



EQUAL OPPORTUNITY ACT, 1984

No. 95 of 1984

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ANNO TRICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1984

No. 95 of 1984

An Act to promote equality of opportunity between the citizens of this State; to prevent certain kinds of discrimination based on sex, sexuality, marital status, pregnancy, race or physical impairment; to facilitate the participation of citizens in the economic and social life of the community; and to deal with other related matters.

[Assented to 20 December 1984]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

1. This Act may be cited as the "Equal Opportunity Act, 1984".

Short title.

2. (1) Subject to subsection (3), this Act shall come into operation on a day to be fixed by proclamation.

Commencement.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

(3) Section 42 shall come into operation as follows:

(a) on a day to be fixed by proclamation for the purposes of this paragraph (being a day not less than six months after the date of the proclamation), that section shall come into operation in respect of employer subsidized superannuation schemes established after that day;

and

(b) on a day to be fixed by proclamation for the purposes of this paragraph (being a day not less than two years after the date of the proclamation), that section shall come into operation in

respect of employer subsidized superannuation schemes established before the day fixed for the purposes of paragraph (a).

Repeal of certain Acts.

3. (1) The Sex Discrimination Act, 1975, is repealed.
- (2) The Handicapped Persons Equal Opportunity Act, 1981, is repealed.
- (3) The Racial Discrimination Act, 1976, is repealed.

Transitional provision.

4. A decision or order of the Sex Discrimination Tribunal or the Handicapped Persons Discrimination Tribunal in force under either of the repealed Acts immediately prior to the commencement of this Act shall, upon that commencement, be deemed to be a decision or order of the Tribunal made and in force under this Act.

Interpretation.

5. (1) In this Act, unless the contrary intention appears—

“the Commissioner” means the person for the time being holding or acting in the office of Commissioner for Equal Opportunity under this Act:

“detriment” includes humiliation or denigration:

“educational authority” means the person or body administering any school, college, university or other institution at which education or training is provided:

“employee” includes a person who is the holder of a public or statutory office but does not, for the purposes of sections 30 (2), 52 (2) and 67 (2), include the holder of judicial office under the Magistrates Act, 1983, the Local and District Criminal Courts Act, 1926, the Industrial Conciliation and Arbitration Act, 1972, or the Supreme Court Act, 1935:

“employer”, in relation to the holder of a public or statutory office, means the Crown:

“employment agency” means a person who, for fee or reward, introduces persons seeking employment to employers:

“introduction agency” means a person who carries on a business of introducing persons who are seeking companionship or social contact:

“marital status” means the status or condition of—

(a) being single;

(b) being married;

(c) being married but living separately and apart from one's spouse;

(d) being divorced;

(e) being widowed;

or

(f) cohabiting with a person of the opposite sex as his husband or wife *de facto*:

“member” of the Tribunal includes a deputy of a member duly acting in his place:

“near relative” of a person means his spouse, parent, child, grandparent, grandchild, brother or sister:

“the panel” means the panel established by the Governor under Part II for the purposes of the constitution of the Tribunal:

“physical impairment” means—

- (a) the total or partial loss of any function of the body;
- (b) the loss of a limb, or of part of a limb;
- (c) the malfunctioning of any part of the body;

or

- (d) the malformation or disfigurement of any part of the body,

but does not include an intellectual impairment or a mental illness:

“race” of a person means—

- (a) his nationality;
- (b) his country of origin;
- (c) the colour of his skin;
- (d) his ancestry;

or

- (e) the nationality, country of origin, colour of the skin or ancestry of any other person with whom he resides or associates:

“the Registrar” means the person holding or acting in the office of Registrar of the Tribunal under this Act:

“services to which this Act applies” means—

- (a) access to and use of any place that members of the public are permitted to enter;
- (b) services provided by an employment agency;
- (c) banking, the provision of credit, or insurance;
- (d) the provision of a scholarship, prize or award;
- (e) entertainment, recreation or refreshment;
- (f) services provided by an introduction agency;
- (g) the provision of coaching in a sport;
- (h) services connected with transportation or travel;
- (i) services of any profession or trade;

or

- (j) services provided by a Government department, instrumentality or agency or a municipal or district council:

“sexuality” means heterosexuality, homosexuality, bisexuality or transsexuality:

“spouse” includes putative spouse:

“transsexual” means a person of the one sex who assumes characteristics of the other sex:

“transexuality” means the condition of being a transsexual:

“the Tribunal” means the Equal Opportunity Tribunal established under this Act:

“voluntary worker” means a person who performs any work for an employer for no remuneration.

(2) A reference in this Act or in the repealed Sex Discrimination Act, 1975, to the provision of a service does not include, and shall be deemed never to have included, the carrying out of either of the following fertilization procedures:

(a) artificial insemination;

or

(b) the procedure of fertilizing an ovum outside the body and transferring the fertilized ovum into the uterus.

Interpretative provisions.

6. (1) For the purposes of this Act, the holder of a public or statutory office shall, in carrying out the duties of his office, be deemed to be acting in the course of employment by his employer.

(2) For the purposes of this Act, a person acts on a particular ground referred to in this Act if he in fact acts on a number of grounds, one of which is the ground so referred to, and that ground is a substantial reason for his act.

Crown is bound.

7. This Act binds the Crown.

PART II

COMMISSIONER AND THE TRIBUNAL

DIVISION I—THE COMMISSIONER

The Commissioner.

8. (1) There shall be a Commissioner for Equal Opportunity.

(2) The Commissioner shall be appointed for a term of five years and shall, at the expiration of a term of appointment, be eligible for reappointment.

(3) The terms and conditions of appointment shall be fixed by the Governor on the recommendation of the Public Service Board.

(4) The Public Service Act, 1967, shall not apply to the office of the Commissioner.

Officers to assist the Commissioner.

9. The Governor may, subject to and in accordance with the Public Service Act, 1967, appoint such officers as he considers necessary or desirable to assist the Commissioner in the administration of this Act.

Administration of this Act.

10. The Commissioner is responsible to the Minister for the general administration of this Act and, in carrying out that function, is subject to the general control and direction of the Minister.

Functions of the Commissioner.

11. (1) The Commissioner shall foster and encourage amongst members of the public informed and unprejudiced attitudes with a view to eliminating

discrimination on the ground of sex, sexuality, marital status, pregnancy, race or physical impairment.

(2) The Commissioner may institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination on the ground of sex, sexuality, marital status, pregnancy, race or physical impairment.

(3) The Commissioner may make recommendations to the Minister as to reforms, whether of a legislative nature or otherwise, that the Commissioner believes will further the objects of this Act.

12. (1) The Commissioner may furnish advice upon any matter within the purview of this Act and, if a written request for any such advice is made to the Commissioner, then, subject to subsection (2), the Commissioner shall either furnish the advice in writing to the person by whom it was requested or notify that person in writing that he declines to furnish the advice.

Advice, assistance and research to be furnished or carried out by the Commissioner.

(2) The Commissioner shall—

(a) if requested to do so by a handicapped person—

(i) inform and advise him of the benefits, assistance or support that may be available to him in respect of his physical impairment;

(ii) assist him to gain access to any such benefits, assistance or support;

or

(iii) assist him, to the extent the Commissioner thinks desirable, to resolve any problem faced by him as a result of his physical impairment in relation to his participation, or attempts to participate, in the economic or social life of the community;

(b) publish advisory documents as to the benefits, assistance and support available to handicapped persons;

(c) institute, promote or assist in research and the collection of data relating to handicapped persons, the problems faced by such persons as a result of their impairments and the ways in which those problems may be resolved,

and may do anything else necessary or expedient to assist handicapped persons to participate in the economic and social life of the community.

(3) For the purposes of subsection (2), a handicapped person is a person who has a physical impairment which in itself, or in conjunction with other factors such as the nature of his physical environment, the attitude of others towards him or his own psychological reaction to his impairment, substantially reduces his participation, or his capacity to participate, in the economic or social life of the community.

13. (1) The Commissioner shall foster and encourage amongst members of the public informed and unprejudiced attitudes to persons who have intellectual impairments.

Special functions of the Commissioner in relation to persons with intellectual impairments.

(2) The Commissioner may institute, promote or assist in research, the collection of data and the dissemination of information relating to persons

who, as a result of intellectual impairment, face significant problems in participating in the life of the community and to the ways in which those problems may be resolved.

Annual report by
Commissioner.

14. (1) The Commissioner shall, not later than the thirty-first day of December in each year, report to the Minister on—

(a) the operation and administration of this Act;

and

(b) the work undertaken by the Commissioner pursuant to sections 11, 12 and 13,

during the previous financial year.

