were a witness in a prosecution for an offence in the Supreme Court; and

- (b) the person were required to give the evidence or document in the prosecution.

Party fails to attend hearing

202.(1) If a complainant, without reasonable excuse, does not attend a hearing, the tribunal may dismiss the complaint and order the complainant to pay costs to the respondent.

(2) If a respondent, without reasonable excuse, does not attend a hearing, the tribunal may do 1 or both of the following—

- (a) proceed with the hearing in the respondent's absence;
- (b) make such order as it considers appropriate, including an order that the respondent pay costs to the complainant.

(3) A party may enforce an order made under this section by filing a copy of it with a court of competent jurisdiction.

(4) The order is then enforceable as if it were an order of the court.

Hearings to be public

203. Hearings are to be held in public unless the tribunal directs that all or part of a hearing be conducted in private—

- (a) either of the tribunal's own motion; or
- (b) at the request of either the complainant or the respondent, if the tribunal is satisfied that it is appropriate to do so.

Burden of proof—general principle

204. It is for the complainant to prove, on the balance of probabilities, that the respondent contravened the Act, subject to the requirements in sections 205 and 206.

Burden of proof—indirect discrimination

205. In a case involving an allegation of indirect discrimination, the

respondent must prove, on the balance of probabilities, that a term complained of is reasonable.

Burden of proof—exemptions

206. If the respondent wishes to rely on an exemption, the respondent must raise the issue and prove, on the balance of probabilities, that it applies.

Commissioner may provide investigation reports

207.(1) The commissioner may give the tribunal a report relating to the investigation of a complaint which the tribunal is hearing.

(2) The report must not contain a record of oral statements made by any person in the course of conciliation.

(3) The commissioner must give a copy of the report provided to the tribunal, to the complainant and the respondent.

Evaluation of evidence

208.(1) The tribunal is not bound by the rules of evidence and—

- (a) may inform itself on any matter as it considers appropriate; and
- (b) must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and
- (c) may give directions relating to procedure that, in its opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties; and
- (d) may draw conclusions of fact from any proceeding before a court or tribunal; and
- (e) may adopt any findings or decisions of a court or tribunal that may be relevant to the hearing; and
- (f) may receive in evidence a report of the commissioner, but only if the commissioner has provided a copy to each party to the hearing; and
- (g) may permit any person with an interest in the proceeding to give

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evidence; and

- (h) may hold a hearing in the absence of a party who was given reasonable notice to attend, but failed to do so without providing a good reason; and
- (i) may permit the commissioner to give evidence on any issue arising in the course of a proceeding that relates to the administration of the Act.

(2) Nothing said or done in the course of conciliation can be admitted as evidence in a hearing before the tribunal.

*Division 3—The post-hearing process***Orders the tribunal may make if complaint is proven**

209.(1) If the tribunal decides that the respondent contravened the Act, the tribunal may make 1 or more of the following orders—

- (a) an order requiring the respondent not to commit a further contravention of the Act against the complainant or another person specified in the order;
- (b) an order requiring the respondent to pay to the complainant or another person, within a specified period, an amount the tribunal considers appropriate as compensation for loss or damage caused by the contravention;
- (c) an order requiring the respondent to do specified things to redress loss or damage suffered by the complainant and another person because of the contravention;
- (d) an order declaring void all or part of an agreement made in connection with a contravention of this Act, either from the time the agreement was made or subsequently.

(2) A respondent must comply with an order of the tribunal under subsection (1)(a), (b) or (c).

Maximum penalty—

- (a) in the case of an individual—35 penalty units;

(b) in the case of a corporation—170 penalty units.

(3) An order may be made under subsection (1)(b) in favour of a person on whose behalf a representative complaint was made, without the necessity for the person to make an individual complaint, if on the evidence before it the tribunal is able to assess the loss or damage of the person.