(2) The Minister shall cause a copy of a report furnished to him under subsection (1) to be laid before each House of Parliament within fourteen sitting days of his receipt of the report if Parliament is then in session, but if Parliament is not then in session, within fourteen days of the commencement of the next session of Parliament.

Power of
Commissioner to
delegate.

15. (1) The Commissioner may, with the approval of the Minister, delegate any of his powers and functions under this Act to any person from time to time holding or acting in a particular office in the Public Service of the State.

(2) A delegation under this section is revocable at will and does not derogate from the power of the Commissioner to act personally in any matter.

Immunity from
liability.

16. (1) No personal liability shall attach to the Commissioner for an act or omission on his part in good faith and in the exercise, or purported exercise, or the discharge, or purported discharge, of his powers or duties under this Act.

(2) A liability that would, but for subsection (1), lie against the Commissioner shall lie against the Crown.

DIVISION II—THE EQUAL OPPORTUNITY TRIBUNAL

The Tribunal.

17. There shall be a tribunal entitled the "Equal Opportunity Tribunal".

Presiding Officer
and Deputy
Presiding
Officers.

18. (1) There shall be—

(a) a Presiding Officer of the Tribunal;

and

(b) not more than two Deputy Presiding Officers of the Tribunal.

(2) The Presiding Officer and Deputy Presiding Officers shall be appointed by the Governor.

(3) A person is not eligible for appointment as the Presiding Officer unless he is—

(a) a judge of a court of this State or the Commonwealth;

or

(b) a magistrate.

(4) A person is not eligible for appointment as a Deputy Presiding Officer unless he is—

(a) a judge of a court of this State or the Commonwealth;

(b) a magistrate;

or

(c) a legal practitioner of not less than seven years standing.

(5) Where a judge or magistrate is appointed as the Presiding Officer or a Deputy Presiding Officer, the following provisions apply:

(a) he shall be appointed—

(i) if he is the first, or one of the first, to be appointed—for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment;

and

(ii) in any other case—for a term of office of three years, and, upon the expiration of his term, shall be eligible for reappointment;

(b) his office becomes vacant if—

(i) his term of office expires;

or

(ii) he ceases to be a judge or magistrate.

(6) Where a legal practitioner is appointed as a Deputy Presiding Officer, the following provisions apply:

(a) he shall be appointed—

(i) if he is the first, or one of the first, to be appointed—for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment;

and

(ii) in any other case—for a term of office of three years, and, upon the expiration of his term, shall be eligible for reappointment;

(b) he may be removed from office by the Governor on the ground of—

(i) mental or physical incapacity to carry out satisfactorily the duties of his office;

(ii) neglect of duty;

or

(iii) dishonourable conduct;

(c) his office becomes vacant if—

(i) he dies;

(ii) his term of office expires;

- (iii) he resigns by notice in writing addressed to the Minister;
- or
- (iv) he is removed from office by the Governor pursuant to paragraph (b).

(7) Upon the office of the Presiding Officer or a Deputy Presiding Officer becoming vacant, a person shall be appointed to that office in accordance with this Act.

Panel.

19. (1) The Governor may establish a panel comprised of not more than twelve persons nominated by the Minister to be available for selection to sit at hearings of the Tribunal.

(2) In selecting nominees for appointment to the panel, the Minister shall ensure that each nominee has expertise that would be of value to the Tribunal in dealing with the various classes of discrimination to which this Act applies and shall have regard to—

- (a) the experience;
- (b) the knowledge;
- and
- (c) the sensitivity,

of those who come under consideration.

(3) A member of the panel shall be appointed—

- (a) if he is one of the first to be appointed—for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment;
- and
- (b) in any other case—for a term of office of three years,

and, upon the expiration of his term of office, shall be eligible for reappointment.

(4) The Governor may remove a member of the panel from office on the ground of—

- (a) mental or physical incapacity to carry out satisfactorily the duties of his office;
- (b) neglect of duty;
- or
- (c) dishonourable conduct.

(5) The office of a member of the panel becomes vacant if—

- (a) he dies;
- (b) his term of office expires;
- (c) he resigns by notice in writing addressed to the Minister;
- or
- (d) he is removed from office by the Governor pursuant to subsection (4).

(6) The Governor may make appointments from time to time for the purpose of maintaining or increasing the membership of the panel.

20. A member of the Tribunal shall be entitled to receive such allowances and expenses as the Governor may from time to time determine.

Allowances and expenses.

21. (1) An act or proceeding of the Tribunal shall not be invalid by reason of a vacancy in its membership or in the membership of the panel, or by reason of a defect in the appointment of a person to the Tribunal or the panel.

Validity of acts of the Tribunal and immunity of its members.

(2) No liability shall attach to a member of the Tribunal for any act or omission by him, or by the Tribunal, in good faith and in the exercise of his or its powers or functions, or in the discharge of his or its duties.

22. (1) In relation to the hearing of proceedings, the Tribunal shall be constituted of the following members:

Constitution of the Tribunal for the hearing of proceedings.

(a) the Presiding Officer or a Deputy Presiding Officer of the Tribunal;
and

(b) two members of the panel selected by the Presiding Officer to sit at the hearing of those proceedings.

(2) In selecting members from the panel for the purpose of hearing proceedings, the Presiding Officer shall endeavour to select those members who have expertise that is relevant to the subject matter of the proceedings.

(3) The Tribunal, separately constituted in accordance with this section, may sit simultaneously for the purpose of hearing and determining separate proceedings.

23. (1) Where the Tribunal is constituted for the purpose of hearing proceedings—

Conduct of proceedings.

(a) the Presiding Officer or Deputy Presiding Officer, as the case may be, shall preside at the proceedings;

(b) the Presiding Officer or Deputy Presiding Officer shall determine any question relating to the admissibility of evidence or any other question of law or procedure;

and

(c) on any other question before the Tribunal, a decision in which any two members concur shall be a decision of the Tribunal.

(2) The Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and shall not be bound by the rules of evidence, but may inform itself on any matter in such manner as it thinks fit.

(3) Subject to subsection (4), proceedings before the Tribunal shall be held in public.

(4) The Tribunal may, of its own motion or on the application of a party to the proceedings, direct that any proceedings or a part of proceedings be held in private.

(5) Subject to this Act, the business of the Tribunal shall be conducted in such manner as the Presiding Officer determines.

24. (1) The Tribunal shall give to any person who is a party to proceedings before the Tribunal—

Parties to proceedings, etc.

(a) reasonable notice of the time and place at which it intends to hear those proceedings;

and

(b) reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Tribunal.

(2) If a person to whom a notice has been given under subsection (1) fails to attend at the time and place specified in the notice, the Tribunal may hear the proceedings in his absence.

(3) Where, in the opinion of the Tribunal, a person ought to be bound by, or have the benefit of, its determination, or is otherwise legitimately interested in proceedings before the Tribunal, it may—

(a) direct that he be joined as a party to the proceedings;

or

(b) grant him leave to intervene in the proceedings.

(4) A person appearing in proceedings before the Tribunal—

(a) shall be entitled to appear personally or by counsel;

or

(b) may, by leave of the Tribunal, be represented by an officer or employee of a registered industrial association or by any other person.

General powers of
the Tribunal.

25. (1) In the exercise of its powers and functions under this Act, the Tribunal may—

(a) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the attendance before the Tribunal of any person;

(b) by summons signed on behalf of the Tribunal by a member of the Tribunal or the Registrar, require the production of any books, papers or documents;

(c) inspect any books, papers or documents produced before it, retain them for such reasonable period as it thinks fit and make copies of any of them, or of any of their contents;

(d) require any person to make oath or affirmation that he will truly answer all questions put to him by the Tribunal relating to any matter being inquired into by the Tribunal (which oath or affirmation may be administered by a member of the Tribunal);

or

(e) require any person appearing before the Tribunal, including the person whose conduct is subject to an inquiry (whether he has been summoned to appear or not), to answer any relevant questions put to him by any member of the Tribunal, or by any other person appearing before the Tribunal.

(2) Subject to subsection (3), if a person—

(a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse to attend in obedience to the summons;

(b) who has been served with a summons to produce any books, papers or documents fails without reasonable excuse to comply with the summons;

(c) misbehaves before the Tribunal, wilfully insults the Tribunal or a member of the Tribunal, or interrupts the proceedings of the Tribunal;

or

(d) refuses to be sworn or to affirm, or to answer a question, when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(3) A person is not obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him of an offence, or to produce any books, papers or documents if their contents would tend to incriminate him of an offence.

(4) In the course of proceedings, the Tribunal may—

(a) receive in evidence the transcript of evidence in proceedings before a court or tribunal and draw such conclusions of fact from that evidence as it considers proper;

or

(b) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court or tribunal that may be relevant to the proceedings.

26. (1) The Tribunal may make an order for costs in any proceedings in accordance with the scale prescribed for that purpose—

Tribunal may award costs in certain circumstances.

(a) where in the opinion of the Tribunal the proceedings are frivolous or vexatious;

or

(b) where in the opinion of the Tribunal the proceedings have been instituted or prosecuted for the purpose of delay or obstruction.

(2) Where a party to proceedings before the Tribunal applies for an adjournment of the hearing of those proceedings, the Tribunal may grant that application upon such terms as it considers just, and may make an order for costs in accordance with a scale prescribed for the purpose against the applicant for the adjournment in favour of any other party to the proceedings.

(3) Costs awarded by the Tribunal under this section may be recovered by the person in whose favour they were awarded as a debt due to him from the person against whom the order was made.

27. (1) If, before or during the hearing of any proceedings under this Act, it appears to the Tribunal, either from the nature of the case or from the attitude of the parties, that there is a reasonable possibility of the matters in dispute between the parties being settled by conciliation, one or more members of the Tribunal may—

Tribunal may conciliate.

(a) interview the parties (either with or without any person who may be representing any of them);

and

(b) endeavour to bring about a settlement of the proceedings on terms that are fair to all parties.

(2) Nothing said or done in the course of an attempt to settle proceedings under this section shall subsequently be given in evidence in any proceedings, nor shall a member of the Tribunal involved in the attempt be disqualified from sitting to continue the hearing of the proceedings.

(3) Where proceedings are settled under this section, the Tribunal may embody the terms of the settlement in an order.

DIVISION III—THE REGISTRAR

Registrar.

28. (1) There shall be a Registrar of the Tribunal.

(2) The Registrar shall be appointed, and shall hold office, subject to and in accordance with the Public Service Act, 1967.

(3) The office of Registrar may be held in conjunction with any other office in the Public Service of the State.

PART III

PROHIBITION OF DISCRIMINATION ON THE GROUND OF SEX, SEXUALITY, MARITAL STATUS OR PREGNANCY

DIVISION I—DISCRIMINATION TO WHICH THIS PART APPLIES

Definition of "discriminate".

29. (1) In this Part—

“discriminate” means—

- (a) discriminate against a person on the ground of his sex;
- (b) discriminate against a person on the ground of his sexuality;
- (c) discriminate against a person on the ground of his marital status;
- (d) discriminate against a pregnant woman on the ground of her pregnancy,

and “discrimination” has a corresponding meaning.

(2) For the purposes of this Act, a person discriminates against another on the ground of his sex if—

- (a) he treats the other person less favourably by reason of his sex than in identical or similar circumstances he treats, or would treat, a person of the opposite sex;
- (b) he treats the other person less favourably by reason of the fact that he does not comply, or is not able to comply, with a particular requirement and—
 - (i) the nature of the requirement is such that a substantially higher proportion of persons of the opposite sex complies, or is able to comply, with the requirement than of those of the same sex as that of the other person;

and

- (ii) the requirement is not reasonable in the circumstances of the case;

or

- (c) he treats the other person less favourably on the basis of a characteristic that appertains generally to persons of that other person's sex, or a presumed characteristic that is generally imputed to persons of that sex.

(3) Subject to subsection (4), for the purposes of this Act, a person discriminates against another on the ground of his sexuality if—

- (a) he treats the other person less favourably by reason of his sexuality, or presumed sexuality, than in identical or similar circumstances he treats, or would treat, a person of a different sexuality;

or

- (b) he treats the other person less favourably by reason of the fact that he does not comply, or is not able to comply, with a particular requirement and—

- (i) the nature of the requirement is such that a substantially higher proportion of persons of a different sexuality complies, or is able to comply, with the requirement than of those of the same sexuality as that of the other person;

and

- (ii) the requirement is not reasonable in the circumstances of the case;

or

- (c) he treats the other person less favourably on the basis of a characteristic that appertains generally to persons of that other person's sexuality, or presumed sexuality, or on the basis of a presumed characteristic that is generally imputed to persons of that sexuality.

(4) Where—

- (a) a person discriminates against another on the basis of his appearance or dress;
- (b) that appearance or dress is characteristic of, or an expression of, that other person's sexuality;

but

- (c) the discrimination is reasonable in all the circumstances,

the discrimination shall not, for the purposes of Division II, be taken to be discrimination on the ground of sexuality.

(5) For the purposes of this Act, a person discriminates against another on the ground of his marital status if—

- (a) he treats the other person less favourably by reason of his marital status than in identical or similar circumstances he treats, or would treat, a person of a different marital status;

(b) he treats the other person less favourably by reason of the fact that he does not comply, or is not able to comply, with a particular requirement and—

(i) the nature of the requirement is such that a substantially higher proportion of persons of a different marital status complies, or is able to comply, with the requirement than of those of the same marital status as that of the other person;

and

(ii) the requirement is not reasonable in the circumstances of the case;

or

(c) he treats the other person less favourably on the basis of a characteristic that appertains generally to persons of that marital status, or a presumed characteristic that is generally imputed to persons of that marital status.

(6) For the purposes of this Act, a person discriminates against a pregnant woman if—

(a) he treats her less favourably by reason of her pregnancy than in identical or similar circumstances he treats, or would treat, a woman who is not pregnant;

(b) he treats her less favourably by reason of the fact that she does not comply, or is not able to comply, with a particular requirement and—

(i) the nature of the requirement is such that a substantially higher proportion of women who are not pregnant complies, or is able to comply, with the requirement than of those who are pregnant;

and

(ii) the requirement is not reasonable in the circumstances of the case;

or

(c) if he treats her less favourably on the basis of a characteristic that appertains generally to pregnant women, or a presumed characteristic that is generally imputed to pregnant women.

DIVISION II—DISCRIMINATION IN EMPLOYMENT

30. (1) It is unlawful for an employer to discriminate against a person—

(a) in determining, or in the course of determining, who should be offered employment;

or

(b) in the terms or conditions on which he offers employment.

(2) It is unlawful for an employer to discriminate against an employee—

(a) in the terms or conditions on which he employs the employee;

(b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits connected with employment;

(c) by dismissing him;

or

(d) by subjecting him to any other detriment.

31. (1) This section applies to a principal for whom work is done by agents remunerated by commission.

Discrimination against agents.

(2) It is unlawful for the principal to discriminate against a person—

(a) in determining, or in the course of determining, who should be engaged as an agent;

or

(b) in the terms or conditions on which he offers to engage him as an agent.

(3) It is unlawful for the principal to discriminate against an agent—

(a) in the terms or conditions on which the agent is engaged;

(b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training or any other benefits connected with his position as an agent;

(c) by terminating his engagement;

or

(d) by subjecting him to any other detriment.

32. (1) This section applies to a principal for whom work is done by contract workers in pursuance of a contract between the principal and the employer of those contract workers.

Discrimination against contract workers.

(2) It is unlawful for a principal to enter into any contract or arrangement with an employer of contract workers under which the employer is to discriminate against a person.

(3) It is unlawful for the principal to discriminate against a contract worker—

(a) in the terms or conditions on which he allows the contract worker to work;

(b) by not allowing him to work;

(c) by denying him access, or limiting his access, to any benefit connected with employment;

or

(d) by subjecting him to any other detriment.

33. (1) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person (otherwise than on the ground of sexuality) in determining, or in the course of determining, who should be offered a position as partner in the firm.

Discrimination within partnerships.

(2) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person on the ground of sexuality in deter-

mining, or in the course of determining, who should be offered a position as partner in the firm, unless the firm consists, or is to consist, of less than six members.

(3) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person in the terms or conditions on which that person is offered a position as partner in the firm.

(4) It is unlawful for a firm to discriminate against a partner—

(a) in the terms or conditions on which it affords him membership of the firm;

(b) by denying him access, or limiting his access, to any benefit arising from membership of the firm;

(c) by expelling him from the firm;

or

(d) by subjecting him to any other detriment.

Exemptions from
this Division.

34. (1) This Division does not apply in relation to employment within a private household.

(2) This Division does not apply to discrimination on the ground of sex in relation to employment for which it is a genuine occupational requirement that a person be of a particular sex.

(3) This Division does not apply to discrimination on the ground of a woman's pregnancy if the discrimination is based on the fact that the woman is not, or would not be, able—

(a) to perform adequately, and without endangering herself, the unborn child or other persons, the work genuinely and reasonably required for the employment or position in question;

or

(b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question,

and, where the discrimination arises out of dismissal from employment, there is no other position in the same employment that could be offered to the woman, being a position that is vacant, is reasonably appropriate to her skills and experience and could be undertaken by her without encountering the problems referred to in paragraphs (a) and (b).