(4) If, in respect of a representative complaint—

- (a) the tribunal decides that the respondent contravened the Act; but
- (b) the tribunal is unable, on the evidence before it at the hearing of the representative complaint, to assess the loss or damage of a person on whose behalf the complaint was made;

the person may subsequently make a request for the tribunal to assess the person's loss or damage.

(5) In this section, the specified things a respondent may be required to do, include, but are not limited to—

- (a) employing, reinstating or re-employing a person; or
- (b) promoting a person; or
- (c) moving a person to a specified position within a specified time.

(6) In this section—

“**damage**”, in relation to a person, includes the offence, embarrassment, humiliation, and intimidation suffered by the person.

Tribunal may dismiss complaint

210. After a hearing, the tribunal may make an order dismissing a complaint.

Written reasons for orders

211.(1) The complainant or the respondent may ask the tribunal for written reasons for an order.

(2) If requested, the tribunal must provide the written reasons within 28 days of receiving a request.

Enforcement of orders

212.(1) A person may enforce an order of the tribunal (other than an order entitling the person to payment) by filing with a court of competent jurisdiction a copy of the order certified as a true copy by the registrar.

(2) A person who is entitled to payment under an order may enforce the order by filing with a court of competent jurisdiction—

- (a) a copy of the order, certified as a true copy by the registrar; and
- (b) an affidavit stating the amount remaining unpaid.

(3) An order is then enforceable as if it were an order of the court.

Costs

213. The tribunal may order a party to pay such costs as the tribunal considers reasonable.

*Division 4—Miscellaneous***Authentication of documents**

214. A document requiring authentication by the tribunal is sufficiently authenticated if signed by a member or the registrar.

Judicial notice of certain signatures

215. Judicial notice must be taken of the signature of a member or the registrar if it appears on a document issued by the tribunal.

PART 3—WHAT THE SUPREME COURT MAY DO**Supreme Court opinions**

216. If a question of law arises in a tribunal proceeding, the tribunal may

ask the Supreme Court for its opinion, and must act in accordance with its opinion.

Appeals against tribunal decisions

217.(1) A party to a proceeding before the tribunal may appeal to the Supreme Court against a tribunal decision on a question of law.

(2) An appeal may only be made—

- (a) within 28 days after the day on which the decision was made; or
- (b) if the tribunal did not give written reasons at the time the decision was made, and the party making the appeal subsequently asked it to do so—within 28 days after the day on which the party received the reasons in writing.

(3) A request to the tribunal to give written reasons may only be made within 28 days after the day on which the decision was made.

Powers of Supreme Court

218. The Supreme Court on the hearing of an appeal may—

- (a) affirm, vary or quash the order or decision appealed against; or
- (b) substitute, or make, in addition, any order or decision that should have been made in the first instance; or
- (c) remit the matter to the tribunal for further hearing or consideration or for rehearing; or
- (d) make any order as to costs or any other matter that the court considers appropriate.

PART 4—OFFENCES (NO COMPLAINT)

Division 1—Creation of offences to assist in enforcement

Creation of offences

219. A number of offences are created under the Act to assist in the enforcement of the Act's purposes.

Division 2—Improper communication offence

Improper communication of official information

220.(1) A person—

- (a) who is or has been—
 - (i) the commissioner; or
 - (ii) a member of the tribunal; or
 - (iii) the registrar; or
 - (iv) a member of the staff of the commission or the tribunal; or
 - (v) a person acting under the direction or authority of the commissioner or a member of the tribunal; or
 - (vi) a person acting under a delegation under section 244;¹⁰ and
- (b) who, in that capacity, acquired information about a person's affairs or has custody of, or access to, a document about a person's affairs;

must not—

- (c) make a record of the information; or
- (d) communicate the information or produce the document to another person.

¹⁰ Section 244 (Delegation of power by commissioner)

Maximum penalty—

- (a) in the case of an individual—85 penalty units or imprisonment for 12 months;
- (b) in the case of a corporation—170 penalty units.

(2) Subsection (1) does not apply to making a record of information, communicating information or producing a document if—

- (a) that is required for the performance of a function in connection with this Act; or
- (b) that is required or permitted by another Act (whether of the Commonwealth or a State).