DIVISION III—DISCRIMINATION BY OTHER BODIES

Discrimination by
associations on
ground of sex.

35. (1) After the expiration of one year from the commencement of this Act, it shall be unlawful for an association that has both male and female members to discriminate—

(a) against an applicant for membership on the ground of his sex—

(i) by refusing or failing to admit him to membership, or to a particular class of membership, of the association;

or

(ii) in the terms on which he is, or may be, admitted to membership, or a particular class of membership;

or

(b) against a member of the association on the ground of his sex—

(i) by refusing or failing to provide a particular service or benefit to that member;

or

(ii) in the terms on which a particular service or benefit is provided to that member.

(2) This section does not apply to discrimination on the ground of sex in relation to the use or enjoyment of a service or benefit provided by an association—

(a) where it is not practicable for the service or benefit to be used or enjoyed simultaneously by both men and women, but the same, or an equivalent, service or benefit is provided for the use or enjoyment of men and women separately from each other or at different times;

or

(b) where it is not practicable for the service or benefit to be used or enjoyed to the same extent by both men and women, but both men and women are entitled to a fair and reasonable proportion of the use or enjoyment of the service or benefit.

(3) Without limiting the generality of this section, an association discriminates against a member of a particular class in the association if, upon application by that member to join a different class of membership in the association, the association accords him a lower order of precedence on the list of applicants for that class of membership than that accorded to an applicant who is not a member of the association.

36. It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person—

Discrimination by
qualifying bodies.

(a) by refusing or failing to confer or renew that authorization or qualification;

(b) in the terms or conditions on which it confers or renews the authorization or qualification;

or

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

DIVISION IV—DISCRIMINATION IN EDUCATION

37. (1) It is unlawful for an educational authority to discriminate against a person—

Discrimination by
educational
authorities.

(a) by refusing or failing to accept his application for admission as a student;

or

(b) in the terms or conditions on which it offers to admit him as a student.

(2) It is unlawful for an educational authority to discriminate against a student—

- (a) in the terms or conditions on which it provides the student with training or education;
- (b) by denying him access, or limiting his access, to any benefit provided by the authority;
- (c) by expelling him;
- or
- (d) by subjecting him to any other detriment.

(3) This section does not apply to discrimination on the ground of sex in respect of—

- (a) admission to a school, college, university or institution established wholly or mainly for students of the one sex;
- (b) the admission of a person to a school, college or institution (not being a tertiary level school, college or institution) where the level of education or training sought by the person is provided only for students of the one sex;
- or
- (c) the provision at a school, college, university or institution of boarding facilities for students of the one sex.

DIVISION V—DISCRIMINATION IN RELATION TO LAND, GOODS, SERVICES AND ACCOMMODATION

Discrimination by person disposing of an interest in land.

38. (1) It is unlawful for a person to discriminate against another—

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

(2) This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift.

Discrimination in provision of goods and services.

39. (1) It is unlawful for a person who offers or provides—

- (a) goods;
- or
- (b) services to which this Act applies,

(whether for payment or not) to the public, or a section of the public, to discriminate against a person—

- (c) by refusing or failing to supply the goods or perform the services;
- or
- (d) in the terms or conditions on which or the manner in which he supplies the goods or performs the services.

(2) Where the nature of a skill varies according to whether it is exercised in relation to men or to women, a person does not contravene this section

by exercising the skill in relation to men only, or women only, in accordance with his normal practice.

40. (1) It is unlawful for a person to discriminate against a person—

(a) in the terms or conditions on which he offers him accommodation;

(b) by refusing his application for accommodation;

or

(c) by deferring his application, or according him a lower order of precedence on any list of applicants for that accommodation.

(2) It is unlawful for a person to discriminate against a person for whom accommodation has been provided—

(a) in the terms or conditions on which he provides the accommodation for that person;

(b) by denying him access, or limiting his access, to any benefit connected with the accommodation;

(c) by evicting him;

or

(d) by subjecting him to any other detriment.

(3) This section does not apply to discrimination in relation to the provision of accommodation if—

(a) the person who provides, or proposes to provide, the accommodation, or a near relative of his, resides, and intends to continue to reside, on the premises;

and

(b) accommodation is provided on the premises for no more than six persons apart from that person and his family.

(4) This section does not apply to discrimination on the ground of sex or marital status in relation to the provision of accommodation by an organization that does not seek to secure a pecuniary profit for its members, where the accommodation is provided only for persons of the one sex, or of a particular marital status, as the case may be.

DIVISION VI—DISCRIMINATION IN RELATION TO SUPERANNUATION

41. In this Division—

“*de facto* spouse”, in relation to a member of a superannuation scheme or provident fund, means a person with whom the member is cohabiting as his husband or wife *de facto*, but does not include a putative spouse:

“employer subsidized superannuation scheme” means a superannuation scheme or provident fund provided for employees to which the employer makes contributions.

42. (1) Subject to this Division, it is unlawful for a person who provides an employer subsidized superannuation scheme to discriminate against a person—

(a) by providing a scheme that discriminates, or requires or authorizes discrimination, against that other person or that would, if he

Discrimination in relation to accommodation.

Interpretation.

Employer subsidized superannuation schemes.

were to become a member of the scheme, discriminate, or require or authorize discrimination, against him;

or

(b) in the manner in which he administers the scheme.

(2) Subsection (1) is subject to the following qualifications:

(a) it applies only in relation to an employer subsidized superannuation scheme under which a greater number of the members (not including members who are no longer employed by an employer who participates in the scheme) reside in this State than in any other single State or Territory;

and

(b) such other qualifications as may be prescribed.

(3) This section does not render unlawful discrimination on the ground of sex in the rates upon which a pension payable to a member under an employer subsidized superannuation scheme may, at his option, be converted to a lump sum or a lump sum payable to him under the scheme may, at his option, be converted to a pension, where the discrimination—

(a) is based upon actuarial or statistical data from a source upon which it is reasonable to rely;

and

(b) is reasonable having regard to that data.

(4) This section does not render unlawful discrimination on the ground of sex in the benefits payable under an employer subsidized superannuation scheme, where—

(a) the contributions payable by both the employer and the employee are fixed by the terms of the scheme;

and

(b) the benefits that will accrue to the employee are derived from the accumulation of those contributions less any insurance premiums paid under the scheme in respect of the employee,

to the extent only that the discrimination is based upon a lawful difference in those insurance premiums.

Other
superannuation
schemes and
provident funds.

43. It is unlawful for a person who provides a superannuation scheme or provident fund (not being an employer subsidized superannuation scheme) to discriminate against a person—

(a) by providing a scheme or fund that discriminates, or requires or authorizes discrimination, against that other person or that would, if he were to become a member of the scheme or fund, discriminate, or require or authorize discrimination, against him;

or

(b) in the manner in which he administers the scheme or fund,

except where the discrimination—

(c) is based upon actuarial or statistical data from a source on which it is reasonable to rely;

and

(d) is reasonable having regard to that data.

44. (1) For the purposes of this Division, a superannuation scheme or provident fund does not discriminate on the ground of marital status by reason only of the fact—

Exemptions from this Division.

(a) that it provides for the payment of benefits to the surviving spouses of members;

or

(b) that it does not provide benefits for the surviving *de facto* spouses of members, or provides less favourable benefits for surviving *de facto* spouses than it does for the surviving spouses of members.

(2) Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this Division has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.

DIVISION VII—GENERAL EXEMPTIONS FROM THIS PART

45. This Part does not—

Charities.

(a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon—

(i) persons of the one sex;

(ii) persons of a particular sexuality;

(iii) persons of a particular marital status;

or

(iv) pregnant women;

or

(b) render unlawful any act done to give effect to such a provision.

46. This Part does not render unlawful the granting to women of rights or privileges in connection with pregnancy or childbirth.

Act does not apply to granting pregnant women rights and privileges.

47. This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking intended to ensure that persons of the one sex, or of a particular marital status, have equal opportunities with persons of the other sex, or of another marital status, in any of the circumstances to which this Part applies.

Measures intended to achieve equality.

48. This Part does not render unlawful the exclusion of persons of the one sex from participation in a competitive sporting activity in which the strength, stamina or physique of the competitor is relevant.

Sport.

49. This Part does not render unlawful discrimination on the ground of sex in the terms on which an annuity, life assurance, accident insurance or any other form of insurance is offered or may be obtained, where the discrimination—

Insurance, etc.

(a) is based upon actuarial or statistical data from a source on which it is reasonable to rely;

and

(b) is reasonable having regard to that data.

Religious bodies.