(3) Subsection (1) does not apply to communicating information or producing a document to a person in accordance with an arrangement under part 3 of chapter 9 (Commonwealth/State arrangement).

(4) In this section—

“**produce**” includes permit access to.

Division 3—Offences against the commissioner, the tribunal and their staff

False or misleading information

221. A person must not knowingly or recklessly provide false or misleading information to a person performing a function under the Act.

Maximum penalty—

- (a) in the case of an individual—45 penalty units or imprisonment for 3 months;
- (b) in the case of a corporation—170 penalty units.

Obstruction

222. A person must not consciously hinder or use insulting language towards a person who is performing a function under the Act.

Maximum penalty—

- (a) in the case of an individual—35 penalty units;
- (b) in the case of a corporation—170 penalty units.

Contempt of commission

223.(1) In addition to the acts or omissions for which a penalty or civil consequence is expressly provided in part 1, a person must not do another act in relation to the commission that would constitute a contempt of court.

(2) For the purposes of the law relating to contempt of court, the commission is to be treated as a court.

Contempt of tribunal

224.(1) In addition to the acts or omissions for which a penalty or civil consequence is expressly provided in part 2, a person must not do another act in relation to the tribunal that would constitute a contempt of court.

(2) For the purposes of the law relating to contempt of court, the tribunal is to be treated as a court.

Example—

Creating or taking part in a disturbance in or near a place where the tribunal is sitting.

Division 4—Miscellaneous offence

Separation of guide dog from visually, hearing or mobility impaired person

225.(1) A person must not impose a term that would result in another person with a visual, hearing or mobility impairment being separated from the other person's guide dog.

(2) In this section—

“**term**” includes condition, requirement or practice, whether or not written.

Maximum penalty—

- (a) in the case of an individual—35 penalty units;
- (b) in the case of a corporation—170 penalty units.

Division 5—Procedure

Proceedings for offences

226.(1) A prosecution for an offence against the Act is to be by way of summary proceeding under the *Justices Act 1886* on complaint of—

- (a) the commissioner; or
- (b) a person authorised by the commissioner for that purpose.

(2) A proceeding for an offence against the Act is to be taken—

- (a) within 1 year after the offence is committed; or
- (b) within 6 months after the offence comes to the commissioner's knowledge;

whichever period ends last, but a proceeding is not to be taken more than 2 years after the offence is committed.

(3) In addition to the places where a complaint for an offence against the Act may be heard under section 139 of the *Justices Act 1886*,¹¹ the complaint may also be heard at a place within the Magistrates Courts' district in which the defendant resides.

(4) The authority of a person referred to in subsection (1)(b) to make a complaint is to be presumed until the contrary is proved.

¹¹ Section 139 (Where summary cases to be heard)

PART 5—PROCEEDINGS INVOLVING UNINCORPORATED ASSOCIATION

Unincorporated association represented by committee member

227.(1) If a proceeding under this Act involves an unincorporated association—

- (a) the president; or
- (b) the secretary; or
- (c) another member of the committee of management;

is to be the nominal party.

(2) If the nominal party ceases to hold office, the person's successor (whether or not acting) is to be substituted as the nominal party.

CHAPTER 8—OPINIONS

Commissioner may seek tribunal opinion

228. If a person asks the commissioner for advice about how the Act applies in a specific situation, the commissioner may ask the tribunal for its opinion.

Tribunal has discretion

229. The tribunal has a discretion whether or not to provide an opinion.

Tribunal may request further information

230. If the tribunal decides to provide an opinion, it may require the person who requested the advice to provide information relevant to the matter.

No complaint if compliance with opinion

231. A person may not make a complaint under the Act against a person acting in accordance with an opinion provided by the tribunal in response to a request for advice from the person.

Revocation of opinion

232. The tribunal may revoke an opinion if—

- (a) it formed the opinion on the basis of false or misleading information; or
- (b) the Supreme Court or the High Court makes a contrary ruling on a question of law covered by the opinion.

Appeal from opinion

233. The commissioner, or a person with a relevant interest, may appeal, against a tribunal opinion, to the Supreme Court on a question of law.

CHAPTER 9—ADMINISTRATION**PART 1—THE ANTI-DISCRIMINATION
COMMISSION****The Anti-Discrimination Commission and Commissioner**

234.(1) An Anti-Discrimination Commission is established.

(2) There is to be an Anti-Discrimination Commissioner.

(3) The commission consists of the commissioner and the staff of the commission.

Commission's functions

235. The commission has the following functions—

- (a) to inquire into complaints and, where possible, to effect conciliation;
- (b) to carry out investigations relating to contraventions of the Act;
- (c) to examine Acts and, when requested by the Minister, proposed Acts, to determine whether they are, or would be, inconsistent with the purposes of the Act, and to report to the Minister the results of the examination;
- (d) to undertake research and educational programs to promote the purposes of the Act, and to coordinate programs undertaken by other people or authorities on behalf of the State;
- (e) to consult with various organisations to ascertain means of improving services and conditions affecting groups that are subjected to contraventions of the Act;
- (f) when requested by the Minister, to research and develop additional grounds of discrimination and to make recommendations for the inclusion of such grounds in the Act;
- (g) such functions as are conferred on the commission under another Act;
- (h) such functions as are conferred on the commission under an arrangement with the Commonwealth under part 3;
- (i) to promote an understanding and acceptance, and the public discussion, of human rights in Queensland;
- (j) if the commission considers it appropriate to do so—to intervene in a proceeding that involves human rights issues with the leave of the court hearing the proceeding and subject to any conditions imposed by the court;
- (k) such other functions as the Minister determines;
- (l) to take any action incidental or conducive to the discharge of the above functions.

Commissioner's powers

236.(1) The commissioner has the powers given by the Act.

(2) The commissioner also has power to do all things that are necessary or convenient to be done for or in connection with the performance of the commission's functions.

Financial administration

237. For the purposes of the *Financial Administration and Audit Act 1977*, the commission is a statutory body within the meaning of that Act.

Commission is statutory body

237A.(1) The commission is a statutory body for the *Statutory Bodies Financial Arrangements Act 1982*.

(2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way in which the Commission's powers under this Act are affected by the *Statutory Bodies Financial Arrangements Act 1982*.

Appointment of commissioner

238.(1) The commissioner is to be appointed by the Governor in Council.

(2) Subject to sections 242 and 243,¹² the commissioner holds office for such term (not longer than 7 years) as is specified in the instrument of appointment.

(3) The commissioner is to be appointed under this Act, and not under the *Public Service Act 1996*.

Terms of appointment

239.(1) The commissioner is to be paid such remuneration and allowances as are determined by the Governor in Council.

¹² Sections 242 (Resignation) and 243 (Termination of appointment)

(2) The commissioner holds office on such terms, not provided for by the Act, as are determined by the Governor in Council.

Preservation of rights

240. If a public service officer is appointed as the commissioner, the person retains—

- (a) any long service leave and other leave entitlements accrued or accruing; and
- (b) any other rights and entitlements accrued or accruing under that Act and any other Act;

as if the person's service as commissioner were a continuation of the person's service as a public service officer.

Leave of absence

241. The Minister may grant leave of absence to the commissioner on such terms as the Minister considers appropriate.

Resignation

242. The commissioner may resign by signed notice delivered to the Governor.

Termination of appointment

243.(1) The Governor in Council may terminate the appointment of the commissioner if the commissioner—

- (a) becomes physically or mentally incapable of satisfactorily performing the duties of office; or
- (b) is guilty of misconduct of a kind that could warrant dismissal from the public service if the Anti-Discrimination Commissioner were an officer of the public service; or
- (c) is absent, without the Minister's leave and without reasonable excuse, for 14 consecutive days or 28 days in any 12 months.