50. (1) This Part does not render unlawful discrimination in relation to—

(a) the ordination or appointment of priests, ministers of religion or members of a religious order;

(b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;

or

(c) any other practice of a body established for religious purposes that conforms with the precepts of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

(2) Where an educational or other institution is administered in accordance with the precepts of a particular religion, discrimination on the ground of sexuality that arises in the course of the administration of that institution and is founded on the precepts of that religion is not rendered unlawful by this Part.

PART IV

PROHIBITION OF DISCRIMINATION ON THE GROUND OF RACE

DIVISION I—DISCRIMINATION TO WHICH THIS PART APPLIES

Criteria for establishing discrimination on the ground of race.

51. For the purposes of this Act, a person discriminates against another on the ground of his race if—

(a) he treats the other person less favourably by reason of his race than in identical or similar circumstances he treats, or would treat, a person of a different race;

(b) he treats the other person less favourably by reason of the fact that he does not comply, or is not able to comply, with a particular requirement and—

(i) the nature of the requirement is such that a substantially higher proportion of persons of a different race complies, or is able to comply, with the requirement than of those of the same race as that of the other person;

and

(ii) the requirement is not reasonable in the circumstances of the case;

or

(c) he treats the other person less favourably on the basis of a characteristic that appertains generally to persons of that other person's race, or on the basis of a presumed characteristic that is generally imputed to persons of that race.

DIVISION II—DISCRIMINATION IN EMPLOYMENT

52. (1) It is unlawful for an employer to discriminate against a person on the ground of his race—

Discrimination against applicants and employees.

(a) in determining, or in the course of determining, who should be offered employment;

or

(b) in the terms or conditions on which he offers employment.

(2) It is unlawful for an employer to discriminate against an employee on the ground of his race—

(a) in the terms or conditions on which he employs the employee;

(b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits connected with employment;

(c) by dismissing him;

(d) by segregating him from persons of other races;

or

(e) by subjecting him to any other detriment.

53. (1) This section applies to a principal for whom work is done by agents remunerated by commission.

Discrimination against agents.

(2) It is unlawful for the principal to discriminate against a person on the ground of his race—

(a) in determining, or in the course of determining, who should be engaged as an agent;

or

(b) in the terms or conditions on which he offers to engage him as an agent.

(3) It is unlawful for the principal to discriminate against an agent on the ground of his race—

(a) in the terms or conditions on which the agent is engaged;

(b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training or any other benefits connected with his position as an agent;

(c) by terminating his engagement;

or

(d) by subjecting him to any other detriment.

54. (1) This section applies to a principal for whom work is done by contract workers in pursuance of a contract between the principal and the employer of those contract workers.

Discrimination against contract workers.

(2) It is unlawful for a principal to enter into any contract or arrangement with an employer of contract workers under which the employer is to discriminate against a person on the ground of his race.

(3) It is unlawful for the principal to discriminate against a contract worker on the ground of his race—

- (a) in the terms or conditions on which he allows the contract worker to work;
 - (b) by not allowing him to work;
 - (c) by denying him access, or limiting his access, to any benefit connected with employment;
- or
- (d) by subjecting him to any other detriment.

Discrimination
within
partnerships.

55. (1) It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of his race—

- (a) in determining, or in the course of determining, who should be offered a position as partner in the firm;
- or
- (b) in the terms or conditions on which that person is offered a position as partner in the firm.

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

- (a) in the terms or conditions on which it affords him membership of the firm;
 - (b) by denying him access, or limiting his access, to any benefit arising from membership of the firm;
 - (c) by expelling him from the firm;
- or
- (d) by subjecting him to any other detriment.

Exemptions from
this Division.

56. (1) This Division does not apply in relation to employment within a private household.

(2) This Division does not apply to discrimination on the ground of race in relation to employment for which it is a genuine occupational requirement that a person be of a particular race.

DIVISION III—DISCRIMINATION BY OTHER BODIES

Discrimination by
associations on
ground of race.

57. (1) It is unlawful for an association to discriminate—

- (a) against an applicant for membership on the ground of his race—
 - (i) by refusing or failing to admit him to membership, or to a particular class of membership, of the association;

or

 - (ii) in the terms on which he is, or may be, admitted to membership, or to a particular class of membership;
- or
- (b) against a member of the association on the ground of his race—
 - (i) by refusing or failing to provide a particular service or benefit to that member;

or

- (ii) in the terms on which a particular service or benefit is provided to that member.

(2) This section does not apply to a club established principally for the purpose of promoting social intercourse between the members of a particular racial or ethnic group.

58. It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person on the ground of his race—

Discrimination by
qualifying bodies.

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

DIVISION IV—DISCRIMINATION IN EDUCATION

59. (1) It is unlawful for an educational authority to discriminate against a person on the ground of his race—

Discrimination by
educational
authorities.

- (a) by refusing or failing to accept his application for admission as a student;
- or
- (b) in the terms or conditions on which it offers to admit him as a student.

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

- (a) in the terms or conditions on which it provides the student with education or training;
- (b) by denying him access, or limiting his access, to any benefit provided by the authority;
- (c) by expelling him;
- or
- (d) by subjecting him to any other detriment.

DIVISION V—DISCRIMINATION IN RELATION TO LAND, GOODS, SERVICES AND ACCOMMODATION

60. (1) It is unlawful for a person to discriminate against another on the ground of his race—

Discrimination by
person disposing
of an interest in
land.

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

(2) This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift.

Discrimination in provision of goods and services.

61. It is unlawful for a person who offers or provides—

(a) goods;

or

(b) services to which this Act applies,

(whether for payment or not) to the public, or a section of the public, to discriminate against a person on the ground of his race—

(c) by refusing or failing to supply the goods or perform the services;

or

(d) in the terms or conditions on which or the manner in which he supplies the goods or performs the services.

Discrimination in relation to accommodation.

62. (1) It is unlawful for a person to discriminate against a person on the ground of his race—

(a) in the terms or conditions on which he offers him accommodation;

(b) by refusing his application for accommodation;

or

(c) by deferring his application, or according him a lower order of precedence on any list of applicants for that accommodation.

(2) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of his race—

(a) in the terms or conditions on which he provides the accommodation for that person;

(b) by denying him access, or limiting his access, to any benefit connected with the accommodation;

(c) by evicting him;

or

(d) by subjecting him to any other detriment.

DIVISION VI—DISCRIMINATION IN RELATION TO SUPERANNUATION

Superannuation schemes and provident funds.

63. (1) It is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of his race—

(a) by providing a scheme or fund that discriminates, or requires or authorizes discrimination, against that other person or that would, if he were to become a member of the scheme or fund, discriminate, or require or authorize discrimination, against him;

or

(b) in the manner in which he administers the scheme or fund.

(2) Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this section has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.

DIVISION VII—GENERAL EXEMPTIONS FROM THIS PART

64. This Part does not—

Charities.

(a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon persons of a particular race;

or

(b) render unlawful any act done to give effect to such a provision.

65. This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons of a particular race.

Act does not apply to projects for benefit of persons of a particular race.

PART V

PROHIBITION OF DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT

DIVISION I—DISCRIMINATION TO WHICH THIS PART APPLIES

66. For the purposes of this Act, a person discriminates against another on the ground of his physical impairment if—

Criteria for establishing discrimination on the ground of physical impairment.

(a) he treats the other person less favourably by reason of his physical impairment, or a presumed physical impairment, than in identical or similar circumstances he treats, or would treat, a person who does not have such an impairment;

(b) he treats the other person less favourably by reason of the fact that he does not comply, or is not able to comply, with a particular requirement and—

(i) the nature of the requirement is such that a substantially higher proportion of persons who do not have such a physical impairment complies, or is able to comply, with the requirement than of those persons who have such an impairment;

and

(ii) the requirement is not reasonable in the circumstances of the case;

(c) he treats the other person less favourably on the basis of a characteristic that appertains generally to persons who have such a physical impairment, or on the basis of a presumed characteristic that is generally imputed to persons who have such an impairment;

or

(d) in the case of a person who is blind or deaf, or partially blind or deaf, he treats such a person less favourably by reason of the fact that he possesses, or is accompanied by, a guide dog, or by reason of any matter related to that fact, whether or not it is his normal practice to treat less favourably any person who possesses, or is accompanied by, a dog.

DIVISION II—DISCRIMINATION IN EMPLOYMENT

Discrimination
against applicants
and employees.

67. (1) It is unlawful for an employer to discriminate against a person on the ground of his physical impairment—

(a) in determining, or in the course of determining, who should be offered employment;

or

(b) in the terms or conditions on which he offers employment.