(2) The Governor in Council must terminate the appointment of the commissioner if the commissioner—

- (a) is convicted of an indictable offence (whether in Queensland or elsewhere); or
- (b) 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; or
- (c) engages in paid employment outside the duties of office without the Minister's approval.

Delegation of power by commissioner

244. The commissioner may delegate to a person powers under—

- (a) this or any other Act; or
- (b) an arrangement made by the Minister with a Commonwealth Minister.

Acting Commissioner

245. The Governor in Council may appoint a person to act as commissioner—

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the commissioner is absent from duty or from the State or is, for any other reason, unable to perform the duties of the office.

Commission staff

246. The staff of the commission are to be employed under the *Public Service Act 1996*.

PART 2—THE ANTI-DISCRIMINATION TRIBUNAL

The Anti-Discrimination Tribunal and members

247.(1) An Anti-Discrimination Tribunal is established.

(2) There are to be such number of members as are appointed under the Act.

Tribunal's functions

248. The tribunal has the following functions—

- (a) to hear and determine complaints that the Act has been contravened;
- (b) to grant exemptions from the Act;
- (c) to provide opinions about the application of the Act;
- (d) any other functions conferred on the tribunal under the Act;
- (e) any other functions conferred on the tribunal under another Act;
- (f) to take any action incidental or conducive to the discharge of the above functions.

Tribunal's powers

249.(1) The tribunal has the powers given by the Act.

(2) The tribunal also has power to do all things that are necessary or convenient to be done for or in connection with the performance of the tribunal's functions.

(3) The tribunal may make rules for the effective and efficient performance of its functions.

(4) A rule is subordinate legislation.

Appointment of president and other members

250.(1) The members are to be appointed by the Governor in Council.

(1A) One member is to be appointed president of the tribunal by the Governor in Council.

(1B) The president may resign office as president without resigning office as a member.

(2) A person is not eligible for appointment as a member unless the person is a barrister, solicitor, barrister and solicitor or legal practitioner of not less than 5 years standing, of the High Court or the Supreme Court of the State or another State.

(3) Subject to sections 254 and 255, a member holds office for such term (not longer than 7 years) as is specified in the instrument of appointment.

(4) Members are to be appointed on a part-time basis.

Arrangement of business

251. The president may give directions as to—

- (a) the arrangement of the business of the tribunal; and
- (b) the member who is to constitute the tribunal for the purpose of conducting a particular hearing.

Terms of appointment

252.(1) A member is to be paid such remuneration and allowances as are determined by the Governor in Council.

(2) A member holds office on such terms, not provided for by this Act, as are determined by the Governor in Council.

Leave of absence

253. The Minister may grant leave of absence to a member on such terms as the Minister considers appropriate.

Resignation

254. A member may resign by signed notice delivered to the Governor.

Termination of appointment

255.(1) The Governor in Council may terminate the appointment of a member if the member—

- (a) becomes physically or mentally incapable of satisfactorily performing the duties of office; or
- (b) is guilty of misconduct of a kind that could warrant dismissal from the public service if the member were an officer of the public service.

(2) The Governor in Council must terminate the appointment of a member if the member—

- (a) is convicted of an indictable offence (whether in Queensland or elsewhere); or
- (b) 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.

Acting member

256. The Governor in Council may appoint a person to act as a member—

- (a) during a vacancy in the office; or
- (b) during any period or during all periods, when 1 of the members is absent from duty or from the State or is, for any other reason, unable to perform the duties of the office.

Registrar and tribunal staff

257.(1) A registrar of the Anti-Discrimination Tribunal, and such other staff as may be necessary to enable the tribunal to exercise its functions, may be employed under the *Public Service Act 1996*.

(2) The office of registrar may be held in conjunction with any other office in the public service.

PART 3—COMMONWEALTH/STATE ARRANGEMENT

Performance of functions

258. The Minister may make an arrangement with a Commonwealth Minister for or in relation to—

- (a) the performance on a joint basis of any functions of the commission or the registrar of the tribunal; or
- (b) the performance by the Commonwealth or a Commonwealth instrumentality on behalf of the State of any functions of the commission or the registrar; or
- (c) the performance by the commission or the registrar of functions on behalf of the Commonwealth.

Necessary provisions

259. An arrangement under this part may contain such incidental or supplementary provisions as the Minister and the Commonwealth Minister with whom the arrangement is made, consider necessary.

Act performed under arrangement

260. An act done by or in relation to the Commonwealth, or a Commonwealth instrumentality, acting (whether on a joint basis or otherwise) under an arrangement made under this part is taken to have been done by or in relation to the Commission.

Alterations

261. The Minister may arrange with the Commonwealth Minister with whom an arrangement is in force under this part for the variation or revocation of the arrangement.

Form of alterations

262. An arrangement under this part, or the variation or revocation of such an arrangement, is to be in writing, and a copy of each instrument by which an arrangement under this part is made, varied or revoked, is to be published in the gazette.

Arrangement to prevail

263. To the extent that an arrangement made under this part is inconsistent with sections 237 to 243, 245, 246 and 257, the arrangement is to prevail.

CHAPTER 10—MISCELLANEOUS**No communication of official information to court**

264.(1) A person—

- (a) who is or has been—
 - (i) the commissioner; or
 - (ii) a member of the tribunal; or
 - (iii) the registrar; or
 - (iv) a member of the staff of the commission or the tribunal; or
 - (v) a person acting under the direction or authority of the commissioner or a member of the tribunal; or
 - (vi) a person acting under a delegation under section 244;¹³ and
- (b) who, in that capacity, acquired information about a person's affairs or has access to, or custody of, a document about a person's affairs;

may not be required—

¹³ Section 244 (Delegation of power by commissioner)

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- (c) to give to a court the information; or
- (d) to produce in a court the document.

(2) Subsection (1) does not apply if giving the information or producing the document—

- (a) is required for the performance of a function in connection with this Act; or
- (b) is required or permitted by another Act (whether of the Commonwealth or a State).

(3) 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.

Protection from civil actions—exercise of functions etc.

265.(1) A person who is or has been—

- (a) the commissioner; or
- (b) a member of the tribunal; or
- (c) the registrar; or
- (d) a member of the staff of the commission or the tribunal; or
- (e) a person acting under the direction or authority of the commissioner or a member of the tribunal; or
- (f) a person acting under a delegation under section 244;

incurs no civil liability for an honest act or omission in—

- (g) the performance or purported performance of functions under the Act; or
- (h) the exercise or purported exercise of powers under the Act.

(2) A liability that would, but for this section, attach to a person mentioned in subsection (1) attaches instead to the State.

Protection from civil actions—complaint etc.

266. If—

- (a) a complaint has been made to the commissioner; or
- (b) a submission has been made or a document, information or evidence given to the commissioner or tribunal;

a person incurs no civil liability in respect of loss, damage or injury of any kind suffered by another person merely because the complaint or submission was made or the document, information or evidence given.

Regulation—making power

267.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may make provision about—

- (a) the exercise of the commissioner's powers; and
- (b) the tribunal's procedure; and
- (c) the fees to be paid for making a complaint under chapter 7 (Enforcement); and
- (d) costs; and
- (e) the fees and expenses to be paid to a person appearing as a witness in a proceeding under the Act.

(3) A regulation may provide that contravention of a regulation is an offence and prescribe a maximum penalty for the offence of not more than 20 penalty units.

Transitional provisions about compulsory age retirement

268.(1) Subject to section 106A (Compulsory retirement age under legislation etc.), a provision of—

- (a) a previous industrial order; or
- (b) a previous industrial agreement; or
- (c) a previous public sector policy;

is of no effect so far as it requires, or requires or authorises the compelling

of, a worker to retire on or after reaching a particular age.