(2) It is unlawful for an employer to discriminate against an employee on the ground of his physical impairment—

(a) in the terms or conditions on which he employs the employee;

(b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits connected with employment;

(c) by dismissing him;

or

(d) by subjecting him to any other detriment.

Discrimination
against agents.

68. (1) This section applies to a principal for whom work is done by agents remunerated by commission.

(2) It is unlawful for the principal to discriminate against a person on the ground of his physical impairment—

(a) in determining, or in the course of determining, who should be engaged as an agent;

or

(b) in the terms or conditions on which he offers to engage him as an agent.

(3) It is unlawful for the principal to discriminate against an agent on the ground of his physical impairment—

(a) in the terms or conditions on which the agent is engaged;

(b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training or any other benefits connected with his position as an agent;

(c) by terminating his engagement;

or

(d) by subjecting him to any other detriment.

Discrimination
against contract
workers.

69. (1) This section applies to a principal for whom work is done by contract workers in pursuance of a contract between the principal and the employer of those contract workers.

(2) It is unlawful for a principal to enter into any contract or arrangement with an employer of contract workers under which the employer is to discriminate against a person on the ground of his physical impairment.

(3) It is unlawful for the principal to discriminate against a contract worker on the ground of his physical impairment—

- (a) in the terms or conditions on which he allows the contract worker to work;
 - (b) by not allowing him to work;
 - (c) by denying him access, or limiting his access, to any benefit connected with employment;
- or
- (d) by subjecting him to any other detriment.

70. (1) It is unlawful for a firm consisting of one or more members, or for one or more persons promoting the formation of a firm, to discriminate against a person on the ground of his physical impairment—

Discrimination within partnerships.

- (a) in determining, or in the course of determining, who should be offered a position as partner in the firm;

or

- (b) in the terms or conditions on which that person is offered a position as partner in the firm.

(2) It is unlawful for a firm consisting of two or more partners to discriminate against a partner on the ground of his physical impairment—

- (a) in the terms or conditions on which it affords him membership of the firm;
- (b) by denying him access, or limiting his access, to any benefit arising from membership of the firm;
- (c) by expelling him from the firm;

or

- (d) by subjecting him to any other detriment.

71. (1) This Division does not apply in relation to employment within a private household.

Exemptions from this Division.

(2) This Division does not apply to discrimination on the ground of physical impairment in relation to employment if the person suffering from the impairment is not, or would not be, able—

- (a) to perform adequately, and without endangering himself or other persons, the work genuinely and reasonably required for the employment or position in question;

or

- (b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the employment or position in question.

DIVISION III—DISCRIMINATION BY OTHER BODIES

72. (1) It is unlawful for an association to discriminate—

- (a) against an applicant for membership on the ground of his physical impairment—

Discrimination by associations on ground of physical impairment.

- (i) by refusing or failing to admit him to membership, or to a particular class of membership, of the association;

or

(ii) in the terms on which he is, or may be, admitted to membership, or to a particular class of membership;

or

(b) against a member of the association on the ground of his physical impairment—

(i) by refusing or failing to provide a particular service or benefit to that member;

or

(ii) in the terms on which a particular service or benefit is provided to that member.

Discrimination by
qualifying bodies.

73. (1) It is unlawful for an authority or body empowered to confer an authorization or qualification that is needed for, or facilitates, the practice of a profession, or the carrying on or engaging in of a trade or occupation, to discriminate against a person on the ground of his physical impairment—

(a) by refusing or failing to confer or renew that authorization or qualification;

(b) in the terms or conditions on which it confers the authorization or qualification;

or

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

(2) This section does not apply to discrimination against a person on the ground of his physical impairment where, in consequence of that impairment, he is not, or would not be, able to practise the profession, or carry on or engage in the trade or occupation, adequately or safely.

DIVISION IV—DISCRIMINATION IN EDUCATION

Discrimination by
educational
authorities.

74. (1) It is unlawful for an educational authority to discriminate against a person on the ground of his physical impairment—

(a) by refusing or failing to accept his application for admission as a student;

or

(b) in the terms or conditions on which it offers to admit him as a student.

(2) It is unlawful for an educational authority to discriminate against a student—

(a) in the terms or conditions on which it provides the student with education or training;

(b) by denying him access, or limiting his access, to any benefit provided by the authority;

(c) by expelling him;

or

(d) by subjecting him to any other detriment.

(3) This section does not apply to discrimination on the ground of physical impairment in respect of admission to a school, college or institution established wholly or mainly for students who have a particular physical impairment.

DIVISION V—DISCRIMINATION IN RELATION TO LAND, GOODS, SERVICES
AND ACCOMMODATION

75. (1) It is unlawful for a person to discriminate against another on the ground of his physical impairment—

Discrimination by person disposing of an interest in land.

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

or

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

(2) This section does not apply to the disposal of an interest in land by way of, or pursuant to, a testamentary disposition or gift.

76. (1) It is unlawful for a person who offers or provides—

Discrimination in provision of goods and services.

(a) goods;

or

(b) services to which this Act applies,

(whether for payment or not) to the public, or a section of the public, to discriminate against a person—

(c) by refusing or failing to supply the goods or perform the services;

or

(d) in the terms or conditions on which or the manner in which he supplies the goods or performs the services.

(2) Where the nature of a skill varies according to whether it is exercised in relation to persons who have a particular physical impairment or to those who do not have such an impairment, a person does not contravene subsection (1) by exercising the skill in relation to only those persons who have a particular physical impairment, or only those who do not have such an impairment, in accordance with his normal practice.

(3) This section does not apply to discrimination against a person on the ground of his physical impairment in relation to the performance of a service where, in consequence of his impairment, he requires the service to be performed in a special manner—

(a) that cannot reasonably be provided by the person performing the service;

or

(b) that can, on reasonable grounds, only be provided by the person performing the service on more onerous terms.

77. (1) It is unlawful for a person to discriminate against a person on the ground of his physical impairment—

Discrimination in relation to accommodation.

(a) in terms or conditions on which he offers him accommodation;

(b) by refusing his application for accommodation;

or

(c) by deferring his application, or according him a lower order of precedence on any list of applicants for that accommodation.

(2) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of his physical impairment—

(a) in the terms or conditions on which he provides the accommodation for that person;

(b) by denying him access, or limiting his access, to any benefit connected with the accommodation;

(c) by evicting him;

or

(d) by subjecting him to any detriment.

DIVISION VI—DISCRIMINATION IN RELATION TO SUPERANNUATION

Superannuation
schemes and
provident funds.

78. (1) Subject to subsection (2), it is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of his physical impairment—

(a) by providing a scheme or fund that discriminates, or requires or authorizes discrimination, against that other person or that would, if he were to become a member of the scheme or fund, discriminate, or require or authorize discrimination, against him;

or

(b) in the manner in which he administers the scheme or fund,

except to the extent that—

(c) the discrimination—

(i) is based upon actuarial or statistical data from a source upon which it is reasonable to rely;

and

(ii) is reasonable having regard to the data and any other relevant factors;

or

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

(2) Subsection (1) does not apply in relation to a superannuation scheme or provident fund provided for employees—

(a) to which the employer makes contributions;

and

(b) under which a greater number of the members (not including members who are no longer employed by an employer who

participates in the scheme or fund) reside in any one other State or Territory than reside in this State.

(3) Subject to any order of the Tribunal or a court in proceedings under this Act, nothing in this section has the effect of rendering a superannuation scheme or provident fund, or a provision of such a scheme or fund, void.

DIVISION VII—GENERAL EXEMPTIONS FROM THIS PART

79. This Part does not render unlawful discriminatory rates of salary, wages or other remuneration payable to persons who have physical impairments.

Act does not affect salary, etc., payable to persons with physical impairments.

80. This Part does not—

Charities.

(a) affect a provision in a charitable instrument for conferring benefits wholly or mainly upon persons who have a particular physical impairment;

or

(b) render unlawful any act done to give effect to such a provision.

81. This Part does not render unlawful the exclusion of persons having physical impairments from participation in a competitive sporting activity in which the strength, stamina or physique of the competitor is relevant.

Sport.

82. This Part does not render unlawful an act done for the purpose of carrying out a scheme or undertaking for the benefit of persons who have a particular physical impairment.

Act does not apply to projects for benefit of persons with a particular physical impairment.

83. This Part does not render unlawful discrimination against a person on the ground of his physical impairment where the discriminatory act arises from the fact that the person, in consequence of his impairment, requires special assistance or equipment that cannot reasonably be provided in the circumstances in which that discrimination occurs.

Act does not apply to discrimination where person requires special assistance, etc., as a result of his physical impairment.

84. This Part does not render unlawful discrimination against a person on the ground of his physical impairment where the discrimination arises out of the fact—

Physical inaccessibility of premises.

(a) that premises, or a part of premises, is so constructed as to be inaccessible to that person;

or

(b) that the owner or occupier of premises fails to ensure that every part, or a particular part, of the premises is accessible to that person.

85. This Part does not render unlawful discrimination on the ground of physical impairment in the terms on which an annuity, life assurance, accident insurance or any other form of insurance is offered or may be obtained, where—

Insurance, etc.

(a) the discrimination—

(i) is based upon actuarial or statistical data from a source on which it is reasonable to rely;

and

(ii) is reasonable having regard to that data and any other relevant factors;

or

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

PART VI

OTHER UNLAWFUL ACTS

Victimization is unlawful.

86. (1) It is unlawful for a person to commit an act of victimization.

(2) For the purposes of this section, a person commits an act of victimization if he treats another person ("the person victimized") unfavourably on the ground that he has—

- (a) brought proceedings under this Act against any person;
- (b) given evidence or information in any proceedings under this Act;
- (c) made allegations that he or some other person has been the victim of an act that contravenes this Act;
- (d) reasonably asserted his right or the right of some other person to lodge a complaint or take any other proceedings under this Act;

or

(e) otherwise done anything under or by reference to this Act,

or on the ground that he knows the person victimized intends to do any of those things, or suspects that the person victimized has done, or intends to do, any of those things.

(3) Unfavourable treatment of a person on the ground that—

(a) he has made a false allegation;

or

(b) he has not acted in good faith,

does not constitute an act of victimization.

Sexual harassment is unlawful in certain circumstances.

87. (1) It is unlawful for an employer (being a natural person) to subject an employee or voluntary worker, or a person seeking employment or voluntary work, to sexual harassment.

(2) It is unlawful for an employee or a voluntary worker to subject a fellow employee or voluntary worker, or a person seeking employment or voluntary work with the same employer, to sexual harassment.

(3) It is unlawful for an employee of an educational authority to subject a student, or a person applying to become a student, to sexual harassment.

(4) It is unlawful for a principal to subject a commission agent or contract worker, or a person seeking to become his commission agent or contract worker, to sexual harassment.

(5) It is unlawful for a commission agent or a contract worker to subject a fellow commission agent or contract worker to sexual harassment.

(6) It is unlawful for a person to subject another to sexual harassment in the course of—

- (a) offering or supplying goods to that other person;
- (b) offering or performing services to which this Act applies for that other person;

or

- (c) offering or providing accommodation to that other person.

(7) It is unlawful for an employer to fail to take such steps as may be reasonably necessary to ensure as far as practicable that none of his employees or voluntary workers subjects a fellow employee or voluntary worker, or a person seeking employment or voluntary work, to sexual harassment.

(8) It is unlawful for an educational authority to fail to take such steps as may be reasonably necessary to ensure as far as practicable that none of its employees subjects a student to sexual harassment.

(9) It is unlawful for a person who offers or provides goods or services to which this Act applies to fail to take such steps as may be reasonably necessary to ensure as far as practicable that none of his agents or employees subjects a person to whom those goods or services are offered or provided to sexual harassment.

(10) Damages shall not be awarded in respect of a failure to take steps to prevent sexual harassment (being a failure that is unlawful by virtue of subsection (7), (8) or (9)), unless it is established that the person guilty of that failure instructed, authorized or connived at the sexual harassment.

(11) For the purposes of this section, a person subjects another to sexual harassment if he does any of the following things in such a manner or in such circumstances that the other person feels offended, humiliated or intimidated:

- (a) he subjects the other person to an unsolicited and intentional act of physical intimacy;
- (b) he demands or requests (directly or by implication) sexual favours from the other person;
- (c) on more than one occasion, he makes a remark pertaining to the other person, being a remark that has sexual connotations,

and it is reasonable in all the circumstances that the other person should feel offended, humiliated or intimidated by that conduct.

88. Subject to this Act—

- (a) it is unlawful to impose any condition or requirement that would result in a person who is blind or deaf, or partially blind or deaf, being separated from his guide dog;

and

- (b) a person who imposes any such condition or requirement shall, in addition to any civil liability that he might incur under this Act by so doing, be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

89. Where a person, in offering or providing insurance or a superannuation scheme or provident fund, proposes to discriminate against another

Blind or deaf persons not to be separated from their guide dogs.

Notification to be given of proposed discrimination based on actuarial or statistical data.

person on a ground referred to in this Act on the basis of actuarial or statistical data and this Act provides that such discrimination is not unlawful, it is unlawful for him—

(a) to fail to notify the other person of the discrimination and of the fact that he may request to be given a summary of the actuarial or statistical data on which it is based;

and

(b) if such a request is made, to fail to comply with the request.

Aiding unlawful acts.

90. Where a person causes, instructs, induces or aids another to act in contravention of this Act, both shall be jointly and severally liable to any criminal or civil liability arising under this Act in respect of the contravention.

Liability of employers and principals.

91. (1) Subject to this section, a person is, for the purposes of this Act, vicariously liable for the acts or defaults of his agents or employees while acting in the course of their agency or employment.

(2) A person is not vicariously liable for an act of sexual harassment committed by an agent or employee, unless he instructed, authorized or connived at that act.

(3) In any proceedings brought under this Act against a person in respect of an act alleged to have been committed by his agent or employee acting in the course of his agency or employment, it shall be a defence for that person to prove that he exercised all reasonable diligence to ensure that his agent or employee would not act in contravention of this Act.

(4) Where a person would, but for the existence of a defence under subsection (3), be liable under this Act to any criminal or civil liability arising out of the act or default of his agent or employee, the agent or employee is liable to that criminal or civil liability.

PART VII

GRANT OF EXEMPTIONS

The Tribunal may grant exemptions.

92. (1) The Tribunal may, upon application under this section, grant exemptions from any of the provisions of this Act in relation to—

(a) a person, or class of persons;

(b) an activity, or class of activity;

or

(c) any circumstances of a specified nature.

(2) An exemption under this section—

(a) may be granted unconditionally or upon conditions;

(b) may be revoked by the Tribunal upon breach of a condition;

and

(c) subject to revocation, shall remain in force for a period, not exceeding three years, determined by the Tribunal, but may be renewed from time to time for a further period, not exceeding three years, determined by the Tribunal.

(3) An application for the grant, renewal or revocation of an exemption may be made to the Tribunal by the Commissioner or any other person.

(4) The following persons shall be entitled to appear and be heard by the Tribunal upon an application under this section:

- (a) the applicant;
- (b) where the Commissioner is not the applicant—the Commissioner;
- (c) any person in whose favour the exemption in question is sought, or has been granted.

(5) A person referred to in subsection (4) may call or give evidence in support of, or against, the application.

(6) In determining an application under this section, the Tribunal may—

- (a) have regard (where relevant) to the desirability of certain discriminatory actions being permitted for the purpose of redressing the effect of past discrimination;

and

- (b) have regard to any other factors that the Tribunal considers relevant.

(7) Notice of the grant, renewal or revocation of an exemption under this section shall be published in the *Gazette*.

(8) Notice of the grant or renewal of an exemption under this section must state—

- (a) the period for which the exemption has been granted or renewed;

and

- (b) the conditions (if any) to which the exemption is subject.

PART VIII

ENFORCEMENT OF THIS ACT

DIVISION I—ENFORCEMENT OF PERSONAL REMEDIES

93. (1) A complaint in writing alleging that a person has acted in contravention of this Act, and setting out the details of the alleged contravention, may be lodged with the Commissioner by the person who was the subject of the alleged contravention.

The making of complaints.

(2) A complaint must be lodged—

- (a) when the alleged contravention is constituted of a series of acts—within six months of the last of those acts;

(b) in any other case—within six months of the date on which the contravention is alleged to have been committed.

(3) Upon a complaint being lodged under this section, the Commissioner shall cause a written summary of the particulars of the complaint to be served, personally or by post, upon the respondent named in the complaint.

Investigation of complaints.

94. (1) Upon a complaint being lodged with the Commissioner, the Commissioner may investigate the complaint.

(2) For the purposes of an investigation, the Commissioner may, by notice in writing given personally or by post to the person who is alleged to have acted in contravention of this Act, require that person to produce to the Commissioner such books, papers or other documents as may be specified in the notice.

(3) Subject to subsection (4), a person to whom a notice is given pursuant to subsection (2) shall not refuse or fail to comply with the notice.

Penalty: Two thousand dollars.

(4) A person is not obliged to produce any books, papers or documents pursuant to this section if their contents would tend to incriminate him of an offence.

(5) The Commissioner may retain any books, papers or documents produced to him pursuant to this section only for so long as is reasonably necessary for him to peruse their contents and take such copies of them as he thinks fit.