(2) If a compulsory retirement age is—

- (a) set for a person on or before 30 June 1994 under section 32(1) (Compulsory retirement age) as in force on that day; or
- (b) specified for a person under a previous agreement;

then, by force of this subsection, the person is required, and is taken always to have been required, to retire in accordance with the compulsory retirement age set or specified unless the compulsory retirement age is subsequently waived by the relevant parties.

(3) Subject to section 106A, a previous provision of an Act is of no effect so far as it has the effect, apart from this subsection, of disqualifying, or requiring or authorising the disqualification of, a person from applying for or being appointed to an office or position or other work because the person has reached a particular age.

(4) Subject to section 106A, a previous provision of an Act is of no effect so far as it requires, or requires or authorises the compelling of, a person to end work on or after reaching a particular age.

(5) Subsections (1), (3) and (4) have effect despite section 106 (Acts done in compliance with legislation etc.).

(6) In this section—

“previous agreement” means any agreement in existence on 30 June 1994 other than a previous industrial agreement.

“previous industrial agreement” means a certified agreement, enterprise flexibility agreement or industrial agreement within the meaning of the *Industrial Relations Act 1990* in force on 30 June 1994.

“previous industrial order” means an order or award of a court or tribunal having power to fix minimum wages and other terms of employment in force on 30 June 1994.

“previous provision of an Act” means a provision of an Act in force on 30 June 1994.

“previous public sector policy” means a policy, standard or other instrument of a previous public sector unit that applied on 30 June 1994 to an employee of the unit.

“previous public sector unit” means an entity that was a unit of the public sector on 30 June 1994 under the repealed *Public Sector Management Commission Act 1990*.

ENDNOTES

1 Index to endnotes

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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 9 July 1999. Future amendments of the Anti-Discrimination Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	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
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

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

Reprint No.	Amendments included	Reprint date
1	to Act No. 36 of 1992	3 July 1992
2	to Act No. 32 of 1993	22 June 1993
3	to Act No. 29 of 1994	21 July 1994
3A	to Act No. 58 of 1995	24 June 1996
3B	to Act No. 54 of 1996	7 March 1997
3C	to Act No. 54 of 1996	13 June 1997
4	to Act No. 54 of 1996	3 September 1998

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed names and titles	3
Corrected minor errors	3
Obsolete and redundant provisions	3
Renumbered provisions	2

6 List of legislation

Anti-Discrimination Act 1991 No. 85

date of assent 9 December 1991

ss 1–2, ch 9 pt 3 commenced on date of assent

ch 2 pt 4 divs 5–6 commenced 9 December 1992 (1992 SL No. 118)

remaining provisions commenced 30 June 1992 (1992 SL No. 118)

as amended by—

Statute Law (Miscellaneous Provisions) Act 1992 No. 36 ss 1–2 sch 2

date of assent 2 July 1992

commenced on date of assent

Vocational Education and Training (Industry Placement) Act 1992 No. 57 ss 1–2, 23

date of assent 7 December 1992

ss 1–2 commenced on date of assent

remaining provisions commenced 29 January 1993 (1993 SL No. 13)

Anti-Discrimination Amendment Act 1992 No. 59

date of assent 7 December 1992
 commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1993 No. 32 ss 1–3 sch 1

date of assent 3 June 1993
 commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1993 No. 76 ss 1–3 sch 1

date of assent 14 December 1993
 commenced on date of assent

Anti-Discrimination Amendment Act 1994 No. 29

date of assent 28 June 1994
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 1994 (see s 2)

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995
 commenced on date of assent

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
 remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Statutory Bodies Financial Arrangements Amendment Act 1996 No. 54 ss 1–2, 9 sch

date of assent 20 November 1996
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 June 1997 (1997 SL No. 128)

Industrial Relations Act 1999 No. 33 ss 1, 2(2), 747 sch 3

date of assent 18 June 1999
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 1999 (1999 SL No. 159)

7 List of annotations**Commencement**

s 2 om 1995 No. 58 s 4 sch 1

Definitions

s 4 def “**forced retirement**” ins 1994 No. 29 s 4
 def “**industrial agreement**” amd 1999 No. 33 s 747 sch 3
 def “**industrial relief**” amd 1999 No. 33 s 747 sch 3
 def “**registrar**” ins 1993 No. 76 s 3 sch 1
 def “**services**” amd 1992 No. 36 s 2 sch 2
 def “**work**” amd 1992 No. 57 s 23

Discrimination in the pre-work area

s 14 amd 1994 No. 29 s 5; 1999 No. 33 s 747 sch 3

Discrimination in work area

s 15 amd 1994 No. 29 s 6; 1999 No. 33 s 747 sch 3

Discrimination by industrial, professional, trade or business organisation in pre-membership area

s 19 amd 1999 No. 33 s 747 sch 3

Discrimination by industrial, professional, trade or business organisation in membership area

s 20 amd 1999 No. 33 s 747 sch 3

Retiring age for partners

s 32 amd 1992 No. 59 s 3
sub 1994 No. 29 s 7
amd 1999 No. 33 s 747 sch 3

Application of Commonwealth occupational superannuation standard

s 64 amd 1994 No. 29 s 8

Compliance etc. with Commonwealth legislation

s 65 amd 1994 No. 29 s 9

Compulsory retirement age under legislation etc.

s 106A ins 1994 No. 29 s 10
amd 1996 No. 37 s 147 sch 2; 1999 No. 33 s 747 sch 3

Legal incapacity

s 112 amd 1992 No. 36 s 2 sch 2

Meaning of relevant circumstances

s 120 amd 1992 No. 36 s 2 sch 2

Discriminatory advertisements

s 127 amd 1992 No. 59 s 4

Commissioner may obtain information and documents

s 156 amd 1992 No. 36 s 2 sch 2

Complaints which are not resolved by conciliation

s 165 amd 1993 No. 76 s 3 sch 1

Attendance at conference

s 182 amd 1992 No. 36 s 2 sch 2

Representative may be used in certain cases

s 187 amd 1993 No. 32 s 3 sch 1; 1993 No. 76 s 3 sch 1

Enforcement of orders

s 212 amd 1993 No. 76 s 3 sch 1

Supreme Court opinions

s 216 amd 1995 No. 58 s 4 sch 1

Powers of Supreme Court

s 218 amd 1992 No. 36 s 2 sch 2

Obstruction

s 222 amd 1992 No. 36 s 2 sch 2

No complaint if compliance with opinion

s 231 amd 1992 No. 36 s 2 sch 2

Commission is statutory body

s 237A ins 1996 No. 54 s 9 sch

Appointment of commissioner

s 238 amd 1996 No. 37 s 147 sch 2

Preservation of rights

s 240 amd 1996 No. 37 s 147 sch 2

Commission staff

s 246 amd 1996 No. 37 s 147 sch 2

Tribunal's powers

s 249 amd 1992 No. 59 s 5

Appointment of president and other members

prov hdg sub 1993 No. 32 s 3 sch 1

s 250 amd 1993 No. 32 s 3 sch 1; 1996 No. 37 s 147 sch 2

Arrangement of business

s 251 amd 1993 No. 32 s 3 sch 1

Registrar and tribunal staff

s 257 amd 1996 No. 37 s 147 sch 2

Regulation-making power

prov hdg sub 1995 No. 58 s 4 sch 1

s 267 sub 1994 No. 29 s 11

CHAPTER 11—AMENDMENT OF INDUSTRIAL RELATION ACT 1990

ch hdg om R2 (see RA s 39)

Transitional provisions about compulsory age retirement

s 268 prev s 268 om R2 (see RA s 40)

pres s 268 ins 1994 No. 29 s 12

amd 1996 No. 37 s 147 sch 2

def “**previous public sector policy**” sub 1996 No. 37 s 147 sch 2

def “**previous public sector unit**” ins 1996 No. 37 s 147 sch 2

Amendment of s 4.13 (General jurisdiction of commission)

s 269 om R2 (see RA s 40)