(6) Nothing in this section empowers the Commissioner to require that a book, paper or document that is required for the day to day operation of a business be produced at any place other than the premises from which the business is operated.

Manner in which Commissioner may deal with complaint.

95. (1) Where, in the opinion of the Commissioner, a complaint that has been lodged with him is frivolous, vexatious, misconceived or lacking in substance, the Commissioner may, by notice in writing addressed to the complainant, decline to recognize the complaint as one upon which action should be taken by the Commissioner.

(2) A decision by the Commissioner not to recognize a complaint as one upon which action should be taken under this section may be made at any time, notwithstanding that to some extent action under this section has already been taken on the complaint.

(3) Where the Commissioner is of the opinion that the subject matter of the complaint (other than a complaint to which subsection (1) applies) may be resolved by conciliation, he shall make all reasonable endeavours to resolve the matter by conciliation.

(4) The Commissioner may, by notice in writing given personally or by post to the person who is alleged to have contravened this Act, require that person to attend before him for the purpose of conciliation.

(5) A person who refuses or fails to comply with a requirement of the Commissioner under this section shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(6) A party to proceedings is not entitled to be represented, or assisted, by a legal practitioner in conciliation proceedings under this section except with the authority of the Commissioner.

(7) Evidence of anything said or done in the course of conciliation proceedings under this section shall not be admissible in any proceedings under this Act or any other Act or law.

(8) Where the Commissioner—

(a) is of the opinion that the subject matter of a complaint cannot be resolved by conciliation;

(b) has attempted to resolve the matter by conciliation but has not been successful in that attempt;

or

(c) has declined to recognize a complaint as one upon which action should be taken under this section and the complainant has, by notice in writing, required him to refer the complaint to the Tribunal,

he shall refer the complaint to the Tribunal for hearing and determination.

(9) Where a complaint is referred to the Tribunal, other than a complaint referred pursuant to subsection (8) (c), the Commissioner shall, if the complainant requests him to do so, either personally, or by counsel or representative, assist the complainant in the presentation of his case to the Tribunal.

96. (1) The Tribunal, after hearing the evidence and representations that the complainant, the respondent and any other party to the proceedings desire to adduce or make, may exercise any of the following powers:

Power of Tribunal to make certain orders.

(a) it may order the respondent to pay the complainant such damages as the Tribunal thinks fit to compensate the complainant for loss or damage suffered by him in consequence of the contravention of this Act;

(b) it may order the respondent to refrain from any further contravention of this Act in relation to the complainant;

(c) it may order the respondent or any other party to the proceedings to perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant as a result of the contravention;

(d) it may order that the complaint be dismissed.

(2) The Tribunal may, at any stage of proceedings under this section, make an interim order to prevent prejudice to any person affected by the proceedings.

(3) The damage for which a complainant may be compensated under subsection (1) includes injury to his feelings.

(4) A person who contravenes or fails to comply with an order under this section shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars.

(5) Any amount that a person is ordered to pay under this section may be recovered from him as a debt in a court of competent jurisdiction.

DIVISION II—APPEALS

97. The Tribunal shall, if so required by a party to proceedings under this Part, state in writing its reasons for any decision or order, together with any findings of fact, that it makes in those proceedings.

Reasons for decision or order.

98. (1) A right of appeal shall lie to the Supreme Court against—

Appeal.

(a) a decision by the Tribunal upon an application for the grant, renewal or revocation of an exemption;

or

(b) a decision or order made by the Tribunal in proceedings under this Part.

(2) An appeal under this section may be made by any party to the proceedings and must be instituted within one month of the making of the decision or order appealed against.

(3) If the reasons of the Tribunal are not given in writing at the time of the making of a decision or order and the appellant then requested the Tribunal to state its reasons in writing, the time for instituting the appeal shall run from the time when the written statement of those reasons is given to the appellant.

(4) An appeal under this section shall be conducted as a review of the decision or order of the Tribunal.

(5) The Supreme Court may, on the hearing of an appeal, exercise one or more of the following powers:

(a) affirm, vary or quash the decision or order appealed against, or substitute, or make in addition, any decision or order that should have been made in the first instance;

(b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for rehearing;

(c) make any order as to costs or any other matter that the justice of the case requires.

PART IX

MISCELLANEOUS

No further sanctions for breach of Act.

99. A contravention of this Act shall attract no sanction or consequence (whether criminal or civil) except to the extent expressly provided by this Act.

Relationship between proceedings under this Act and proceedings under s. 31 of Industrial Conciliation and Arbitration Act.

100. (1) Nothing in this Act prevents a person who has been dismissed from his employment from bringing proceedings in respect of that dismissal under section 31 of the Industrial Conciliation and Arbitration Act, 1972.

(2) Where a person brings proceedings under section 31 of the Industrial Conciliation and Arbitration Act, 1972, in respect of dismissal from employment, and those proceedings are determined, he shall not institute or prosecute proceedings under this Act in respect of the dismissal.

(3) Subsection (2) does not apply where the proceedings under the Industrial Conciliation and Arbitration Act, 1972, are dismissed on a ground that does not relate to the sex, sexuality, marital status, pregnancy, race or physical impairment of the person.

(4) Where a person brings proceedings under this Act in respect of dismissal from employment, and those proceedings are determined, he shall not institute or prosecute proceedings under section 31 of the Industrial Conciliation and Arbitration Act, 1972, in respect of the dismissal.

(5) Subsection (4) does not apply where the proceedings under this Act are dismissed and the proceedings under the Industrial Conciliation and Arbitration Act, 1972, do not relate to the sex, sexuality, marital status, pregnancy, race or physical impairment of the person.

101. (1) Subject to this section, it shall be a defence in any proceedings under this Act (whether of a civil or criminal nature) for the defendant to prove—

General defence where Commissioner gives written advice.

(a) that the act or omission forming the subject matter of the charge, complaint, claim or inquiry was done, or made, in accordance with written advice furnished to the defendant by the Commissioner;

and

(b) that the Commissioner had not, by notice in writing served personally or by post on the defendant, retracted that advice before the date of the act or omission in question.

(2) Where a person proposes to act upon the advice of the Commissioner to the detriment of another, he shall, at least seven days before so doing—

(a) notify that other person of the action that he proposes to take against him;

and

(b) furnish him with a copy of the advice upon which he proposes to act, together with a statement in the prescribed form, of his rights under subsection (3),

and, if he fails to do so, he shall not be entitled to rely on the defence provided by subsection (1).

(3) A person may, within seven days after receiving a notification under subsection (2), apply to the Tribunal for a declaration as to whether the advice of the Commissioner is correct.

(4) The period limited by subsection (3) for the making of an application for a declaration is not capable of extension under the provisions of any other Act.

(5) The Registrar shall cause a copy of an application under subsection (3) to be served personally or by post upon the Commissioner and the person to whom he furnished the advice.

(6) Where a person to whom advice is furnished by the Commissioner acts upon that advice before an application for a declaration under this section in relation to the advice is determined, the defence provided by subsection (1) shall be available to that person in any proceedings under this Act in respect of his action, if the Tribunal declares that the advice is correct or if the application is withdrawn or dismissed, but shall not be available in any such proceedings if the Tribunal declares that the advice is incorrect.

(7) Where in any proceedings under this section the Tribunal declares that advice furnished by the Commissioner is incorrect, the advice shall, for the purposes of subsection (1), be deemed to have been retracted on the date of the commencement of those proceedings.

102. A person shall not molest, wilfully insult, hinder or obstruct the Commissioner, or an officer assisting the Commissioner, in the exercise or

Offences against the Commissioner.

discharge by the Commissioner or the officer of his powers or duties under this Act.

Penalty: Two thousand dollars.

**Discriminatory
advertisements.**

103. (1) A person shall not publish or cause to be published an advertisement that indicates an intention to do an act that is unlawful by virtue of this Act.

Penalty: One thousand dollars.

(2) In proceedings for an offence against subsection (1), it shall be a defence for a person who published an advertisement in contravention of that subsection to prove that he believed on reasonable grounds that the publication of the advertisement would not contravene that subsection.

**Summary
proceedings.**

104. Proceedings for an offence against this Act shall be disposed of summarily.

**Power of
Presiding Officer
to make rules.**

105. The Presiding Officer of the Tribunal may make rules regulating the practice and procedure of the Tribunal.

Regulations.

106. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

(a) prescribe any form for the purposes of this Act;

(b) exempt, conditionally or unconditionally, specified persons, or persons of a specified class, from any provision of this Act;

or

(c) prescribe a penalty not exceeding two hundred dollars for breach of, or non-compliance with, any regulation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor