

South Australia

## **Equal Opportunity Act 1984**

An Act to promote equality of opportunity between the citizens of this State; to prevent certain kinds of discrimination based on sex, race, disability, age or various other grounds; to facilitate the participation of citizens in the economic and social life of the community; and to deal with other related matters.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Equal Opportunity Act 1984*.

### **5—Interpretation**

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

**act** includes an omission;

**assistance animal** means—

- (a) a dog that is an accredited assistance dog under the *Dog and Cat Management Act 1995*; or
- (b) an animal of a class prescribed by regulation;

**business** includes a business that is not carried on for profit;

**caring responsibilities**—see subsection (3);

**child** means a person who is under the age of 18 years;

**close personal relationship** means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—

- (a) the relationship between a legally married couple; or
- (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

**Note—**

Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

**Commissioner** means the person for the time being holding or acting in the office of Commissioner for Equal Opportunity under this Act;

**council** means a council constituted under the *Local Government Act 1999*;

**court** includes a tribunal;

**detriment** includes humiliation or denigration;

**disability**, in relation to a person, means—

- (a) total or partial loss of the person's bodily or mental functions; or
- (b) total or partial loss of a part of the body; or
- (c) the presence in the body of organisms causing disease or illness; or
- (d) the presence in the body of organisms capable of causing disease or illness; or
- (e) the malfunction, malformation or disfigurement of a part of the person's body; or

- (f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- (g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour;

**domestic partner**—a person is the domestic partner of another if the person lives with the other in a close personal relationship;

**educational authority** means the person or body administering a school, college, university or other institution at which education or training is provided;

**employee**—

- (a) includes the holder of a public or statutory office (not being a judicial or magisterial office); and
- (b) includes an unpaid worker;

**employer**—

- (a) in relation to the holder of a public or statutory office—means the Crown;
- (b) in relation to an unpaid worker—means an organisation for which the unpaid worker performs services;

**employment** includes unpaid work;

**employment agency** means a person who, for fee or reward, introduces persons seeking work to persons seeking to employ or engage persons to perform work;

**introduction agency** means a person who carries on a business of introducing persons who are seeking companionship or social contact;

**judicial officer** means a member of a court or tribunal;

**marital or domestic partnership status** means the status or condition of—

- (a) being single; or
- (b) being married; or
- (c) being married but living separately and apart from one's spouse; or
- (d) being divorced; or
- (e) being widowed; or
- (f) being a domestic partner;

**medical practitioner** means a person who is registered in this State as a medical practitioner;

**near relative** of a person means spouse, domestic partner, parent, child, grandparent, grandchild, brother or sister;

**parliamentary proceedings** means proceedings before—

- (a) the House of Assembly or the Legislative Council; or
- (b) a committee of either House or of both Houses;

**potential pregnancy** of a woman means that the woman is likely, or is perceived as being likely, to become pregnant;



**race** of a person means the nationality (current, past or proposed), country of origin, colour or ancestry of the person;

**registered industrial association** means an industrial association or organisation registered under a law of the State or the Commonwealth;

**Registrar** means the person holding or acting in the office of Registrar of the Tribunal under this Act;

**secondary education institution** means an institution at which secondary education is provided;

**services to which this Act applies** means—

- (a) access to or use of a place or facilities that members of the public are permitted to enter or use; or
- (b) services provided by an employment agency; or
- (c) services provided in the course of a banking business (within the meaning of the *Banking Act 1959* of the Commonwealth), the provision of credit, or insurance; or
- (d) the provision of a scholarship, prize or award; or
- (e) entertainment, recreation or refreshment; or
- (f) services provided by an introduction agency; or
- (g) the provision of coaching or umpiring in a sport; or
- (h) services connected with transportation or travel; or
- (i) services of a profession or trade; or
- (j) services provided by a Government department, instrumentality or agency or a council;

**spouse**—a person is the spouse of another if they are legally married;

**Tribunal** means the South Australian Employment Tribunal established under the *South Australian Employment Tribunal Act 2014*;

**unpaid worker** means a person who performs work for an employer for no remuneration.

- (2) After the commencement of this subsection, the provision of assisted insemination or assisted reproductive treatment (both within the meaning of the *Assisted Reproductive Treatment Act 1988*) will be the provision of a service to which this Act applies; however, to avoid doubt, the provision of any such service before the commencement of this subsection is not (and will be taken never to have been) a service to which this Act or the repealed *Sex Discrimination Act 1975* applied.
- (2a) Despite subsection (2), the refusal by a person who is a registered objector within the meaning of the *Assisted Reproductive Treatment Act 1988* to provide assisted reproductive treatment to another on the basis of the other's sexual orientation or gender identity, or marital status, will not be taken to be refusal of a service to which this Act applies.

- (3) For the purposes of this Act—
- (a) a person has *caring responsibilities* if the person has responsibilities to care for or support—
    - (i) a dependent child of the person; or
    - (ii) any other immediate family member of the person who is in need of care and support; and
  - (b) an Aboriginal or Torres Strait Islander person also has *caring responsibilities* if the person has responsibilities to care for or support any person to whom that person is held to be related according to Aboriginal kinship rules or Torres Strait Islander kinship rules, as the case may require.
- (4) In subsection (3)—
- child* includes an adopted child, a step-child or an ex-nuptial child;
- dependent child* of a person means a child who is wholly or substantially dependent on the person;
- immediate family member* of a person includes—
- (a) the person's spouse or domestic partner or former spouse or former domestic partner; and
  - (b) an adult child, parent, grandparent, grandchild, or sibling of the person or of the spouse or domestic partner of the person.

## 6—Interpretative provisions

- (1) For the purposes of this Act, the holder of a public or statutory office will, in carrying out official duties, be taken to be acting in the course of employment.
- (2) For the purposes of this Act, a person acts on a particular ground referred to in this Act if the person 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 the act.
- (3) For the purposes of this Act, a person (the *discriminator*) treats another unfavourably on the basis of a particular attribute or circumstance if the discriminator treats that other person less favourably than in identical or similar circumstances the discriminator treats, or would treat, a person who does not have that attribute or is not affected by that circumstance.
- (4) For the purposes of this Act, an act will be regarded as a discriminatory act despite the fact that the person alleged to have committed the act did so on the basis of a mistaken assumption (for example, a mistaken assumption that another person was of a particular sexual orientation or gender identity or a particular race).

## 7—Crown is bound

This Act binds the Crown.

## **Part 2—Commissioner**

### **Division 1—Commissioner**

#### **8—The Commissioner**

- (1) There will be a Commissioner for Equal Opportunity.
- (2) The Commissioner will be appointed for a term of five years and will, at the expiration of a term of appointment, be eligible for reappointment.
- (3) The Commissioner is not a Public Service employee.
- (4) The terms and conditions of the Commissioner's appointment will be fixed by the Governor on the recommendation of the Commissioner for Public Employment.
- (5) A Public Service employee may be appointed to act temporarily as the Commissioner.

#### **9—Staff**

- (1) The Commissioner will have such staff as is necessary for the administration of this Act.
- (2) The Commissioner's staff will consist of Public Service employees.

#### **10—Administration of Act and Ministerial direction**

- (1) 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.
- (2) However, the Minister—
  - (a) must not give a direction in relation to the manner in which action should be taken on a particular complaint; and
  - (b) must not seek information tending to identify a party to proceedings under this Act.

#### **11—Functions of Commissioner**

- (1) The Commissioner must foster and encourage amongst members of the public informed and unprejudiced attitudes with a view to eliminating discrimination on the grounds to which this Act applies.
- (2) The Commissioner may institute, promote or assist in research, the collection of data and the dissemination of information relating to discrimination on the grounds to which this Act applies.
- (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.

#### **14—Annual report by Commissioner**

- (1) The Commissioner must, not later than 30 September in each year, report to the Minister on—
  - (a) the operation and administration of this Act; and

- (b) the work undertaken by the Commissioner under section 11, during the previous financial year.
- (2) The Minister must cause a copy of a report furnished under subsection (1) to be laid before each House of Parliament within 12 sitting days of receipt of the report if Parliament is then in session, but if Parliament is not then in session, within 12 days of the commencement of the next session of Parliament.

### **15—Power of Commissioner to delegate**

- (1) The Commissioner may, with the approval of the Minister, delegate powers and functions under this Act to a Public Service employee.
- (2) A delegation under this section is revocable at will and does not derogate from the power of the Commissioner to act personally in a matter.

## **Part 3—Prohibition of discrimination on ground of sex, sexual orientation or gender identity**

### **Division 1—Discrimination to which Part 3 applies**

#### **29—Criteria for discrimination on ground of sex, sexual orientation or gender identity**

- (2) For the purposes of this Act, a person discriminates on the ground of sex—
- (a) if he or she treats another unfavourably because of the other's sex; or
  - (b) if he or she treats another unfavourably because the other 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 other's sex; and
    - (ii) the requirement is not reasonable in the circumstances of the case; or
  - (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons of the other's sex, or on the basis of a presumed characteristic that is generally imputed to persons of that sex; or
  - (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.
- (2a) For the purposes of this Act, a person discriminates on the ground of gender identity—
- (a) if he or she treats another unfavourably because the other is or has been a person of a particular gender identity or because of the other's past sex; or
  - (b) if he or she treats another unfavourably because the other 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 are not persons of a particular gender identity comply, or are able to comply, with the requirement than of those of the particular gender identity; and
    - (ii) the requirement is not reasonable in the circumstances of the case; or
  - (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons of a particular gender identity, or on the basis of a presumed characteristic that is generally imputed to persons of a particular gender identity; or
  - (d) if he or she requires a person of a particular gender identity to assume characteristics of a sex with which the person does not identify; or
  - (e) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

- (3) For the purposes of this Act, a person discriminates on the ground of sexual orientation—
- (a) if he or she treats another unfavourably because of the other's sexual orientation or past sexual orientation; or
  - (b) if he or she treats another unfavourably because the other 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 sexual orientation complies, or is able to comply, with the requirement than of those of the other's sexual orientation; and
    - (ii) the requirement is not reasonable in the circumstances of the case; or
  - (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons of the other's sexual orientation, or presumed sexual orientation, or on the basis of a presumed characteristic that is generally imputed to persons of that sexual orientation; or
  - (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

## **Division 2—Discrimination against workers**

### **30—Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of sex, sexual orientation or gender identity—
- (a) in determining, or in the course of determining, who should be offered employment; or
  - (b) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of sex, sexual orientation or gender identity—
- (a) in the terms or conditions of employment; or
  - (b) by denying or limiting access to opportunities for promotion, transfer or training, or to other benefits connected with employment; or
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to other detriment.

### **31—Discrimination against agents and independent contractors**

- (1) This section applies to a principal for whom work is done—
- (a) by agents remunerated by commission; or
  - (b) by independent contractors engaged under a contract for services.

- (2) It is unlawful for the principal to discriminate against a person on the ground of sex, sexual orientation or gender identity—
  - (a) in determining, or in the course of determining, who should be engaged as an agent or independent contractor; or
  - (b) in the terms or conditions on which such an engagement is offered.
- (3) It is unlawful for the principal to discriminate against an agent or independent contractor on the ground of sex, sexual orientation or gender identity—
  - (a) in the terms or conditions on which the agent or independent contractor is engaged; or
  - (b) by denying or limiting access to opportunities for promotion, transfer or training or other benefits connected with the agent's or independent contractor's position; or
  - (c) by terminating the engagement; or
  - (d) by subjecting the agent or independent contractor to other detriment.

### **32—Discrimination against contract workers**

- (1) This section applies to a principal for whom work is done by persons (*contract workers*) under a contract between the principal and another where the contract workers are employed or engaged by a person other than the principal.
- (2) It is unlawful for a principal to enter into a contract or arrangement with another for work to be performed by contract workers under which a person is to discriminate against a contract worker on the ground of sex, sexual orientation or gender identity.
- (3) It is unlawful for the principal to discriminate against a contract worker on the ground of sex, sexual orientation or gender identity—
  - (a) in the terms or conditions on which the contract worker is allowed to work; or
  - (b) by not allowing the contract worker to work; or
  - (c) by denying or limiting access to a benefit connected with the employment or position concerned; or
  - (d) by subjecting the contract worker to other detriment.

### **33—Discrimination within partnerships**

- (1) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person on the ground of sex, sexual orientation or gender identity in determining, or in the course of determining, who should be offered a position as partner in the firm.
- (3) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person on the ground of sex, sexual orientation or gender identity 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 on the ground of sex, sexual orientation or gender identity—
  - (a) in the terms or conditions of membership of the firm; or

- (b) by denying or limiting access to a benefit arising from membership of the firm; or
- (c) by expelling the partner from the firm; or
- (d) by subjecting the partner to other detriment.

### **34—Exemptions**

- (1) This Division does not apply in relation to—
  - (a) an employer employing a person for purposes not connected with a business carried on by the employer; or
  - (b) a principal engaging a natural person as an independent contractor for purposes not connected with a business carried on by the principal.
- (2) This Division does not apply to discrimination on the ground of sex, sexual orientation or gender identity in relation to employment or engagement for which it is a genuine occupational requirement that a person be a person of a particular sex, sexual orientation or gender identity.
- (3) This Division does not apply to discrimination on the ground of sexual orientation or gender identity in relation to employment or engagement for the purposes of an educational institution if—
  - (a) the educational institution is administered in accordance with the precepts of a particular religion and the discrimination is founded on the precepts of that religion; and
  - (b) the educational authority administering the institution has a written policy stating its position in relation to the matter; and
  - (c) a copy of the policy is given to a person who is to be interviewed for or offered employment with the authority or a teacher who is to be offered engagement as a contractor by the authority; and
  - (d) a copy of the policy is provided on request, free of charge—
    - (i) to employees and contractors and prospective employees and contractors of the authority to whom it relates or may relate; and
    - (ii) to students, prospective students and parents and guardians of students and prospective students of the institution; and
    - (iii) to other members of the public.
- (4) This Division does not apply to discrimination on the ground of gender identity in relation to employment or engagement if the discrimination is for the purposes of enforcing standards of appearance and dress reasonably required for the employment or engagement.

### **Division 3—Discrimination by other bodies**

#### **35—Discrimination by associations**

- (1) It is unlawful for an association to discriminate—
  - (a) against an applicant for membership on the ground of sex, sexual orientation or gender identity—



- (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or
    - (ii) in the terms on which the applicant 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 sex, sexual orientation or gender identity—
    - (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; or
    - (iii) by expelling that member from the association or subjecting him or her to other detriment.
- (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) if it is not practicable for the service or benefit to be used or enjoyed simultaneously by persons of different sex, but the same, or an equivalent, service or benefit is provided for the use or enjoyment of persons of different sex separately from each other or at different times; or
  - (b) if it is not practicable for the service or benefit to be used or enjoyed to the same extent by persons of different sex, but persons of different sex are entitled to a fair and reasonable proportion of the use or enjoyment of the service or benefit.
- (2a) This section does not render unlawful an association established for—
  - (a) persons of a particular sex; or
  - (b) persons of a particular gender identity; or
  - (c) persons of a particular sexual orientation (other than heterosexuality),and, consequently, such an association may discriminate against an applicant for membership so as to exclude from membership persons other than those for whom the association is established.
- (2b) This section does not apply to discrimination on the ground of sexual orientation or gender identity if the association is administered in accordance with the precepts of a particular religion and the discrimination is founded on the precepts of that religion.
- (3) Without limiting the generality of this section, an association discriminates against a member of a particular class in the association if, on application by that member to join a different class of membership in the association, the association accords the member 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—Discrimination by qualifying bodies**

It is unlawful for an authority or body empowered to confer an authorisation 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 sex, sexual orientation or gender identity—

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

## **Division 4—Discrimination in education**

### **37—Discrimination by educational authorities**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of sex, sexual orientation or gender identity—
  - (a) by refusing or failing to accept an application for admission as a student; or
  - (b) in the terms or conditions on which it offers to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of sex, sexual orientation or gender identity—
  - (a) in the terms or conditions on which it provides the student with training or education; or
  - (b) by denying or limiting access to a benefit provided by the authority; or
  - (c) by expelling the student; or
  - (d) by subjecting the student to 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; or
  - (b) the admission of a person to a school, college or institution (not being a tertiary level school, college or institution) if 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 5—Discrimination in relation to land, goods, services and accommodation**

### **38—Discrimination by person disposing of an interest in land**

- (1) It is unlawful for a person to discriminate against another on the ground of sex, sexual orientation or gender identity—
  - (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.

### **39—Discrimination in provision of goods and services**

- (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 discriminate against another on the ground of sex, sexual orientation or gender identity—
  - (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 the goods are supplied or the services are performed.
- (2) If 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 the person's normal practice.

### **40—Discrimination in relation to accommodation**

- (1) It is unlawful for a person to discriminate against another on the ground of sex, sexual orientation or gender identity—
  - (a) in the terms or conditions on which accommodation is offered; or
  - (b) by refusing an application for accommodation; or
  - (c) by deferring such an application or according the applicant a lower order of precedence on a 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 sex, sexual orientation or gender identity—
  - (a) in the terms or conditions on which accommodation is provided; or
  - (b) by denying or limiting access to a benefit connected with the accommodation; or
  - (c) by evicting the person; or
  - (d) by subjecting the person to other detriment.
- (3) This section does not apply to discrimination in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.
- (4) This section does not apply to discrimination on the ground of sex in relation to the provision of accommodation by an organisation that does not seek to secure a pecuniary profit for its members, if the accommodation is provided only for persons of the one sex.

## **Division 7—General exemptions from Part 3**

### **45—Charities**

This Part does not—

- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly on—
  - (i) persons of the one sex; or
  - (ia) persons of a particular gender identity; or
  - (ii) persons of a particular sexual orientation; or
- (b) render unlawful an act done to give effect to such a provision.

### **47—Measures intended to achieve equality**

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 a particular sex, sexual orientation or gender identity, have equal opportunities with, respectively, all other persons, in circumstances to which this Part applies.

### **48—Sport**

This Part does not render unlawful the exclusion of persons from participation in a competitive sporting activity on the ground of sex in the following circumstances:

- (a) if the sporting activity is one in which the strength, stamina or physique of the competitor is relevant to the outcome of the competition;
- (b) if the exclusion is genuinely intended to facilitate or increase the participation of persons, or a class of persons, of a particular sex in the sporting activity and—
  - (i) it is unlikely that those persons will participate, or that there will be an increase in participation by those persons, in the sporting activity if the exclusion is not made (having regard to all of the circumstances of the persons or class of persons); and
  - (ii) there are reasonable opportunities for excluded persons to participate in the sporting activity in another competition;
- (c) if—
  - (i) the exclusion is reasonably required to enable participants in the sporting activity to advance to competitions at a level higher than that in which the exclusion is to occur (being a requirement that is due to the structure of, or restrictions in, the higher level competitions); and
  - (ii) there are reasonable opportunities for excluded persons to participate in the sporting activity in another competition;
- (d) in such other circumstances as may be prescribed by the regulations.

#### **49—Insurance etc**

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

- (a) is based on actuarial or statistical data from a source on which it is reasonable to rely; and
- (b) is reasonable having regard to that data.

#### **50—Religious bodies**

- (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; or
  - (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order; or
  - (ba) the administration of a body established for religious purposes in accordance with the precepts of that religion; 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.



## **Part 4—Prohibition of discrimination on ground of race**

### **Division 1—Discrimination to which Part 4 applies**

#### **51—Criteria for establishing discrimination on ground of race**

For the purposes of this Act, a person discriminates on the ground of race—

- (a) if he or she treats another unfavourably by reason of the other's race; or
- (b) if he or she treats another person unfavourably because the other 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 other's race; and
  - (ii) the requirement is not reasonable in the circumstances of the case; or
- (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons of the other's race, or on the basis of a presumed characteristic that is generally imputed to persons of that race; or
- (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

### **Division 2—Discrimination against workers**

#### **52—Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of race—
  - (a) in determining, or in the course of determining, who should be offered employment; or
  - (b) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of race—
  - (a) in the terms or conditions of employment; or
  - (b) by denying or limiting access to opportunities for promotion, transfer or training, or to other benefits connected with employment; or
  - (c) by dismissing the employee; or
  - (d) by segregating the employee from persons of other races; or
  - (e) by subjecting the employee to other detriment.

#### **53—Discrimination against agents and independent contractors**

- (1) This section applies to a principal for whom work is done—
  - (a) by agents remunerated by commission; or
  - (b) by independent contractors engaged under a contract for services.

- (2) It is unlawful for the principal to discriminate against a person on the ground of race—
  - (a) in determining, or in the course of determining, who should be engaged as an agent or independent contractor; or
  - (b) in the terms or conditions on which such an engagement is offered.
- (3) It is unlawful for the principal to discriminate against an agent or independent contractor on the ground of race—
  - (a) in the terms or conditions on which the agent or independent contractor is engaged; or
  - (b) by denying or limiting access to opportunities for promotion, transfer or training or other benefits connected with the agent's or independent contractor's position; or
  - (c) by terminating the engagement; or
  - (d) by subjecting the agent or independent contractor to other detriment.

#### **54—Discrimination against contract workers**

- (1) This section applies to a principal for whom work is done by persons (*contract workers*) under a contract between the principal and another where the contract workers are employed or engaged by a person other than the principal.
- (2) It is unlawful for a principal to enter into a contract or arrangement with another for work to be performed by contract workers under which a person is to discriminate against a contract worker on the ground of race.
- (3) It is unlawful for the principal to discriminate against a contract worker on the ground of race—
  - (a) in the terms or conditions on which the contract worker is allowed to work; or
  - (b) by not allowing the contract worker to work; or
  - (c) by denying or limiting access to a benefit connected with the employment or position concerned; or
  - (d) by subjecting the contract worker to other detriment.

#### **55—Discrimination within partnerships**

- (1) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person on the ground of 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 to discriminate against a partner on the ground of race—
  - (a) in the terms or conditions of membership of the firm; or
  - (b) by denying or limiting access to a benefit arising from membership of the firm; or
  - (c) by expelling the partner from the firm; or



- (d) by subjecting the partner to other detriment.

## **56—Exemptions**

- (1) This Division does not apply in relation to—
- (a) an employer employing a person for purposes not connected with a business carried on by the employer; or
  - (b) a principal engaging a natural person as an independent contractor for purposes not connected with a business carried on by the principal.
- (2) This Division does not apply to discrimination on the ground of race in relation to employment or engagement for which it is a genuine occupational requirement that a person be of a particular race.

## **Division 3—Discrimination by other bodies**

### **57—Discrimination by associations on ground of race**

- (1) It is unlawful for an association to discriminate—
- (a) against an applicant for membership on the ground of race—
    - (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or
    - (ii) in the terms on which the applicant 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 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; or
    - (iii) by expelling that member from the association or subjecting him or her to other detriment.
- (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—Discrimination by qualifying bodies**

- (1) It is unlawful for an authority or body empowered to confer an authorisation 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 race—
- (a) by refusing or failing to confer or renew that authorisation or qualification; or
  - (b) in the terms or conditions on which it confers the authorisation or qualification; or
  - (c) by withdrawing the authorisation or qualification, or varying the terms or conditions on which it is held.

- (2) Without limiting the generality of subsection (1), an authority or body discriminates against a person on the ground of race if the authority or body—
- (a) fails to take reasonable steps to inform itself sufficiently on the adequacy or appropriateness of qualifications or experience gained outside of Australia by the person; and
  - (b) in consequence of that failure, refuses to confer on the person an authorisation or qualification for which the person has applied.

## **Division 4—Discrimination in education**

### **59—Discrimination by educational authorities**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of race—
- (a) by refusing or failing to accept an application for admission as a student; or
  - (b) in the terms or conditions on which it offers to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of race—
- (a) in the terms or conditions on which it provides the student with education or training; or
  - (b) by denying or limiting access to a benefit provided by the authority; or
  - (c) by expelling the student; or
  - (d) by subjecting the student to other detriment.

## **Division 5—Discrimination in relation to land, goods, services and accommodation**

### **60—Discrimination by person disposing of an interest in land**

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

### **61—Discrimination in provision of goods and services**

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 discriminate against another on the ground of 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 the goods are supplied or the services are performed.

## **62—Discrimination in relation to accommodation**

- (1) It is unlawful for a person to discriminate against another on the ground of race—
  - (a) in the terms or conditions on which accommodation is offered; or
  - (b) by refusing an application for accommodation; or
  - (c) by deferring such an application or according the applicant a lower order of precedence on a 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 race—
  - (a) in the terms or conditions on which accommodation is provided; or
  - (b) by denying or limiting access to a benefit connected with the accommodation; or
  - (c) by evicting the person; or
  - (d) by subjecting the person to other detriment.
- (2a) This section does not apply to discrimination in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.

## **Division 6—Discrimination in relation to superannuation**

### **63—Superannuation schemes and provident funds**

- (1) It is unlawful for a person who provides a superannuation scheme or provident fund to discriminate against a person on the ground of race—
  - (a) by providing a scheme or fund that discriminates or, if the other person were to become a member of the scheme or fund, would discriminate, or require or authorise discrimination, against the other person; or
  - (b) in the manner in which the scheme or fund is administered.
- (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 7—General exemptions from Part 4**

### **64—Charities**

This Part does not—

- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly on persons of a particular race; or
- (b) render unlawful an act done to give effect to such a provision.

**65—Act does not apply to projects for benefit of persons of a particular race**

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.

## **Part 5—Prohibition of discrimination on ground of disability**

### **Division 1—Discrimination to which Part 5 applies**

#### **66—Criteria for establishing discrimination on ground of disability**

For the purposes of this Act, a person discriminates on the ground of disability—

- (a) if he or she treats another unfavourably because of the other's disability, or a past disability or a disability that may exist in the future; or
- (b) if he or she treats another unfavourably because the other 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 disability complies, or is able to comply, with the requirement than of those persons who have such a disability; and
  - (ii) the requirement is not reasonable in the circumstances of the case; or
- (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons who have such a disability, or on the basis of a presumed characteristic that is generally imputed to persons who have such a disability; or
- (ca) if he or she—
  - (i) fails to provide a safe and proper means of access to, or use of, a place or facilities for a person who requires special means of access to, or use of, the place or facilities as a consequence of the person's disability; or
  - (ii) treats another unfavourably because the other requires special means of access to, or use of, a place or facilities as a consequence of the other's disability,to the extent that he or she is able to effect the provision of access or use; or
- (d) if, in circumstances where it is unreasonable to do so—
  - (i) he or she fails to provide special assistance or equipment required by a person in consequence of the person's disability; or
  - (ii) he or she treats another unfavourably because the other requires special assistance or equipment as a consequence of the other's disability; or
- (e) if he or she treats a person with a disability unfavourably because the person possesses, or is accompanied by, an assistance animal, or because of a related matter (whether or not it is his or her normal practice to treat unfavourably a person who possesses, or is accompanied by, an animal of the same species as the assistance animal); or
- (f) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

## Division 2—Discrimination against workers

### 67—Discrimination against applicants and employees

- (1) It is unlawful for an employer to discriminate against a person on the ground of disability—
  - (a) in determining, or in the course of determining, who should be offered employment; or
  - (b) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of disability—
  - (a) in the terms or conditions of employment; or
  - (b) by denying or limiting access to opportunities for promotion, transfer or training, or to other benefits connected with employment; or
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to other detriment.

### 68—Discrimination against agents and independent contractors

- (1) This section applies to a principal for whom work is done—
  - (a) by agents remunerated by commission; or
  - (b) by independent contractors engaged under a contract for services.
- (2) It is unlawful for the principal to discriminate against a person on the ground of disability—
  - (a) in determining, or in the course of determining, who should be engaged as an agent or independent contractor; or
  - (b) in the terms or conditions on which such an engagement is offered.
- (3) It is unlawful for the principal to discriminate against an agent or independent contractor on the ground of disability—
  - (a) in the terms or conditions on which the agent or independent contractor is engaged; or
  - (b) by denying or limiting access to opportunities for promotion, transfer or training or other benefits connected with the agent's or independent contractor's position; or
  - (c) by terminating the engagement; or
  - (d) by subjecting the agent or independent contractor to other detriment.

### 69—Discrimination against contract workers

- (1) This section applies to a principal for whom work is done by persons (*contract workers*) under a contract between the principal and another where the contract workers are employed or engaged by a person other than the principal.

- (2) It is unlawful for a principal to enter into a contract or arrangement with another for work to be performed by contract workers under which a person is to discriminate against a contract worker on the ground of disability.
- (3) It is unlawful for the principal to discriminate against a contract worker on the ground of disability—
  - (a) in the terms or conditions on which the contract worker is allowed to work; or
  - (b) by not allowing the contract worker to work; or
  - (c) by denying or limiting access to a benefit connected with the employment or position concerned; or
  - (d) by subjecting the contract worker to other detriment.

### **70—Discrimination within partnerships**

- (1) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person on the ground of disability—
  - (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 to discriminate against a partner on the ground of disability—
  - (a) in the terms or conditions of membership of the firm; or
  - (b) by denying or limiting access to a benefit arising from membership of the firm; or
  - (c) by expelling the partner from the firm; or
  - (d) by subjecting the partner to other detriment.

### **71—Exemptions**

- (1) This Division does not apply in relation to—
  - (a) an employer employing a person for purposes not connected with a business carried on by the employer; or
  - (b) a principal engaging a natural person as an independent contractor for purposes not connected with a business carried on by the principal.
- (2) This Division does not apply to discrimination on the ground of disability in relation to employment or engagement if the person suffering from the disability is not, or would not be, able—
  - (a) to perform adequately, and without endangering himself or herself 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 3—Discrimination by other bodies**

### **72—Discrimination by associations**

- (1) It is unlawful for an association to discriminate—
  - (a) against an applicant for membership on the ground of disability—
    - (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or
    - (ii) in the terms on which the applicant 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 disability—
    - (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; or
    - (iii) by expelling that member from the association or subjecting him or her to other detriment.

### **73—Discrimination by qualifying bodies**

- (1) It is unlawful for an authority or body empowered to confer an authorisation 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 disability—
  - (a) by refusing or failing to confer or renew that authorisation or qualification; or
  - (b) in the terms or conditions on which it confers the authorisation or qualification; or
  - (c) by withdrawing the authorisation or qualification, or varying the terms or conditions on which it is held.
- (2) This section does not apply to discrimination against a person on the ground of disability where, in consequence of that disability, the person 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 4—Discrimination in education**

### **74—Discrimination by educational authorities**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of disability—
  - (a) by refusing or failing to accept an application for admission as a student; or
  - (b) in the terms or conditions on which it offers to admit the person as a student.



- (2) It is unlawful for an educational authority to discriminate against a student on the ground of disability—
  - (a) in the terms or conditions on which it provides the student with education or training; or
  - (b) by denying or limiting access to a benefit provided by the authority; or
  - (c) by expelling the student; or
  - (d) by subjecting the student to other detriment.
- (3) This section does not apply to discrimination on the ground of disability in respect of admission to a school, college or institution established wholly or mainly for students who have a particular disability.

## **Division 5—Discrimination in relation to land, goods, services and accommodation**

### **75—Discrimination by person disposing of interest in land**

- (1) It is unlawful for a person to discriminate against another on the ground of disability—
  - (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—Discrimination in provision of goods and services**

- (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 discriminate against another on the ground of disability—
  - (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 the goods are supplied or the services are performed.
- (1a) For the purposes of the application of subsection (1) to services comprised of access to or use of a place or facilities that members of the public are permitted to enter or use (see paragraph (a) of the definition of *services to which this Act applies*), the owner of the place or facilities and the occupier of the place or the place where the facilities are provided will each be taken to offer or provide the services.
- (2) If the nature of a skill varies according to whether it is exercised in relation to persons who have a particular disability or to those who do not have such a disability, a person does not contravene subsection (1) by exercising the skill in relation to only those persons who have a particular disability, or only those who do not have such a disability, in accordance with the person's normal practice.

- (3) This section does not apply to discrimination against a person on the ground of disability in relation to the performance of a service if, in consequence of the disability, that person requires the service to be performed in a special manner and the person performing the service—
- (a) cannot reasonably be expected to perform the service in that manner; or
  - (b) cannot reasonably be expected to perform the service in that manner except on more onerous terms than would otherwise apply.

### **77—Discrimination in relation to accommodation**

- (1) It is unlawful for a person to discriminate against another on the ground of disability—
- (a) in terms or conditions on which accommodation is offered; or
  - (b) by refusing an application for accommodation; or
  - (c) by deferring such an application or according the applicant a lower order of precedence on a 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 disability—
- (a) in the terms or conditions on which accommodation is provided; or
  - (b) by denying or limiting access to a benefit connected with the accommodation; or
  - (c) by evicting the person; or
  - (d) by subjecting the person to detriment.
- (2a) This section does not apply to discrimination in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.

## **Division 6—Discrimination in relation to superannuation**

### **78—Discrimination in relation to superannuation**

- (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 disability—
- (a) by providing a scheme or fund that discriminates or, if the other person were to become a member of the scheme or fund, would discriminate, or require or authorise discrimination, against the other person; or
  - (b) in the manner in which the scheme or fund is administered,
- except to the extent that—
- (c) the discrimination—
    - (i) is based on actuarial or statistical data from a source on which it is reasonable to rely; and
    - (ii) is reasonable having regard to the data and other relevant factors; or

- (d) if no such actuarial or statistical data is available, the discrimination is reasonable having regard to 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 7—General exemptions from Part 5**

### **79—Exemption in relation to remuneration**

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

### **79A—Exemption in relation to infectious diseases**

This Part does not render unlawful a discriminatory act if the act—

- (a) is directed towards ensuring that an infectious disease is not spread; and
- (b) is reasonable in all the circumstances.

### **80—Exemption for charities**

This Part does not—

- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly on persons who have a particular disability; or
- (b) render unlawful an act done to give effect to such a provision.

### **81—Exemption in relation to sporting activities**

This Part does not render unlawful the exclusion of a person who has a disability from participation in a sporting activity—

- (a) if the activity requires physical or intellectual attributes that the person does not possess; or
- (b) if, in the case of a sporting activity conducted wholly or mainly for persons who have a particular disability, the person's disability is not of that kind.

### **82—Exemption for projects for benefit of persons with particular disability**

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 disability.

### **84—Exemption for unjustifiable hardship**

- (1) This Part does not render unlawful discrimination by a person on the ground of disability in relation to the provision of access to or use of a place or facilities if the provision of access or use would impose unjustifiable hardship on the person.
- (2) In determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including—
  - (a) the nature of the benefit or detriment likely to accrue or be suffered by the persons concerned; and
  - (b) the effect of the disability of the person concerned; and
  - (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.

### **85—Exemption in relation to insurance**

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

- (a) the discrimination—
  - (i) is based on actuarial or statistical data from a source on which it is reasonable to rely; and
  - (ii) is reasonable having regard to that data and other relevant factors; or
- (b) if no such actuarial or statistical data is available, the discrimination is reasonable having regard to other relevant factors.

## **Part 5A—Prohibition of discrimination on ground of age**

### **Division 1—Discrimination to which Part 5A applies**

#### **85A—Criteria for establishing discrimination on ground of age**

For the purposes of this Act, a person discriminates on the ground of age—

- (a) if he or she treats another unfavourably because of the other's age; or
- (b) if he or she treats another person unfavourably because the other 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 age or age group complies, or is able to comply, with the requirement than of those of the other's age or age group; and
  - (ii) the requirement is not reasonable in the circumstances of the case; or
- (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons of the other's age or age group, or on the basis of a presumed characteristic that is generally imputed to persons of that age or age group; or
- (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

### **Division 2—Discrimination against workers**

#### **85B—Discrimination against applicants and employees**

- (1) It is unlawful for an employer to discriminate against a person on the ground of age—
  - (a) in determining, or in the course of determining, who should be offered employment; or
  - (b) in the terms or conditions on which employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of age—
  - (a) in the terms or conditions of employment; or
  - (b) by denying or limiting access to opportunities for promotion, transfer or training, or to other benefits connected with employment; or
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to other detriment.

#### **85C—Discrimination against agents and independent contractors**

- (1) This section applies to a principal for whom work is done—
  - (a) by agents remunerated by commission; or
  - (b) by independent contractors engaged under a contract for services.

- (2) It is unlawful for the principal to discriminate against a person on the ground of age—
  - (a) in determining, or in the course of determining, who should be engaged as an agent or independent contractor; or
  - (b) in the terms or conditions on which such an engagement is offered.
- (3) It is unlawful for the principal to discriminate against an agent or independent contractor on the ground of age—
  - (a) in the terms or conditions on which the agent or independent contractor is engaged; or
  - (b) by denying or limiting access to opportunities for promotion, transfer or training or other benefits connected with the agent's or independent contractor's position; or
  - (c) by terminating the engagement; or
  - (d) by subjecting the agent or independent contractor to other detriment.

#### **85D—Discrimination against contract workers**

- (1) This section applies to a principal for whom work is done by persons (*contract workers*) under a contract between the principal and another where the contract workers are employed or engaged by a person other than the principal.
- (2) It is unlawful for a principal to enter into a contract or arrangement with another for work to be performed by contract workers under which a person is to discriminate against a contract worker on the ground of age.
- (3) It is unlawful for the principal to discriminate against a contract worker on the ground of age—
  - (a) in the terms or conditions on which the contract worker is allowed to work; or
  - (b) by not allowing the contract worker to work; or
  - (c) by denying or limiting access to a benefit connected with the employment or position concerned; or
  - (d) by subjecting the contract worker to other detriment.

#### **85E—Discrimination within partnerships**

- (1) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person on the ground of age—
  - (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 to discriminate against a partner on the ground of age—
  - (a) in the terms or conditions of membership of the firm; or
  - (b) by denying or limiting access to a benefit arising from membership of the firm; or
  - (c) by expelling the partner from the firm; or

- (d) by subjecting the partner to other detriment.

### **85EA—No compulsory retiring age**

Despite any Act or law to the contrary, a provision in an industrial or enterprise award, determination or agreement made or approved under the *Fair Work Act 1994* that—

- (a) imposes, or requires or authorises an employer to impose, a compulsory retiring age in respect of employment of any kind; or
- (b) requires or authorises an employer to terminate the employment of a person on the basis of the person's age,

is void and of no effect.

### **85F—Exemptions**

- (1) This Division does not apply in relation to—
  - (a) an employer employing a person for purposes not connected with a business carried on by the employer; or
  - (b) a principal engaging a natural person as an independent contractor for purposes not connected with a business carried on by the principal.
- (2) This Division does not apply to discrimination on the ground of age in relation to employment or engagement for which there is a genuine occupational requirement that a person be of a particular age, or age group.
- (3) This Division does not apply to discrimination on the ground of age in relation to the employment or engagement of a person if the person is not, or would not be, able—
  - (a) to perform adequately, and without endangering himself or herself 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.
- (4) This Division does not render unlawful—
  - (a) acts done in order to comply with the provisions of—
    - (i) an award or enterprise agreement under the *Fair Work Act 1994*; or
    - (ii) a fair work instrument under the *Fair Work Act 2009* of the Commonwealth; or
    - (iii) an award or determination given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth; or
  - (b) a decision to offer employment only to a young person, or the employment of a young person, where the rate of pay for that employment is a rate less than that applicable to an adult, fixed by or in accordance with the provisions of—
    - (i) an award or enterprise agreement under the *Fair Work Act 1994*; or
    - (ii) a fair work instrument under the *Fair Work Act 2009* of the Commonwealth; or

- (iii) an award or determination given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* of the Commonwealth.

### **Division 3—Discrimination by other bodies**

#### **85G—Discrimination by associations on ground of age**

- (1) It is unlawful for an association to discriminate—
  - (a) against an applicant for membership on the ground of age—
    - (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or
    - (ii) in the terms on which the applicant 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 age—
    - (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; or
    - (iii) by expelling that member from the association or subjecting him or her to other detriment.
- (2) Subsection (1)(a) does not apply to discrimination on the ground of age if the association has, on a genuine and reasonable basis, established different classes of membership for persons of different ages, or age groups.
- (3) Subsection (1)(b)(i) and (ii) do not apply to discrimination on the ground of age if it is reasonable that the association discriminate in relation to the provision of a particular service or benefit to members of a particular age, or age group.
- (4) This section does not apply to an association established wholly or mainly for—
  - (a) the promotion of the interests of persons of a particular age group; or
  - (b) the organisation or provision of services for persons of a particular age group; or
  - (c) the organisation or provision of activities for persons of a particular age group.

#### **85H—Discrimination by qualifying bodies**

- (1) It is unlawful for an authority or body empowered to confer an authorisation 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 age—
  - (a) by refusing or failing to confer or renew that authorisation or qualification; or
  - (b) by withdrawing the authorisation or qualification.



- (2) This section does not apply to discrimination on the ground of age—
  - (a) by or on account of the imposition of a reasonable and appropriate minimum age under which an authorisation or qualification will not be conferred; or
  - (b) in respect of the terms or conditions on which an authority or body confers or renews an authorisation or qualification.
- (3) This section does not apply to discrimination against a person on the ground of age where, in consequence of his or her age, the person 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 4—Discrimination in education**

### **85I—Discrimination by educational authorities**

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of age—
  - (a) by refusing or failing to accept an application for admission as a student; or
  - (b) in the terms or conditions on which it offers to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of age—
  - (a) in the terms or conditions on which it provides the student with training or education; or
  - (b) by denying or limiting access to a benefit provided by the authority; or
  - (c) by expelling the student; or
  - (d) by subjecting the student to other detriment.
- (3) This section does not apply to discrimination on the ground of age in respect of the admission of a person to a school, college or institution if the level of education or training sought by the person is provided only for students above a particular age.

## **Division 5—Discrimination in relation to land, goods, services and accommodation**

### **85J—Discrimination by person disposing of an interest in land**

It is unlawful for a person to discriminate against another on the ground of age—

- (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.

### **85K—Discrimination in provision of goods and services**

- (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 discriminate against another on the ground of age—

- (c) by refusing or failing to supply the goods or to perform the services; or
  - (d) in the terms or conditions on which or the manner of which the goods are supplied or the services are performed.
- (3) This section does not apply to discrimination on the ground of age in relation to—
- (a) the charging of a reduced fee, fare or price, or no fee, fare or price, for the benefit of a particular age group if the concession is based on genuine and reasonable grounds; or
  - (b) the terms or conditions on which—
    - (i) a ticket is issued; or
    - (ii) admission is allowed to a place,if those terms or conditions are imposed on a genuine and reasonable basis for the benefit of a particular age group.

### **85L—Discrimination in relation to accommodation**

- (1) It is unlawful for a person to discriminate against another on the ground of age—
- (a) in terms or conditions on which accommodation is offered; or
  - (b) by refusing an application for accommodation; or
  - (c) by deferring such an application or according the applicant a later order of precedence on a list of applicants for that accommodation.
- (3) It is unlawful for a person to discriminate against a person for whom accommodation has been provided on the ground of age—
- (a) in the terms or conditions on which accommodation is provided; or
  - (b) by denying or limiting access to a benefit connected with the accommodation; or
  - (c) by evicting the person; or
  - (d) by subjecting the person to other detriment.
- (4) This section does not apply to discrimination on the ground of age in relation to the provision of accommodation by an organisation that does not seek to secure a pecuniary profit for its members, if the accommodation is provided only for persons of a particular age group.
- (5) This section does not apply—
- (a) in relation to the provision of accommodation for recreational purposes if the use of that accommodation is limited, on a genuine and reasonable basis, to persons of a particular age group; or
  - (b) in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.

## **Division 6—General exemptions from Part 5A**

### **85M—Legal capacity of children**

Nothing in this Part derogates from the operation of a law that relates to the juristic capacity of children.

### **85N—Charities**

This Part does not—

- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly on persons of a particular age, or age group; or
- (b) render unlawful an act done to give effect to such a provision.

### **85O—Testamentary dispositions or gifts**

This Part does not apply to the disposal of an interest in land or goods, or the provision of services, by way of, or pursuant to, a testamentary disposition or gift.

### **85P—Projects for the benefit of persons of a particular age group**

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 age or age group in order to meet a need that arises out of, or that is related to, the age or ages of those persons.

### **85Q—Sport**

This Part does not render unlawful the exclusion of persons of particular age groups from participation in a competitive sporting activity.

### **85R—Insurance etc**

- (1) This Part does not render unlawful discrimination on the ground of age—
  - (a) in the terms on which an annuity or life insurance is offered or may be obtained; or
  - (b) —
    - (i) in the terms on which a person may become a member of a superannuation scheme or provident fund; or
    - (ii) in the manner in which a superannuation scheme or provident fund may be administered.
- (2) This Part does not render unlawful discrimination on the ground of age in the terms on which accident insurance or any other form of insurance (other than life insurance) is offered or may be obtained where the discrimination—
  - (a) is based on actuarial or statistical data from a source on which it is reasonable to rely; and
  - (b) is reasonable having regard to the data.



## Part 5B—Prohibition of discrimination on other grounds

### Division 1—Discrimination to which Part 5B applies

#### 85T—Criteria for establishing discrimination on other grounds

(1) In this Part—

*discriminate* means—

- (a) discriminate on the ground of marital or domestic partnership status; or
- (b) discriminate on the ground of the identity of a spouse or domestic partner; or
- (c) discriminate on the ground of pregnancy; or
- (d) discriminate on the ground of association with a child; or
- (e) discriminate on the ground of caring responsibilities; or
- (f) discriminate on the ground of religious appearance or dress,

and *discrimination* has a corresponding meaning.

(2) For the purposes of this Act, a person discriminates on the ground of marital or domestic partnership status—

- (a) if he or she treats another unfavourably because of the other's marital or domestic partnership status or past or proposed marital or domestic partnership status; or
- (b) if he or she treats another unfavourably because the other 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 or domestic partnership status comply, or are able to comply, with the requirement than of those of the other's marital or domestic partnership status; and
  - (ii) the requirement is not reasonable in the circumstances of the case; or
- (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons of that marital or domestic partnership status, or on the basis of a presumed characteristic that is generally imputed to persons of that marital or domestic partnership status; or
- (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

(3) For the purposes of this Act, a person discriminates on the ground of the identity of a spouse or domestic partner if he or she treats another unfavourably because of the identity of the other's spouse or domestic partner, or former or proposed spouse or domestic partner.

(4) For the purposes of this Act, a person discriminates on the ground of pregnancy—

- (a) if he or she treats a woman unfavourably because of her pregnancy or potential pregnancy; or

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- (b) if he or she treats a pregnant woman unfavourably because 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 comply, or are 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 or she treats a pregnant woman unfavourably on the basis of a characteristic that appertains generally to pregnant women, or on the basis of a presumed characteristic that is generally imputed to pregnant women; or
  - (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.
- (5) For the purposes of this Act, a person discriminates on the ground of association with a child—
- (a) if he or she treats another unfavourably because the person is breast feeding or bottle feeding an infant, or proposes to do so, or is, or proposes to be, accompanied by a child; or
  - (b) if he or she treats another unfavourably because a relative or associate of the other is breast feeding or bottle feeding an infant, or proposes to do so, or is, or proposes to be, accompanied by a child.
- (6) For the purposes of this Act, a person discriminates on the ground of caring responsibilities—
- (a) if he or she treats another unfavourably because of the other's caring responsibilities or proposed caring responsibilities; or
  - (b) if he or she treats another unfavourably because the other 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 without caring responsibilities comply, or are able to comply, with the requirement than of those with caring responsibilities; and
    - (ii) the requirement is not reasonable in the circumstances of the case; or
  - (c) if he or she treats another unfavourably on the basis of a characteristic that appertains generally to persons with caring responsibilities, or on the basis of a presumed characteristic that is generally imputed to persons with caring responsibilities; or
  - (d) if he or she treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.
- (7) For the purposes of this Act, a person discriminates on the ground of religious appearance or dress—
- (a) if he or she treats another unfavourably because of the other's appearance or dress and that appearance or dress is required by, or symbolic of, the other's religious beliefs; or

- (b) if he or she requires a person to alter the person's appearance or dress and that appearance or dress is required by, or symbolic of, the other's religious beliefs; or
- (c) if he or she treats another unfavourably because of the appearance or dress of a relative or associate of the other and that appearance or dress is required by, or symbolic of, the relative or associate's religious beliefs.

## **Division 2—Discrimination against workers**

### **85U—Application of Division**

This Division applies to discrimination on the ground of marital or domestic partnership status, identity of spouse or domestic partner, pregnancy, caring responsibilities or religious appearance or dress.

### **85V—Discrimination against applicants and employees**

- (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 employment is offered.
- (2) It is unlawful for an employer to discriminate against an employee—
  - (a) in the terms or conditions of employment; or
  - (b) by denying or limiting access to opportunities for promotion, transfer or training, or to other benefits connected with employment; or
  - (c) by dismissing the employee; or
  - (d) by subjecting the employee to other detriment.

### **85W—Discrimination against agents and independent contractors**

- (1) This section applies to a principal for whom work is done—
  - (a) by agents remunerated by commission; or
  - (b) by independent contractors engaged under a contract for services.
- (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 independent contractor; or
  - (b) in the terms or conditions on which such an engagement is offered.
- (3) It is unlawful for the principal to discriminate against an agent or independent contractor—
  - (a) in the terms or conditions on which the agent or independent contractor is engaged; or
  - (b) by denying or limiting access to opportunities for promotion, transfer or training or other benefits connected with the agent's or independent contractor's position; or
  - (c) by terminating the engagement; or

- (d) by subjecting the agent or independent contractor to other detriment.

### **85X—Discrimination against contract workers**

- (1) This section applies to a principal for whom work is done by persons (*contract workers*) under a contract between the principal and another where the contract workers are employed or engaged by a person other than the principal.
- (2) It is unlawful for a principal to enter into a contract or arrangement with another for work to be performed by contract workers under which a person is to discriminate against a contract worker.
- (3) It is unlawful for the principal to discriminate against a contract worker—
  - (a) in the terms or conditions on which the contract worker is allowed to work; or
  - (b) by not allowing the contract worker to work; or
  - (c) by denying or limiting access to a benefit connected with the employment or position concerned; or
  - (d) by subjecting the contract worker to other detriment.

### **85Y—Discrimination within partnerships**

- (1) It is unlawful for a firm, or a person promoting the formation of a firm, to discriminate against a person—
  - (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 to discriminate against a partner—
  - (a) in the terms or conditions of membership of the firm; or
  - (b) by denying or limiting access to a benefit arising from membership of the firm; or
  - (c) by expelling the partner from the firm; or
  - (d) by subjecting the partner to other detriment.

### **85Z—Exemptions**

- (1) This Division does not apply in relation to—
  - (a) an employer employing a person for purposes not connected with a business carried on by the employer; or
  - (b) a principal engaging a natural person as an independent contractor for purposes not connected with a business carried on by the principal.
- (2) This Division does not apply to discrimination against same sex domestic partners on the ground of marital or domestic partnership status in relation to employment or engagement for the purposes of an educational institution administered in accordance with the precepts of a particular religion if Part 3 Division 2 does not apply in relation to discrimination on the ground of sexual orientation in relation to the employment or engagement (see section 34(3)).



- (3) This Division does not apply to discrimination against a pregnant woman on the ground of pregnancy if—
- (a) the discrimination is based on the fact that the woman is not, or would not be, able—
    - (i) to perform adequately, and without endangering herself, the unborn child or other persons, the work genuinely and reasonably required of her; or
    - (ii) to respond adequately to situations of emergency that should reasonably be anticipated in connection with her duties; and
  - (b) in the case of discrimination arising out of dismissal from employment—
    - (i) there is no other work that the employer could reasonably be expected to offer the woman; and
    - (ii) the woman has been offered leave for the period that would result in her being unable—
      - (A) to perform adequately, and without endangering herself, the unborn child or other persons, the work genuinely and reasonably required of her; or
      - (B) to respond adequately to situations of emergency that should reasonably be anticipated in connection with her duties,and the woman has declined to take the leave.
- (4) This Division does not apply to discrimination on the ground of religious appearance or dress if, by reason of the person's appearance or dress, the person is not, or would not be, able—
- (a) to perform adequately, and without endangering himself or herself 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.
- (5) This Division does not apply to discrimination on the ground of religious appearance or dress in relation to employment or engagement if the discrimination is for the purposes of enforcing a standard of appearance or dress reasonably required for the employment or engagement.

### **Division 3—Discrimination by other bodies**

#### **85ZA—Application of Division**

This Division applies to discrimination on the ground of marital or domestic partnership status, identity of spouse or domestic partner, pregnancy or caring responsibilities.

#### **85ZB—Discrimination by associations**

- (1) It is unlawful for an association to discriminate—
- (a) against an applicant for membership—

- (i) by refusing or failing to admit the applicant to membership, or to a particular class of membership, of the association; or
  - (ii) in the terms on which the applicant is, or may be, admitted to membership, or to a particular class of membership; or
- (b) against a member of the association—
  - (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; or
  - (iii) by expelling that member from the association or subjecting him or her to other detriment.
- (2) This section does not render unlawful an association established—
  - (a) for persons of a particular marital or domestic partnership status; or
  - (b) for spouses or domestic partners of a particular class; or
  - (c) for persons with caring responsibilities or particular caring responsibilities, and, consequently, such an association may discriminate against an applicant for membership so as to exclude from membership persons other than those for whom the association is established.
- (3) This section does not apply to discrimination against same sex domestic partners on the ground of marital or domestic partnership status if the association is administered in accordance with the precepts of a particular religion and the discrimination is founded on the precepts of that religion.

### **85ZC—Discrimination by qualifying bodies**

It is unlawful for an authority or body empowered to confer an authorisation 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—

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

## **Division 4—Discrimination in education**

### **85ZD—Application of Division**

This Division applies to discrimination on the ground of marital or domestic partnership status, identity of spouse or domestic partner, pregnancy, caring responsibilities or religious appearance or dress.

### **85ZE—Discrimination by educational authorities**

- (1) It is unlawful for an educational authority to discriminate against a person—
  - (a) by refusing or failing to accept an application for admission as a student; or

- (b) in the terms or conditions on which it offers to admit the person 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; or
  - (b) by denying or limiting access to a benefit provided by the authority; or
  - (c) by expelling the student; or
  - (d) by subjecting the student to other detriment.
- (3) This section does not apply to discrimination against a pregnant woman on the ground of pregnancy in respect of participation in a particular activity or admission as a student to a course requiring participation in a particular activity if the woman is not, or would not be, able—
  - (a) to perform adequately, and without endangering herself, the unborn child or other persons, the activity; or
  - (b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the activity.
- (4) This section does not apply to discrimination on the ground of religious appearance or dress in respect of participation in a particular activity if, by reason of the person's appearance or dress, the person is not, or would not be, able—
  - (a) to perform adequately, and without endangering himself or herself or other persons, the activity; or
  - (b) to respond adequately to situations of emergency that should reasonably be anticipated in connection with the activity.
- (5) This section does not render unlawful an act of discrimination by an educational authority administered in accordance with the precepts of a particular religion against a student or potential student because the student or potential student appears or dresses, or wishes to appear or dress, in a manner required by, or symbolic of, a different religion.

## **Division 5—Discrimination in relation to land, goods, services and accommodation**

### **85ZF—Discrimination by person disposing of interest in land**

- (1) This section applies to discrimination on the ground of marital or domestic partnership status, identity of spouse or domestic partner, pregnancy or caring responsibilities.
- (2) 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.
- (3) This section does not apply to the disposal of an interest in land by way of, or under, a testamentary disposition or gift.

### **85ZG—Discrimination in provision of goods and services**

- (1) This section applies to discrimination on the ground of marital or domestic partnership status, identity of spouse or domestic partner, pregnancy, association with a child or caring responsibilities.
- (2) 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 discriminate against another—
  - (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 the goods are supplied or the services are performed.

### **85ZH—Discrimination in relation to accommodation**

- (1) This section applies to discrimination on the ground of marital or domestic partnership status, identity of spouse or domestic partner, pregnancy or caring responsibilities.
- (2) It is unlawful for a person to discriminate against another—
  - (a) in the terms or conditions on which accommodation is offered; or
  - (b) by refusing an application for accommodation; or
  - (c) by deferring such an application or according the applicant a lower order of precedence on a list of applicants for that accommodation.
- (3) 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 accommodation is provided; or
  - (b) by denying or limiting access to a benefit connected with the accommodation; or
  - (c) by evicting the person; or
  - (d) by subjecting the person to other detriment.
- (4) This section does not apply to discrimination in relation to the provision of accommodation if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.
- (5) This section does not apply to discrimination on the ground of marital or domestic partnership status, pregnancy or caring responsibilities in relation to the provision of accommodation by an organisation that does not seek to secure a pecuniary profit for its members, if that accommodation is provided only for persons of a particular marital or domestic partnership status, pregnant women or persons with caring responsibilities.

## **Division 6—General exemptions from Part 5B**

### **85ZI—Charities**

This Part does not—

- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly on—
  - (i) persons of a particular marital or domestic partnership status; or
  - (ii) pregnant women; or
  - (iii) spouses or domestic partners of persons of a particular class; or
  - (iv) persons with caring responsibilities or particular caring responsibilities; or
- (b) render unlawful an act done to give effect to such a provision.

### **85ZJ—Rights in connection with pregnancy**

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

### **85ZK—Measures intended to achieve equality**

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 a particular marital or domestic partnership status, or persons with caring responsibilities, have equal opportunities with, respectively, persons of another marital or domestic partnership status, or persons without caring responsibilities, in any of the circumstances to which this Part applies.

### **85ZL—Exemption relating to identity of spouse or domestic partner**

This Part does not apply to discrimination on the ground of the identity of a spouse or domestic partner if the discrimination is, having regard to all the circumstances of the particular case, reasonably necessary to preserve confidentiality, avoid conflicts of interest or nepotism or reasonably apprehended conflicts of interest or nepotism or protect the health or safety of persons.

### **85ZM—Religious bodies**

This Part does not render unlawful discrimination on the ground of marital or domestic partnership status in relation to—

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

**85ZN—Exemption relating to religious appearance or dress**

This Part does not apply to discrimination on the ground of religious appearance or dress if the discrimination arises as a consequence of a person refusing to reveal his or her face in circumstances in which the person has been requested to do so for the purpose of verifying the identity of the person, and the request was reasonable in the circumstances.

## Part 6—Other unlawful acts

### 86—Victimisation is unlawful

- (1) It is unlawful for a person to commit an act of victimisation.
- (2) For the purposes of this section, a person commits an act of victimisation against another person (the *victim*) if he or she treats the victim unfavourably on the ground that the victim has—
  - (a) brought proceedings under this Act against a person; or
  - (b) given evidence or information in proceedings under this Act; or
  - (c) made allegations that the victim or some other person has been the subject of an act that contravenes this Act; or
  - (d) reasonably asserted the victim's right or the right of some other person to lodge a complaint or take other proceedings under this Act; or
  - (e) otherwise done anything under or by reference to this Act,or on the ground that he or she knows that the victim intends to do any of those things, or suspects that the victim has done, or intends to do, any of those things.
- (3) Unfavourable treatment on the ground that a person—
  - (a) has made a false allegation; or
  - (b) has not acted in good faith,does not constitute an act of victimisation.

### 87—Sexual harassment

- (1) It is unlawful for a person to subject to sexual harassment—
  - (a) a person with whom he or she works; or
  - (b) a person who is seeking to become a fellow worker,while in attendance at a place that is a workplace of both the persons or in circumstances where the person was, or ought reasonably to have been, aware that the other person was a fellow worker or seeking to become a fellow worker.
- (2) It is unlawful for a person who works for an educational authority to subject a student of the educational authority, or a person applying to become a student of the educational authority, to sexual harassment while in attendance at a place in connection with the student's education or the applicant's prospective education or in circumstances where the person was, or ought reasonably to have been, aware that the person was a student, or a person applying to become a student, of the educational authority.
- (3) It is unlawful for a student of or over 16 years of age, while in attendance at a place in connection with his or her education, to subject a person who works at the educational institution at which the student is enrolled or a fellow student 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; or

- (b) offering or performing services to which this Act applies for that other person; or
  - (c) offering or providing accommodation to that other person.
- (6aa) It is unlawful for a person to whom goods, services to which this Act applies or accommodation are being offered, supplied, performed or provided by another person to subject that other person to sexual harassment.
- (6a) It is unlawful for a judicial officer to subject to sexual harassment a non-judicial officer, or a member of the staff, of a court of which the judicial officer is a member.
- (6b) Subsection (6a) does not apply in relation to anything said or done by a judicial officer in court or in chambers in the exercise, or purported exercise, of judicial powers or functions or in the discharge, or purported discharge, of judicial duties (but conduct occurring in such circumstances may be the subject of a complaint under the *Judicial Conduct Commissioner Act 2015*).
- (6c) It is unlawful for a member of Parliament to subject to sexual harassment—
  - (a) a member of his or her staff; or
  - (b) a member of the staff of another member of Parliament; or
  - (c) an officer or member of the staff of the Parliament; or
  - (d) any other person who in the course of employment performs duties at Parliament House.
- (6d) Subsection (6c) does not apply in relation to anything said or done by a member of Parliament in the course of parliamentary proceedings.
- (6e) It is unlawful for a member of a council to subject to sexual harassment an officer or employee of the council.
- (6f) It is unlawful for a member of an authority or body empowered to confer an authorisation 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 subject an applicant for the conferral of such an authorisation or qualification to sexual harassment.
- (6g) It is unlawful for a member of the governing body of an association to subject a member of the association, or a person applying to become a member of the association, to sexual harassment.
- (7) If an employee reports to his or her employer specific circumstances in which the employee was subjected, in the course of his or her employment, to sexual harassment by a person other than a fellow worker, and it is reasonable in all the circumstances to expect that further sexual harassment of the employee by the same person is likely to occur, it is unlawful for the employer to fail to take reasonable steps to prevent the further sexual harassment.
- (8) It is unlawful for an educational authority administering a secondary education institution to fail to have a written policy against sexual harassment by students that incorporates procedures for resolving complaints and is made readily available to students.
- (9) For the purposes of this section—
  - (a) a person *sexually harasses* another (the *person harassed*) if—



- (i) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
  - (ii) engages in other unwelcome conduct of a sexual nature in relation to the person harassed,  
in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated; and
- (b) *conduct of a sexual nature* includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing; and
  - (c) a person *works with another* if both carry out duties or perform functions, in whatever capacity and whether for payment or not, in or in relation to the same business or organisation; and
  - (d) a person *works for* an authority if he or she carries out duties or performs functions, in whatever capacity and whether for payment or not, in or in relation to that authority; and
  - (e) *workplace* means a place (including a ship, aircraft or vehicle) at which a person works or attends in connection with the person's work.

#### **87A—Sharing accommodation with child**

- (1) It is unlawful for a person—
  - (a) to refuse an application for accommodation; or
  - (b) to defer such an application or accord the applicant a late order of precedence on a list of applicants for that accommodation,  
on the ground that the applicant intends to share that accommodation with a child.
- (2) Subsection (1) does not apply—
  - (a) in relation to the provision of accommodation for recreational purposes, if the use of that accommodation is limited, on a genuine and reasonable basis, to persons other than children or persons of a particular age group; or
  - (b) in relation to the provision of accommodation, if the person who provides, or proposes to provide, the accommodation, or a near relative of that person, resides, and intends to continue to reside, in the same household as the person requiring the accommodation.

#### **87B—Student breast feeding infant**

- (1) It is unlawful for an educational authority to discriminate against a student by denying or limiting access to the educational services provided by the authority on the ground that the student is breast feeding an infant or proposes to do so.
- (2) This section does not apply to discrimination in respect of a particular activity if the student is not, or would not be, able—
  - (a) to perform adequately, and without endangering herself or other persons, the activity; or

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

### **88—Assistance animals**

Subject to this Act—

- (a) it is unlawful to impose a condition or requirement that would result in a person with a disability being separated from his or her assistance animal; and
- (b) a person who imposes such a condition or requirement is, in addition to civil liability that might be incurred under this Act, guilty of an offence.

Maximum penalty: \$2 500.

### **88A—Therapeutic animals**

- (1) It is unlawful for a person—

- (a) to refuse an application for accommodation; or
- (b) to defer such an application or accord the applicant a late order of precedence on a list of applicants for that accommodation,

on the ground that the applicant intends to keep a therapeutic animal at that accommodation.

- (2) Subsection (1)(a) does not apply if the respondent establishes that in the circumstances of the case the refusal was reasonable.

- (3) In this section—

*therapeutic animal* means—

- (a) an animal certified by a medical practitioner as being required to assist a person as a consequence of the person's disability; or
- (b) an animal of a class prescribed by regulation,

but does not include an assistance animal, a dangerous dog within the meaning of the *Dog and Cat Management Act 1995* or a dog of a prescribed breed within the meaning of the *Dog and Cat Management Act 1995*.

### **89—Notification to be given of proposed discrimination based on actuarial or statistical data**

If a person, in offering or providing insurance or a superannuation scheme or provident fund, proposes to discriminate against another 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 the person—

- (a) to fail to notify the other person of the discrimination and of the fact that he or she 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.

## **90—Aiding unlawful acts**

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

## **91—Civil liability of employers and principals**

- (1) Subject to this section, a person is, for the purposes of this Act, vicariously liable for a discriminatory or unlawful act of an agent or employee of the person committed while acting in the course of their agency or employment.
- (2) In proceedings brought under this Act against a person in respect of an act alleged to have been committed by an agent or employee while acting in the course of their agency or employment, it is a defence to prove that the person took reasonable steps to ensure that the agent or employee would not act in contravention of this Act.
- (3) Without limiting subsection (2), a defence is established under that subsection in relation to an alleged discriminatory or unlawful act if the person—
  - (a) had in force at the relevant time an appropriate policy for the prevention of such an act; and
  - (b) had taken reasonable steps to implement and enforce the policy including—
    - (i) reasonable steps to make the employees and agents of the person aware of the terms of the policy; and
    - (ii) prompt investigation of any alleged act and taking appropriate action.



## Part 7—Grant of exemptions

### 92—The Tribunal may grant exemptions

- (1) The Tribunal may, on application under this section, grant exemptions from a provision of this Act in relation to—
  - (a) a person, or class of persons; or
  - (b) an activity, or class of activity; or
  - (c) circumstances of a specified nature.
- (2) An exemption under this section—
  - (a) may be granted unconditionally or on conditions; and
  - (b) may be revoked by the Tribunal on breach of a condition; and
  - (c) subject to revocation, remains 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 are entitled to appear and be heard by the Tribunal on an application under this section:
  - (a) the applicant;
  - (b) if the Commissioner is not the applicant—the Commissioner;
  - (c) a 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 other factors that the Tribunal considers relevant.
- (7) Notice of the grant, renewal or revocation of an exemption under this section must 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 8—Enforcement**

### **Division 1—Proceedings before Commissioner and Tribunal**

#### **93—Making of complaints**

- (1) A complaint alleging that a person has acted in contravention of this Act may be made—
  - (a) by a person aggrieved by the act;
  - (b) by a person aggrieved by the act, on behalf of himself or herself and any other person aggrieved by the act;
  - (c) if a person aggrieved by the act is a child or has an intellectual disability—by a person who is, in the opinion of the Commissioner, a suitable representative of the interests of the aggrieved person.
- (1a) A person cannot make a complaint pursuant to subsection (1)(b) on behalf of some other person unless that other person has consented in writing to the making of the complaint.
- (1b) A person who consents to a complaint being made on his or her behalf is bound by any decision or order made on the complaint.
- (1c) A complaint—
  - (a) must be in writing and set out the details of the alleged contravention; and
  - (b) must be lodged with the Commissioner.
- (2) A complaint must be lodged—
  - (a) if the alleged contravention is constituted of a series of acts—within 12 months of the last of those acts;
  - (b) in any other case—within 12 months of the date on which the contravention is alleged to have been committed.
- (2a) The Commissioner may, on application, extend the time for lodging a complaint, even if the time for lodging the complaint has expired, if the Commissioner is satisfied—
  - (a) that there is good reason why the complaint was not made within the stipulated time period; and
  - (b) that in all the circumstances it is just and equitable to do so.
- (2b) If the Commissioner decides to refuse an application to extend the time for lodging a complaint, the Commissioner must give the applicant notice in writing of the decision and of the applicant's right to have the decision reviewed.
- (2c) A complaint alleging that a student enrolled in a course of secondary education has committed an act of sexual harassment or victimisation against a fellow student of the educational institution at which the student is enrolled may not be lodged unless the complainant satisfies the Commissioner that the complainant has made a reasonable attempt to resolve the matter through procedures available at the institution or that there is good reason for not doing so.

- (3) On a complaint being lodged under this section, the Commissioner must cause a written summary of the particulars of the complaint to be served on the respondent named in the complaint.

**93AA—Manner of dealing with complaints of sexual harassment by judicial officers and members of Parliament**

- (1) If a complaint alleging that a judicial officer or a member of Parliament has acted in contravention of section 87 is lodged with the Commissioner, the following provisions apply:
- (a) the Commissioner must refer the complaint to the appropriate authority;
  - (b) if the appropriate authority is of the opinion that dealing with the complaint under this Act could impinge on judicial independence or parliamentary privilege, as the case may be, the appropriate authority will investigate and may deal with the matter in such manner as the appropriate authority thinks fit;
  - (c) on the appropriate authority giving the Commissioner written notice that a complaint is to be dealt with under paragraph (b)—
    - (i) no further action can be taken under any other provision of this Act on the complaint; and
    - (ii) the Commissioner must give the complainant and the respondent written notice that the complaint will be dealt with by the appropriate authority;
  - (d) on the appropriate authority giving the Commissioner written notice that a complaint will not be dealt with under paragraph (b), the Commissioner may proceed to deal with the complaint under this Act;
  - (e) a notice must be given under paragraph (c) or (d) by the appropriate authority no later than one month after the referral of a complaint to the appropriate authority;
  - (f) the Commissioner may at the request of the appropriate authority—
    - (i) assist the authority in investigating a complaint that is to be dealt with under paragraph (b); or
    - (ii) attempt to resolve the subject matter of such a complaint by conciliation;
  - (g) if the Commissioner is to act under paragraph (f), the appropriate authority must give the complainant and the respondent written notice that the Commissioner is to so act;
  - (h) if the Commissioner attempts to resolve the subject matter of a complaint by conciliation but is not successful in that attempt, the Commissioner may make recommendations to the appropriate authority regarding resolution of the matter;



- (i) if, after investigating a complaint under paragraph (b), the appropriate authority considers that the complaint can be dealt with under this Act without impinging on judicial independence or parliamentary privilege (as the case may be), the appropriate authority must remit the complaint to the Commissioner, and, in that case, the Commissioner may proceed to deal with the complaint under this Act;
  - (j) if a complaint is remitted to the Commissioner under paragraph (i), the Commissioner must give the complainant and respondent written notice that the complaint is to be dealt with by the Commissioner;
  - (k) the appropriate authority must give the complainant and the Commissioner written notice of the manner in which the appropriate authority has dealt with a complaint under paragraph (b).
- (2) For the purposes of investigating a complaint that is to be dealt with by the appropriate authority under this section, the authority has the same investigative powers as are conferred on the Commissioner by section 94 in relation to the investigation of a complaint by the Commissioner.
- (3) For the purposes of conciliating a complaint under this section, the Commissioner has the same powers as are conferred on the Commissioner by section 95 in relation to the conduct of conciliation proceedings under that section.
- (4) No personal liability attaches to the appropriate authority for an act or omission in good faith and in the exercise, or purported exercise, or the discharge, or purported discharge, of powers or duties under this section.
- (5) A liability that would, but for subsection (4), lie against the appropriate authority lies instead against the Crown.
- (8) In this section—

***appropriate authority*** means—

- (a) in relation to a complaint against a judicial officer—
  - (i) the Chief Justice; or
  - (ii) if the Chief Justice is the respondent or considers it inappropriate that he or she should deal with the matter—the most senior puisne judge of the Supreme Court who is not the respondent, is available to deal with the matter and does not consider it inappropriate that he or she should deal with the matter;
- (b) in relation to a complaint against a member of the House of Assembly—
  - (i) the Speaker of the House of Assembly; or
  - (ii) if the Speaker is absent or unable for the time being to perform the duties of office, or is the respondent or considers it inappropriate that he or she should deal with the matter—the Deputy Speaker of the House of Assembly; or

- (iii) if the Deputy Speaker is absent or unable for the time being to perform the duties of office, or is the respondent or considers it inappropriate that he or she should deal with the matter—a member of the House of Assembly who is not the respondent in the matter and who is appointed by the House of Assembly to deal with the complaint;
- (c) in relation to a complaint against a member of the Legislative Council—
  - (i) the President of the Legislative Council; or
  - (ii) if the President is absent or unable for the time being to perform the duties of office, or is the respondent or considers it inappropriate that he or she should deal with the matter—the member of the Legislative Council for the time being appointed by the Legislative Council to deal with such a complaint; or
  - (iii) if that member is absent or unable for the time being to perform the duties of office, or is the respondent or considers it inappropriate that he or she should deal with the matter—a member of the Legislative Council who is not the respondent and who is appointed by the Legislative Council to deal with the complaint.

### **93A—Institution of inquiries**

- (1) If it appears to the Tribunal, on application made by the Commissioner with the approval of the Minister, that a person may have acted in contravention of this Act, the Tribunal may refer the matter to the Commissioner for investigation.
- (2) The person the subject of an application under this section is a party to the application and the Commissioner must, on lodging the application with the Tribunal, furnish the person with a copy of the application.
- (3) This section does not apply in relation to an alleged contravention of section 87 by a judicial officer or a member of Parliament.

### **94—Investigation of complaints or matters referred to Commissioner**

- (1) On a complaint being lodged or a matter being referred, the Commissioner may conduct an investigation into the alleged contravention.
- (2) An investigation by the Commissioner into an alleged contravention of this Act is to be conducted—
  - (a) in the case of an investigation on a complaint—for the purpose of enabling the Commissioner to determine whether the complaint is one on which action should be taken by the Commissioner and, if so, enabling resolution of the matter by conciliation or enabling referral of the matter to the Tribunal; and
  - (b) in the case of a matter referred to the Commissioner for investigation—for the purpose of enabling the Commissioner to determine whether the matter should be referred to the Tribunal and, if so, enabling that referral.

- (2a) For the purposes of an investigation, the Commissioner may, by notice in writing, require a person whom the Commissioner reasonably believes may have in his or her possession or control books, papers or other documents relevant to the subject matter of the investigation, to produce to the Commissioner such of those books, papers or other documents as may be specified in the notice.
- (2b) The Commissioner cannot, without the consent of the person concerned, require production of—
- (a) records of counselling or therapy sessions undergone by the person; or
  - (b) records or notes made by an advocate for the person in relation to the subject matter of the alleged contravention of the Act.
- (3) Subject to subsection (4), a person to whom a notice is given under subsection (2a) must not refuse or fail to comply with the notice.  
Maximum penalty: \$2 500.
- (4) A person is not obliged to produce books, papers or documents under this section if—
- (a) their contents would tend to incriminate the person of an offence; or
  - (b) by producing them the person would commit a breach of legal professional privilege.
- (5) The Commissioner may retain books, papers or documents produced under this section only for so long as is reasonably necessary to peruse their contents and take copies of them.
- (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 a place other than the premises from which the business is operated.
- (7) This section does not empower the Commissioner to require the production of books, papers or documents relating to—
- (a) parliamentary proceedings; or
  - (b) the exercise, or purported exercise, of judicial powers or functions, or the discharge, or purported discharge, of judicial duties, by a judicial officer in court or in chambers.

### **95—Conciliation of complaints lodged with Commissioner**

- (1) If the Commissioner is of the opinion that a matter the subject of a complaint (other than a complaint declined by the Commissioner under section 95A) may be resolved by conciliation, the Commissioner must make all reasonable endeavours to resolve the matter by conciliation.
- (2) If the Commissioner—
- (a) has received more than 1 complaint against the same respondent alleging the same or similar issues of law or fact; and
  - (b) is of the opinion that the most appropriate form of conciliation is by way of joint conciliation,
- the Commissioner may conciliate the matters jointly.

- (3) The Commissioner may, by notice in writing to the complainant or the person who is alleged to have contravened this Act, require that person to attend at a time and place specified in the notice for the purpose of conciliation.
- (4) A person who refuses or fails to comply with a requirement of the Commissioner under this section is guilty of an offence.  
Maximum penalty: \$2 500.
- (5) The Commissioner may conduct conciliation proceedings as the Commissioner thinks fit, including—
  - (a) by conciliating the matter without bringing the parties into direct contact with one another; and
  - (b) by inviting persons other than the parties to attend the conciliation proceedings (for example, by inviting representatives of an educational authority to attend conciliation proceedings in a case involving sexual harassment between students).
- (6) A party to proceedings is not entitled to be represented, or assisted, by a legal practitioner in conciliation proceedings except with the authority of the Commissioner.
- (7) If a child is a party to proceedings, the child is entitled to be supported in conciliation proceedings by an adult who, in the opinion of the Commissioner, would be of assistance in that role.
- (8) For the purposes of conciliating a matter, the Commissioner may make available to a particular party to the proceedings books, papers or documents produced by other persons for the purposes of an investigation that are likely, in the Commissioner's opinion, to facilitate resolution of the matter (but the Commissioner must not make records referred to in section 94(2b), or other documents containing confidential or personal information, available without the consent of the person concerned).
- (9) Evidence of anything said or done in the course of conciliation proceedings is not admissible in proceedings under this Act or any other Act or law.

#### **95A—Commissioner may decline complaints in certain circumstances**

- (1) The Commissioner may, by notice in writing to the complainant, decline to recognise a complaint as one on which action should be taken by the Commissioner if, in the opinion of the Commissioner—
  - (a) the complaint is frivolous, vexatious, misconceived or lacking in substance; or
  - (b) the complaint has ceased to be a complaint that should be proceeded with because the complainant—
    - (i) has died; or
    - (ii) is unable to be contacted; or
    - (iii) has expressed an intention not to proceed, or otherwise evidenced a lack of interest in proceeding, with the complaint; or
    - (iv) has unreasonably refused or failed to cooperate; or

- (c) there is no reasonable prospect of an order being made by the Tribunal under section 96(1) or of an order being made by the Tribunal that is more favourable to the complainant than offers refused by the complainant in conciliation proceedings.
- (2) A decision by the Commissioner not to recognise a complaint as one on which action should be taken may be made at any time, despite the fact that to some extent action has already been taken on the complaint.
- (3) If—
- (a) the Commissioner has determined that a complaint has ceased to be a complaint that should be proceeded with under subsection (1)(b); and
  - (b) the complainant contacts the Commissioner within 12 months after the date of that determination requesting that the complaint proceed,
- the Commissioner may reinstate the complaint.

### **95B—Referral of complaints to Tribunal**

If, in respect of a complaint, the Commissioner—

- (a) is of the opinion that the matter cannot be resolved by conciliation; or
- (b) has attempted to resolve the matter by conciliation but has not been successful in that attempt; or
- (ba) is of the opinion that the matter should be transferred to the Tribunal (whether or not there has been an attempt to resolve the matter by conciliation); or
- (c) has declined to recognise the complaint as one on which action should be taken and the complainant has, within 3 months of being notified of the Commissioner's decision, by notice in writing, required the Commissioner to refer the complaint to the Tribunal,

the Commissioner must refer the matter to the Tribunal for hearing and determination.

### **95C—Assistance to parties before Tribunal**

- (1) Subject to subsection (2), the Commissioner may, at the request of the complainant or respondent, provide representation for the complainant or respondent in proceedings before the Tribunal.
- (2) The Commissioner must apply available public funds judiciously taking into account—
- (a) the capacity of the complainant or respondent to represent himself or herself or provide his or her own representation; and
  - (b) the nature and circumstances of the alleged contravention of this Act; and
  - (c) any other matter considered relevant by the Commissioner.
- (3) If the Commissioner provides representation to a complainant or respondent, the person representing the complainant or respondent—
- (a) must disclose to the Commissioner information reasonably required by the Commissioner to determine whether the Commissioner should cease to provide representation; and

- (b) may disclose to the Commissioner information that the person considers relevant to the question of whether the Commissioner should cease to provide representation,

and the complainant or respondent will be taken to have waived any right or privilege that might prevent such disclosure.

### **95D—Referral of matters to Tribunal**

- (1) If, following an investigation of a matter referred to the Commissioner, the Commissioner is of the opinion that the matter should be referred to the Tribunal for hearing and determination, the Commissioner will lodge a complaint with the Tribunal in respect of the matter.
- (2) If, following an investigation of a matter referred to the Commissioner, the Commissioner determines that the matter should not be referred to the Tribunal, the Commissioner must, by notice in writing to the person the subject of the investigation, inform the person of that determination.

### **96—Power of Tribunal to make certain orders**

- (1) The Tribunal may, on determining that the respondent in proceedings under this Part has acted in contravention of this Act, make one or more of the following orders:
  - (a) subject to this section, an order requiring the respondent to pay compensation (of such amount as the Tribunal thinks fit) to a person for loss or damage arising from the contravention;
  - (b) an order requiring the respondent to refrain from further contravention of the Act;
  - (c) an order requiring the respondent or any other party to the proceedings to perform specified acts with a view to redressing loss or damage arising from the contravention or remedying a discriminatory or unlawful act.
- (2) The Tribunal may, at any stage of proceedings under this Part—
  - (a) make an interim order to prevent prejudice to a person affected by the proceedings;
  - (b) make an order dismissing the proceedings.
- (3) The damage for which a person may be compensated under subsection (1) includes injury to his or her feelings.
- (3a) In awarding compensation the Tribunal must take into account the amount of damages or compensation (if any) awarded in other proceedings (criminal or civil) in respect of the same act or series of acts.
- (3b) An award of compensation may not be made against a child for an act in contravention of this Act (but an award of compensation may be made against a person who is vicariously liable for the act of the child).
- (4) A person who contravenes or fails to comply with an order under this section is guilty of an offence.  
Maximum penalty: \$5 000.
- (5) An amount that a person is ordered to pay under this section may be recovered from the person as a debt in a court of competent jurisdiction.

- (6) The Commissioner may, at the request or with the leave of the Tribunal, assist the Tribunal in proceedings.

#### **96A—Limitation on publicity relating to child**

A person must not publish, by radio, television or newspaper, on the Internet or in any other way, a report of proceedings under this Act to which a child is a party if the report identifies the child or contains information tending to identify the child.

Maximum penalty: \$10 000.

### **Division 2—Related matters**

#### **96B—Review of refusal to extend time**

- (1) If the Commissioner has refused an application for an extension of time within which to lodge a complaint, the applicant may apply to the Tribunal for a review of the decision.
- (2) An application for review must be made within 1 month after notification of the decision.
- (3) The Tribunal may confirm the decision of the Commissioner or substitute its own decision.

#### **97—Reasons for decision or order**

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





## Part 9—Miscellaneous

### 99—No further sanctions for breach of Act

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

### 100—Proceedings under *Fair Work Act 1994*

- (1) Nothing in this Act prevents a person who has been dismissed from employment from bringing proceedings in respect of that dismissal under the *Fair Work Act 1994*.
- (2) If a person brings proceedings under—
  - (a) Chapter 3 Part 6 of the *Fair Work Act 1994*; or
  - (b) Part 3-2 of the *Fair Work Act 2009* of the Commonwealth,in respect of dismissal from employment, and those proceedings are determined, that person cannot institute or prosecute proceedings under this Act in respect of that dismissal.
- (3) Subsection (2) does not apply if the proceedings under the *Fair Work Act 1994* or the *Fair Work Act 2009* of the Commonwealth are dismissed on a ground that does not relate to a ground of discrimination under this Act.
- (4) If a person brings proceedings under this Act in respect of dismissal from employment, and those proceedings are determined, that person cannot institute or prosecute proceedings under the *Fair Work Act 1994* in respect of the dismissal.
- (5) Subsection (4) does not apply if the proceedings under this Act are dismissed and the proceedings under the *Fair Work Act 1994* do not relate to a ground of discrimination under this Act.
- (6) The Commissioner may, with leave of the Tribunal in proceedings before the Tribunal under the *Fair Work Act 1994*, make submissions and present evidence in those proceedings.

### 102—Offences against Commissioner

A person must not molest, wilfully insult, hinder or obstruct the Commissioner, or an officer assisting the Commissioner, in the exercise or discharge by the Commissioner or the officer of official powers or duties.

Maximum penalty: \$5 000.

### 103—Discriminatory advertisements

- (1) A person must 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.  
Maximum penalty: \$2 500.
- (2) In proceedings for an offence against subsection (1), it is a defence to prove that the defendant believed on reasonable grounds that the publication of the advertisement would not contravene that subsection.

### **104—Service of documents**

A notice or document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may—

- (a) be given to the person personally; or
- (b) be posted in an envelope addressed to the person at the person's last known address; or
- (c) if the person is a party to proceedings under this Act, be transmitted to the person by fax or email to the fax number or email address last provided to the Commissioner by the person for that purpose; or
- (d) in the case of a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be given in accordance with that Act.

### **106—Regulations**

- (1) The Governor may make such regulations as are contemplated by or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), those regulations may—
  - (a) prescribe forms for the purposes of this Act; or
  - (b) exempt, conditionally or unconditionally, specified persons, or persons of a specified class, from a provision of this Act; or
  - (c) impose fines, not exceeding \$2 500, for offences against the regulations.

## **Schedule 1—Supplementary panel members for proceedings before Tribunal**

- (1) For the purposes of section 18A of the *South Australian Employment Tribunal Act 2014*, there will be a panel of supplementary panel members who, in the opinion of the Minister, have expertise that would be of value to the Tribunal in dealing with the various classes of discrimination to which this Act applies.
- (2) For the purposes of any proceedings before the Tribunal under this Act, the President of the Tribunal must consider whether the Tribunal will sit with 1 or more members of the panel established under subclause (1).



## Legislative history

### Notes

- This version is comprised of the following:

Part 1	1.7.2017
Part 2	1.7.2017
Part 3	8.9.2016
Part 4	2.10.2009
Part 5	2.10.2009
Part 5A	1.1.2010
Part 5B	8.9.2016
Part 6	5.12.2016
Part 7	2.10.2009
Part 8	1.7.2017
Part 9	1.7.2017
Schedule 1	1.7.2017
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Equal Opportunity Act 1984* repealed the following:

*Sex Discrimination Act 1975*

*Handicapped Persons Equal Opportunity Act 1981*

*Racial Discrimination Act 1976*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1984	95	<i>Equal Opportunity Act 1984</i>	20.12.1984	1.3.1986 except Pt 4 Div 6, Pt 5 Div 6 & s 89—1.6.1986 ( <i>Gazette 5.12.1985 p1690</i> ) and except ss 12, Pt 3 Div 6 & s 101 which were deleted by 34/2009 without coming into operation

**Equal Opportunity Act 1984—1.7.2017 to 31.7.2017**

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1989	68	<i>Equal Opportunity Act Amendment Act 1989</i>	29.10.1989	31.3.1990 ( <i>Gazette 29.3.1990 p884</i> ) except Sch—1.8.1990 ( <i>Gazette 12.7.1990 p257</i> )
1990	23	<i>Statute Law Revision Act 1990</i>	26.4.1990	Sch 4—1.8.1990 ( <i>Gazette 12.7.1990 p257</i> )
1990	25	<i>Equal Opportunity Act Amendment Act 1990</i>	26.4.1990	24.5.1990 ( <i>Gazette 24.5.1990 p1404</i> ) except ss 3—6 & 8—1.6.1991 ( <i>Gazette 30.5.1991 p1702</i> )
1992	56	<i>Equal Opportunity (Employment of Juniors) Amendment Act 1992</i>	29.10.1992	29.10.1992
1993	35	<i>Equal Opportunity (Compulsory Retirement) Amendment Act 1993</i>	13.5.1993	13.5.1993
1993	75	<i>Statutes Amendment (Abolition of Compulsory Retirement) Act 1993</i>	21.10.1993	1.1.1994: s 2
1996	85	<i>Equal Opportunity (Tribunal) Amendment Act 1996</i>	12.12.1996	12.12.1996
1997	30	<i>Statutes Amendment (References to Banks) Act 1997</i>	12.6.1997	Pt 5 (s 7)—3.7.1997 ( <i>Gazette 3.7.1997 p4</i> )
1997	47	<i>Equal Opportunity (Sexual Harassment) Amendment Act 1997</i>	31.7.1997	20.4.1998 ( <i>Gazette 16.4.1998 p1706</i> )
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 32 (ss 95 & 96)—1.6.2007 ( <i>Gazette 26.4.2007 p1352</i> )
2009	34	<i>Equal Opportunity (Miscellaneous) Amendment Act 2009</i>	23.7.2009	2.10.2009 ( <i>Gazette 10.9.2009 p4410</i> )
2009	58	<i>Statutes Amendment (National Industrial Relations System) Act 2009</i>	26.11.2009	Pt 3 (ss 5 & 6)—1.1.2010 ( <i>Gazette 17.12.2009 p6351</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 58 (ss 119—121)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
2013	42	<i>Equal Opportunity (Sporting Competitions) Amendment Act 2013</i>	3.10.2013	3.10.2013
2015	34	<i>Judicial Conduct Commissioner Act 2015</i>	5.11.2015	Sch 1 (cl 5)—5.12.2016 ( <i>Gazette 29.11.2016 p4525</i> )
<b>2016</b>	<b>33</b>	<b><i>Dog and Cat Management (Miscellaneous) Amendment Act 2016</i></b>	<b>14.7.2016</b>	<b>Sch 1 (cl 3)—1.7.2017 (<i>Gazette 19.4.2017 p1101</i>)</b>
2016	35	<i>Statutes Amendment (Gender Identity and Equity) Act 2016</i>	4.8.2016	Pt 6 (ss 14—31)—8.9.2016 ( <i>Gazette 8.9.2016 p3676</i> )
<b>2016</b>	<b>63</b>	<b><i>Statutes Amendment (South Australian Employment Tribunal) Act 2016 as amended by 16/2017</i></b>	<b>8.12.2016</b>	<b>Pt 9 (ss 92—100)—1.7.2017 (<i>Gazette 16.5.2017 p1221</i>)</b>
2016	67	<i>Relationships Register Act 2016</i>	15.12.2016	Sch 1 (c11 4—19)—uncommenced
2017	6	<i>Statutes Amendment (Surrogacy Eligibility) Act 2017</i>	15.3.2017	Pt 3 (s 8)—21.3.2017 ( <i>Gazette 21.3.2017 p926</i> )
<b>2017</b>	<b>16</b>	<b><i>South Australian Employment Tribunal (Miscellaneous) Amendment Act 2017</i></b>	<b>23.5.2017</b>	<b>Sch 1 (cl 4)—27.6.2017; cl 2—1.7.2017 immediately after Pts 8 &amp; 20 of 63/2016 (<i>Gazette 27.6.2017 p2620</i>)</b>

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## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 68/1989 s 3	31.3.1990
	amended by 25/1990 s 3	1.6.1991
	amended by 34/2009 s 4	2.10.2009
Pt 1		
s 2	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
	<i>deleted by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>ss 3 and 4</i>	<i>deleted by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
s 5		
s 5(1)		
act	inserted by 34/2009 s 5(1)	2.10.2009
assistance animal	inserted by 34/2009 s 5(1)	2.10.2009
	<b>amended by 33/2016 Sch 1 cl 3</b>	<b>1.7.2017</b>
business	inserted by 34/2009 s 5(1)	2.10.2009
caring responsibilities	inserted by 34/2009 s 5(1)	2.10.2009
child	inserted by 34/2009 s 5(1)	2.10.2009
<i>chosen gender</i>	<i>inserted by 34/2009 s 5(1)</i>	<i>2.10.2009</i>
	<i>deleted by 35/2016 s 14(1)</i>	<i>8.9.2016</i>
close personal relationship	inserted by 34/2009 s 5(1)	2.10.2009
	amended by 67/2016 Sch 1 cl 4(1)	uncommenced—not incorporated
Commissioner	the Commissioner amended to read Commissioner by 34/2009 Sch 1	2.10.2009
council	inserted by 47/1997 s 3(a)	20.4.1998
	amended by 34/2009 Sch 1	2.10.2009
court	inserted by 47/1997 s 3(a)	20.4.1998
disability	inserted by 34/2009 s 5(2)	2.10.2009
domestic partner	inserted by 43/2006 s 95(1)	1.6.2007
	substituted by 34/2009 s 5(3)	2.10.2009
	amended by 35/2016 s 14(2)	8.9.2016
	substituted by 67/2016 Sch 1 cl 4(2)	uncommenced—not incorporated
educational authority	amended by 34/2009 Sch 1	2.10.2009
employee	substituted by 68/1989 s 4(a)	31.3.1990
employer	substituted by 68/1989 s 4(a)	31.3.1990
employment	inserted by 68/1989 s 4(a)	31.3.1990
employment agency	amended by 34/2009 s 5(4)	2.10.2009
<i>impairment</i>	<i>inserted by 68/1989 s 4(b)</i>	<i>31.3.1990</i>
	<i>deleted by 34/2009 s 5(5)</i>	<i>2.10.2009</i>

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<i>intellectual impairment</i>	<i>inserted by 68/1989 s 4(b)</i>	31.3.1990
	<i>deleted by 34/2009 s 5(5)</i>	2.10.2009
judicial officer	inserted by 47/1997 s 3(b)	20.4.1998
marital or domestic partnership status	marital status amended by 68/1989 Sch	1.8.1990
	marital status amended to read marital or domestic partnership status by 34/2009 s 5(6), (7)	2.10.2009
medical practitioner	inserted by 34/2009 s 5(8)	2.10.2009
<i>member</i>	<i>amended by 68/1989 Sch</i>	1.8.1990
	<b><i>deleted by 63/2016 s 92(1)</i></b>	<b>1.7.2017</b>
near relative	amended by 68/1989 Sch	1.8.1990
	amended by 43/2006 s 95(2)	1.6.2007
<i>panel</i>	<i>the panel amended to read panel by 34/2009 Sch 1</i>	2.10.2009
	<b><i>deleted by 63/2016 s 92(2)</i></b>	<b>1.7.2017</b>
parliamentary proceedings	inserted by 47/1997 s 3(c)	20.4.1998
<i>physical impairments</i>	<i>substituted by 68/1989 s 4(c)</i>	31.3.1990
	<i>deleted by 34/2009 s 5(9)</i>	2.10.2009
potential pregnancy	inserted by 34/2009 s 5(9)	2.10.2009
race	substituted by 68/1989 Sch	1.8.1990
	substituted by 34/2009 s 5(9)	2.10.2009
registered industrial association	inserted by 34/2009 s 5(9)	2.10.2009
registered relationship	inserted by 67/2016 Sch 1 cl 4(3)	uncommenced—not incorporated
Registrar	the Registrar amended to read Registrar by 34/2009 Sch 1	2.10.2009
secondary education institution	inserted by 34/2009 s 5(10)	2.10.2009
services to which this Act applies	amended by 68/1989 s 4(d)	31.3.1990
	amended by 30/1997 s 7	3.7.1997
	amended by 34/2009 s 5(11), Sch 1	2.10.2009
<i>sexuality</i>	<i>amended by 34/2009 s 5(12)</i>	2.10.2009
	<i>deleted by 35/2016 s 14(3)</i>	8.9.2016
spouse	substituted by 43/2006 s 95(3)	1.6.2007
<i>transsexual</i>	<i>deleted by 34/2009 s 5(13)</i>	2.10.2009
<i>transexuality</i>	<i>deleted by 34/2009 s 5(13)</i>	2.10.2009
Tribunal	the Tribunal amended to read Tribunal by 34/2009 Sch 1	2.10.2009
	<b>substituted by 63/2016 s 92(3)</b>	<b>1.7.2017</b>
unpaid worker	voluntary worker redefined as unpaid worker by 68/1989 s 4(e)	31.3.1990



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	amended by 34/2009 Sch 1	2.10.2009
s 5(2)	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	substituted by 6/2017 s 8	21.3.2017
s 5(2a)	inserted by 6/2017 s 8	21.3.2017
s 5(3) and (4)	inserted by 34/2009 s 5(14)	2.10.2009
s 5(5)	<i>inserted by 34/2009 s 5(14)</i>	2.10.2009
	<i>deleted by 35/2016 s 14(4)</i>	8.9.2016
s 6		
s 6(1)	amended by 68/1989 Sch	1.8.1990
	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
s 6(2)	amended by 68/1989 Sch	1.8.1990
s 6(3)	inserted by 68/1989 s 5	31.3.1990
s 6(4)	inserted by 34/2009 s 6	2.10.2009
	amended by 35/2016 s 15	8.9.2016
Pt 2		
heading	amended by 34/2009 Sch 1	2.10.2009
	<b>substituted by 63/2016 s 93</b>	<b>1.7.2017</b>
Pt 2 Div 1		
heading	amended by 34/2009 Sch 1	2.10.2009
s 8		
s 8(1) and (2)	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
s 8(3) and (4)	substituted by 68/1989 s 6	31.3.1990
s 8(5)	inserted by 68/1989 s 6	31.3.1990
s 9	substituted by 68/1989 s 7	31.3.1990
s 10		
s 10(1)	s 10 redesignated as s 10(1) by 34/2009 s 7	2.10.2009
s 10(2)	inserted by 34/2009 s 7	2.10.2009
s 11		
s 11(1)	amended by 68/1989 s 8	31.3.1990
	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 25/1990 s 4(a), (b)	1.6.1991
	amended by 34/2009 s 8(1)	2.10.2009
s 11(2)	amended by 68/1989 s 8	31.3.1990
	amended by 25/1990 s 4(c), (d)	1.6.1991
	amended by 34/2009 s 8(2)	2.10.2009
<i>s 12 before substitution by 34/2009</i>		
s 12(1)	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
s 12(2)	<i>amended by 68/1989 s 9(a)—(c)</i>	<i>31.3.1990</i>
	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
s 12(3)	<i>substituted by 68/1989 s 9(d)</i>	<i>31.3.1990</i>

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<i>s 12</i>	<i>deleted by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 13</i>	<i>deleted by 68/1989 s 10</i>	<i>31.3.1990</i>
<i>s 14</i>		
<i>s 14(1)</i>	<i>amended by 68/1989 s 11</i>	<i>31.3.1990</i>
	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
	<i>amended by 34/2009 s 9(1), (2)</i>	<i>2.10.2009</i>
<i>s 14(2)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
	<i>amended by 34/2009 s 9(3)</i>	<i>2.10.2009</i>
<i>s 15</i>		
<i>s 15(1)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 34/2009 Sch 1</i>	<i>22.10.2009</i>
	<i>amended by 84/2009 s 119</i>	<i>1.2.2010</i>
<i>s 15(2)</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 16 before deletion by 84/2009</i>		
<i>s 16(1)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
<i>s 16(2)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
<i>s 16</i>	<i>deleted by 84/2009 s 120</i>	<i>1.2.2010</i>
<i>Pt 2 Div 2 before deletion by 63/2016</i>		
<i>heading</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 17</i>	<i>substituted by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
<i>s 18</i>		
<i>s 18(1)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
	<i>amended by 85/1996 s 2(a)</i>	<i>12.12.1996</i>
<i>s 18(2)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
<i>s 18(3) and (4)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
<i>s 18(5)</i>	<i>substituted by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 85/1996 s 2(b)</i>	<i>12.12.1996</i>
	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 18(6)</i>	<i>substituted by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 18(7)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
	<i>deleted by 85/1996 s 2(c)</i>	<i>12.12.1996</i>
<i>s 19</i>		
<i>s 19(2)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
<i>s 19(3)—(5)</i>	<i>substituted by 68/1989 Sch</i>	<i>1.8.1990</i>
<i>s 20</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
<i>s 21</i>		
<i>s 21(1)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
<i>s 21(2)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>

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	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	1.8.1990
	<i>amended by 34/2009 Sch 1</i>	2.10.2009
<i>s 22</i>		
<i>s 22(1) and (2)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	1.8.1990
<i>s 23</i>		
<i>s 23(1)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	1.8.1990
	<i>amended by 34/2009 Sch 1</i>	2.10.2009
<i>s 23(1a)</i>	<i>inserted by 34/2009 s 10</i>	2.10.2009
<i>s 23(2)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	1.8.1990
	<i>amended by 34/2009 Sch 1</i>	2.10.2009
<i>s 23(3)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	1.8.1990
<i>s 23(4)</i>	<i>amended by 34/2009 Sch 1</i>	2.10.2009
<i>s 23(5)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	1.8.1990
<i>s 24</i>		
<i>s 24(1)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	1.8.1990
	<i>amended by 34/2009 Sch 1</i>	2.10.2009
<i>s 24(2)</i>	<i>amended by 68/1989 Sch</i>	1.8.1990
<i>s 24(3)</i>	<i>amended by 68/1989 Sch</i>	1.8.1990
	<i>amended by 34/2009 Sch 1</i>	2.10.2009
<i>s 24(4)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	1.8.1990
<i>s 25</i>		
<i>s 25(1)</i>	<i>amended by 68/1989 Sch</i>	1.8.1990
	<i>amended by 34/2009 Sch 1</i>	2.10.2009
<i>s 25(2)</i>	<i>amended by 68/1989 Sch</i>	1.8.1990
	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	1.8.1990
	<i>amended by 34/2009 s 11, Sch 1</i>	2.10.2009
<i>s 25(3)</i>	<i>substituted by 68/1989 Sch</i>	1.8.1990
<i>s 26</i>		
<i>s 26(1)</i>	<i>amended by 34/2009 s 12, Sch 1</i>	2.10.2009
<i>s 26(2)</i>	<i>amended by 34/2009 Sch 1</i>	2.10.2009
<i>s 26(3)</i>	<i>amended by 68/1989 Sch</i>	1.8.1990
<i>s 27</i>		
<i>s 27(1)</i>	<i>amended by 34/2009 Sch 1</i>	2.10.2009
<i>s 27(2)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	1.8.1990
<i>s 27(3)</i>	<i>amended by 34/2009 Sch 1</i>	2.10.2009
<b>Pt 2 Div 2</b>	<b><i>deleted by 63/2016 s 94</i></b>	<b>1.7.2017</b>
<i>Pt 2 Div 3 before deletion by 63/2016</i>		
<i>heading</i>	<i>amended by 34/2009 Sch 1</i>	2.10.2009
<i>s 28</i>		
<i>s 28(1)</i>	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	1.8.1990
<i>s 28(2)</i>	<i>substituted by 68/1989 s 12</i>	31.3.1990
<i>s 28(3)</i>	<i>deleted by 68/1989 s 12</i>	31.3.1990

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<b><i>Pt 2 Div 3</i></b>	<b><i>deleted by 63/2016 s 94</i></b>	<b><i>1.7.2017</i></b>
Pt 3		
heading	substituted by 34/2009 s 13	2.10.2009
	substituted by 35/2016 s 16	8.9.2016
Pt 3 Div 1		
heading	amended by 34/2009 Sch 1	2.10.2009
s 29	substituted by 68/1989 Sch	1.8.1990
s 29(1)	<i>deleted by 34/2009 s 14(1)</i>	<i>2.10.2009</i>
s 29(2)	amended by 34/2009 s 14(2), Sch 1	2.10.2009
	amended by 67/2016 Sch 1 cl 5(1)	uncommenced—not incorporated
s 29(2a)	inserted by 34/2009 s 14(3)	2.10.2009
	amended by 35/2016 s 17(1)—(7)	8.9.2016
	amended by 67/2016 Sch 1 cl 5(1)	uncommenced—not incorporated
s 29(3)	amended by 34/2009 s 14(4)—(6), Sch 1	2.10.2009
	amended by 84/2009 s 121	1.2.2010
	amended by 35/2016 s 17(8)	8.9.2016
	amended by 67/2016 Sch 1 cl 5(1)	uncommenced—not incorporated
s 29(4)	<i>deleted by 34/2009 Sch 1 cl 14(7)</i>	<i>2.10.2009</i>
	<i>inserted by 67/2016 Sch 1 cl 5(2)</i>	<i>uncommenced—not incorporated</i>
s 29(5) and (6)	<i>deleted by 34/2009 s 14(7)</i>	<i>2.10.2009</i>
Pt 3 Div 2		
heading	substituted by 34/2009 s 15	2.10.2009
s 30	amended by 68/1989 Sch	1.8.1990
s 30(1)	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 18(1)	8.9.2016
	amended by 67/2016 Sch 1 cl 6	uncommenced—not incorporated
s 30(2)	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 18(2)	8.9.2016
	amended by 67/2016 Sch 1 cl 6	uncommenced—not incorporated
s 31		
s 31(1)	substituted by 34/2009 s 16(1)	2.10.2009
s 31(2)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 16(2), Sch 1	2.10.2009
	amended by 35/2016 s 19(1)	8.9.2016
	amended by 67/2016 Sch 1 cl 7	uncommenced—not incorporated
s 31(3)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 16(3), (4), Sch 1	2.10.2009
	amended by 35/2016 s 19(2)	8.9.2016
	amended by 67/2016 Sch 1 cl 7	uncommenced—not incorporated
s 32		
s 32(1)	substituted by 34/2009 s 17(1)	2.10.2009
s 32(2)	substituted by 34/2009 s 17(1)	2.10.2009
	amended by 35/2016 s 20(1)	8.9.2016

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	amended by 67/2016 Sch 1 cl 8	uncommenced—not incorporated
s 32(3)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 17(2), Sch 1	2.10.2009
	amended by 35/2016 s 20(2)	8.9.2016
	amended by 67/2016 Sch 1 cl 8	uncommenced—not incorporated
s 33		
s 33(1)	amended by 34/2009 s 18(1), Sch 1	2.10.2009
	amended by 35/2016 s 21(1)	8.9.2016
	amended by 67/2016 Sch 1 cl 9	uncommenced—not incorporated
s 33(2)	<i>deleted by 34/2009 s 18(2)</i>	2.10.2009
s 33(3)	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 21(2)	8.9.2016
	amended by 67/2016 Sch 1 cl 9	uncommenced—not incorporated
s 33(4)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 21(3)	8.9.2016
	amended by 67/2016 Sch 1 cl 9	uncommenced—not incorporated
<i>s 34 before substitution by 34/2009</i>		
s 34(3)	<i>substituted by 68/1989 s 13</i>	31.3.1990
s 34	substituted by 34/2009 Sch 1 cl 19	2.10.2009
s 34(2)	amended by 35/2016 s 22(1), (2)	8.9.2016
	amended by 67/2016 Sch 1 cl 10	uncommenced—not incorporated
s 34(3)	amended by 35/2016 s 22(3)	8.9.2016
	amended by 67/2016 Sch 1 cl 10	uncommenced—not incorporated
s 34(4)	amended by 35/2016 s 22(4)	8.9.2016
Pt 3 Div 3		
s 35		
s 35(1)	amended by 68/1989 s 14	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 20(1)—(3), Sch 1	2.10.2009
	amended by 35/2016 s 23(1), (2)	8.9.2016
	amended by 67/2016 Sch 1 cl 11(1)	uncommenced—not incorporated
s 35(2)	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 23(3)—(5)	8.9.2016
s 35(2a)	inserted by 34/2009 s 20(4)	2.10.2009
	amended by 35/2016 s 23(6), (7)	8.9.2016
	amended by 67/2016 Sch 1 cl 11(2)	uncommenced—not incorporated
s 35(2b)	inserted by 34/2009 s 20(4)	2.10.2009
	amended by 35/2016 s 23(8)	8.9.2016
	amended by 67/2016 Sch 1 cl 11(1), (3)	uncommenced—not incorporated
s 35(3)	amended by 68/1989 Sch	1.8.1990

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	amended by 34/2009 Sch 1	2.10.2009
s 35A	<i>inserted by 68/1989 s 15</i>	31.3.1990
	<i>deleted by 34/2009 s 21</i>	2.10.2009
s 36	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 24	8.9.2016
	amended by 67/2016 Sch 1 cl 12	uncommenced—not incorporated
Pt 3 Div 4		
s 37		
s 37(1)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 25(1)	8.9.2016
	amended by 67/2016 Sch 1 cl 13	uncommenced—not incorporated
s 37(2)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 25(2)	8.9.2016
	amended by 67/2016 Sch 1 cl 13	uncommenced—not incorporated
s 37(3)	amended by 34/2009 Sch 1	2.10.2009
Pt 3 Div 5		
s 38		
s 38(1)	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 26	8.9.2016
	amended by 67/2016 Sch 1 cl 14	uncommenced—not incorporated
s 39		
s 39(1)	amended by 68/1989 s 16	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 27	8.9.2016
	amended by 67/2016 Sch 1 cl 15	uncommenced—not incorporated
s 39(2)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
s 40		
s 40(1)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 28(1)	8.9.2016
	amended by 67/2016 Sch 1 cl 16	uncommenced—not incorporated
s 40(2)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
	amended by 35/2016 s 28(2)	8.9.2016
	amended by 67/2016 Sch 1 cl 16	uncommenced—not incorporated
s 40(3)	amended by 68/1989 Sch	1.8.1990
	substituted by 34/2009 s 22(1)	2.10.2009
s 40(4)	amended by 34/2009 s 22(2), (3), Sch 1	2.10.2009

*Pt 3 Div 6 before deletion  
by 34/2009*

<i>s 41</i>		
<i>de facto spouse</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
<i>s 42</i>		
<i>s 42(1) and (3)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
<i>s 43</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
<i>Pt 3 Div 6</i>	<i>deleted by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>Pt 3 Div 7</i>		
<i>heading</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 45</i>	<i>amended by 34/2009 s 23(1), Sch 1</i>	<i>2.10.2009</i>
	<i>(a)(iii) and (iv) deleted by 34/2009 s 23(2)</i>	<i>2.10.2009</i>
	<i>amended by 35/2016 s 29(1), (2)</i>	<i>8.9.2016</i>
	<i>amended by 67/2016 Sch 1 cl 17</i>	<i>uncommenced—not incorporated</i>
<i>s 46</i>	<i>deleted by 34/2009 s 24</i>	<i>2.10.2009</i>
<i>s 47</i>	<i>amended by 34/2009 s 25</i>	<i>2.10.2009</i>
	<i>amended by 35/2016 s 30(1), (2)</i>	<i>8.9.2016</i>
	<i>amended by 67/2016 Sch 1 cl 18</i>	<i>uncommenced—not incorporated</i>
<i>s 48</i>	<i>substituted by 42/2013 s 3</i>	<i>3.10.2013</i>
<i>s 49</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 50</i>		
<i>s 50(1)</i>	<i>amended by 34/2009 s 26(1)</i>	<i>2.10.2009</i>
<i>s 50(2)</i>	<i>amended by 43/2006 s 96</i>	<i>1.6.2007</i>
	<i>deleted by 34/2009 s 26(2)</i>	<i>2.10.2009</i>
<i>Pt 4</i>		
<i>heading</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>Pt 4 Div 1</i>		
<i>heading</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 51</i>	<i>substituted by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 34/2009 s 27, Sch 1</i>	<i>2.10.2009</i>
<i>Pt 4 Div 2</i>		
<i>heading</i>	<i>substituted by 34/2009 s 28</i>	<i>2.10.2009</i>
<i>s 52</i>		
<i>s 52(1)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
<i>s 52(2)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 53</i>		
<i>s 53(1)</i>	<i>substituted by 34/2009 s 29(1)</i>	<i>2.10.2009</i>
<i>s 53(2)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 34/2009 s 29(2)</i>	<i>2.10.2009</i>
<i>s 53(3)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 34/2009 s 29(3), (4), Sch 1</i>	<i>2.10.2009</i>
<i>s 54</i>		

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s 54(1)	substituted by 34/2009 s 30(1)	2.10.2009
s 54(2)	amended by 68/1989 Sch	1.8.1990
	substituted by 34/2009 s 30(1)	2.10.2009
s 54(3)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 30(2), Sch 1	2.10.2009
s 55		
s 55(1) and (2)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
s 56		
s 56(1)	substituted by 34/2009 s 31(1)	2.10.2009
s 56(2)	amended by 34/2009 s 31(2)	2.10.2009
Pt 4 Div 3		
s 57		
s 57(1)	amended by 68/1989 s 17	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
s 58		
s 58(1)	s 58 amended by 68/1989 Sch	1.8.1990
	s 58 redesignated as s 58(1) by 25/1990 s 5	1.6.1991
	amended by 34/2009 Sch 1	2.10.2009
s 58(2)	inserted by 25/1990 s 5	1.6.1991
Pt 4 Div 4		
s 59		
s 59(1)	amended by 68/1989 Sch	1.8.1990
s 59(2)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
Pt 4 Div 5		
s 60		
s 60(1)	amended by 68/1989 Sch	1.8.1990
s 61	amended by 68/1989 s 18	31.3.1990
	amended by 68/1989 Sch	1.8.1990
s 62		
s 62(1) and (2)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
s 62(2a)	inserted by 34/2009 s 32	2.10.2009
Pt 4 Div 6		
s 63		
s 63(1)	amended by 68/1989 Sch	1.8.1990
Pt 4 Div 7		
heading	amended by 34/2009 Sch 1	2.10.2009
s 64	amended by 34/2009 Sch 1	2.10.2009
Pt 5		
heading	amended by 68/1989 s 19	31.3.1990



	amended by 34/2009 s 33	2.10.2009
Pt 5 Div 1		
heading	amended by 34/2009 Sch 1	2.10.2009
s 66	substituted by 68/1989 s 20	31.3.1990
	amended by 34/2009 s 34(1)—(5)	2.10.2009
Pt 5 Div 2		
heading	substituted by 34/2009 s 35	2.10.2009
s 67		
s 67(1)	amended by 68/1989 s 21	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 36	2.10.2009
s 67(2)	amended by 68/1989 s 21	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 36, Sch 1	2.10.2009
s 68		
s 68(1)	substituted by 34/2009 s 37(2)	2.10.2009
s 68(2)	amended by 68/1989 s 21	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 37(1), (3)	2.10.2009
s 68(3)	amended by 68/1989 s 21	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 37(1), (4), (5), Sch 1	2.10.2009
s 69		
s 69(1)	substituted by 34/2009 s 38(1)	2.10.2009
s 69(2)	amended by 68/1989 s 21	31.3.1990
	substituted by 34/2009 s 38(1)	2.10.2009
s 69(3)	amended by 68/1989 s 21	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 38(2), (3), Sch 1	2.10.2009
s 70		
s 70(1)	amended by 68/1989 s 21	31.3.1990
	amended by 34/2009 s 39, Sch 1	2.10.2009
s 70(2)	amended by 68/1989 s 21	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 39, Sch 1	2.10.2009
s 71		
s 71(1)	substituted by 34/2009 s 40(1)	2.10.2009
s 71(2)	amended by 68/1989 s 22	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 40(2), (3)	2.10.2009
Pt 5 Div 3		
s 72		
s 72(1)	amended by 68/1989 s 23	31.3.1990

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	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 41, Sch 1	2.10.2009
s 73		
s 73(1)	amended by 68/1989 s 24	31.3.1990
	amended by 34/2009 s 42, Sch 1	2.10.2009
s 73(2)	amended by 68/1989 s 24	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 42	2.10.2009
Pt 5 Div 4		
s 74		
s 74(1)	amended by 68/1989 s 25(a)	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 43	2.10.2009
s 74(2)	amended by 68/1989 s 25(b)	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 43, Sch 1	2.10.2009
s 74(3)	amended by 68/1989 s 25(c)	31.3.1990
	amended by 34/2009 s 43	2.10.2009
Pt 5 Div 5		
s 75		
s 75(1)	amended by 68/1989 s 26	31.3.1990
	amended by 34/2009 s 44	2.10.2009
s 76		
s 76(1)	amended by 68/1989 s 27(a), (b)	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 45(2)	2.10.2009
s 76(1a)	inserted by 34/2009 s 45(3)	2.10.2009
s 76(2)	amended by 68/1989 s 27(c)	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 45(1), (2), Sch 1	2.10.2009
s 76(3)	substituted by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 45(2), Sch 1	2.10.2009
s 77		
s 77(1) and (2)	amended by 68/1989 s 28	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 46(1), Sch 1	2.10.2009
s 77(2a)	inserted by 34/2009 s 46(2)	2.10.2009
Pt 5 Div 6		
s 78		
s 78(1)	amended by 68/1989 s 29	31.3.1990
	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 s 47, Sch 1	2.10.2009
Pt 5 Div 7		

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heading	amended by 34/2009 Sch 1	2.10.2009
s 79	amended by 68/1989 s 30	31.3.1990
	amended by 34/2009 s 48	2.10.2009
s 79A	inserted by 34/2009 s 49	2.10.2009
s 80	amended by 68/1989 s 31	31.3.1990
	amended by 34/2009 s 50, Sch 1	2.10.2009
s 81	substituted by 68/1989 s 32	31.3.1990
	amended by 34/2009 s 51(1), (2)	2.10.2009
s 82	amended by 68/1989 s 33	31.3.1990
	amended by 34/2009 s 52	2.10.2009
s 83	<i>deleted by 68/1989 s 34</i>	<i>31.3.1990</i>
s 84	amended by 68/1989 Sch	1.8.1990
	substituted by 34/2009 s 53	2.10.2009
s 85	amended by 68/1989 s 35	31.3.1990
	amended by 34/2009 s 54, Sch 1	2.10.2009
Pt 5A	inserted by 25/1990 s 6	1.6.1991
heading	amended by 34/2009 Sch 1	2.10.2009
Pt 5A Div 1		
heading	amended by 34/2009 Sch 1	2.10.2009
s 85A	amended by 34/2009 s 55, Sch 1	2.10.2009
Pt 5A Div 2		
heading	substituted by 34/2009 s 56	2.10.2009
s 85B		
s 85B(2)	amended by 34/2009 Sch 1	2.10.2009
s 85C		
s 85C(1)	substituted by 34/2009 s 57(1)	2.10.2009
s 85C(2)	amended by 34/2009 s 57(2)	2.10.2009
s 85C(3)	amended by 34/2009 s 57(3), (4), Sch 1	2.10.2009
s 85D		
s 85D(1) and (2)	substituted by 34/2009 s 58(1)	2.10.2009
s 85D(3)	amended by 34/2009 s 58(2), Sch 1	2.10.2009
s 85E		
s 85E(1) and (2)	amended by 34/2009 Sch 1	2.10.2009
s 85EA	inserted by 34/2009 Sch 1	2.10.2009
s 85F		
s 85F(1)	substituted by 34/2009 s 59(1)	2.10.2009
s 85F(2)	amended by 34/2009 s 59(2)	2.10.2009
s 85F(3)	amended by 34/2009 s 59(3)	2.10.2009
s 85F(4)	substituted by 56/1992 s 2	29.10.1992
	amended by 34/2009 Sch 1	2.10.2009
	substituted by 58/2009 s 5	1.1.2010
s 85F(4a)	<i>inserted by 75/1993 s 12</i>	<i>1.1.1994</i>
	<i>deleted by 34/2009 Sch 1</i>	<i>2.10.2009</i>

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<i>s 85F(5)</i>	<i>expired: s 85F(6)—omitted under Legislation Revision and Publication Act 2002</i>	<i>(31.12.1993)</i>
<i>s 85F(6)</i>	<i>amended by 35/1993 s 2</i>	<i>13.5.1993</i>
	<i>deleted by 34/2009 Sch 1</i>	<i>2.10.2009</i>
Pt 5A Div 3		
<i>s 85G</i>		
<i>s 85G(1)—(3)</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
Pt 5A Div 4		
<i>s 85I</i>		
<i>s 85I(2) and (3)</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
Pt 5A Div 5		
<i>s 85K</i>		
<i>s 85K(2)</i>	<i>deleted by 34/2009 s 60(1)</i>	<i>2.10.2009</i>
<i>s 85K(3)</i>	<i>amended by 34/2009 s 60(2), (3), Sch 1</i>	<i>2.10.2009</i>
<i>s 85L</i>		
<i>s 85L(1)</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 85L(2)</i>	<i>deleted by 34/2009 s 61(1)</i>	<i>2.10.2009</i>
<i>s 85L(3) and (4)</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 85L(5)</i>	<i>amended by 34/2009 s 61(2), Sch 1</i>	<i>2.10.2009</i>
	<i>(c) deleted by 34/2009 s 61(2)</i>	<i>2.10.2009</i>
Pt 5A Div 6		
heading	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 85N</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>Pt 5A Div 7</i>	<i>deleted by 34/2009 Sch 1</i>	<i>2.10.2009</i>
Pt 5B	<i>inserted by 34/2009 s 62</i>	<i>2.10.2009</i>
<i>s 85Z</i>		
<i>s 85Z(2)</i>	<i>amended by 35/2016 s 31</i>	<i>8.9.2016</i>
Pt 6		
<i>s 86</i>	<i>substituted by 68/1989 Sch</i>	<i>1.8.1990</i>
<i>s 86(2)</i>	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<i>s 87</i>		
<i>s 87(1) and (2)</i>	<i>substituted by 68/1989 s 36(a)</i>	<i>31.3.1990</i>
	<i>substituted by 34/2009 s 63(1)</i>	<i>2.10.2009</i>
<i>s 87(3)</i>	<i>substituted by 34/2009 s 63(1)</i>	<i>2.10.2009</i>
<i>s 87(4)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>deleted by 34/2009 s 63(1)</i>	<i>2.10.2009</i>
<i>s 87(5)</i>	<i>deleted by 34/2009 s 63(1)</i>	<i>2.10.2009</i>
<i>s 87(6aa)</i>	<i>inserted by 34/2009 s 63(2)</i>	<i>2.10.2009</i>
<i>s 87(6a)</i>	<i>inserted by 47/1997 s 4</i>	<i>20.4.1998</i>
<i>s 87(6b)</i>	<i>inserted by 47/1997 s 4</i>	<i>20.4.1998</i>
	<i>amended by 34/2015 Sch 1 cl 5</i>	<i>5.12.2016</i>
<i>s 87(6c)—(6e)</i>	<i>inserted by 47/1997 s 4</i>	<i>20.4.1998</i>
<i>s 87(6f) and (6g)</i>	<i>inserted by 34/2009 s 63(3)</i>	<i>2.10.2009</i>

s 87(7)	substituted by 68/1989 s 36(b)	31.3.1990
	substituted by 34/2009 s 63(4)	2.10.2009
s 87(8)	substituted by 34/2009 s 63(4)	2.10.2009
s 87(9)	amended by 68/1989 Sch	1.8.1990
	substituted by 34/2009 s 63(4)	2.10.2009
s 87(10)	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
	<i>deleted by 34/2009 s 63(4)</i>	<i>2.10.2009</i>
s 87(11)	<i>substituted by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>deleted by 34/2009 s 63(4)</i>	<i>2.10.2009</i>
ss 87A and 87B	inserted by 34/2009 s 64	2.10.2009
s 88	amended by 68/1989 Sch	1.8.1990
	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	substituted by 34/2009 s 64	2.10.2009
s 88A	inserted by 34/2009 s 64	2.10.2009
s 89	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
s 90	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
<i>s 91 before substitution by 34/2009</i>		
<i>s 91(1) and (2)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
<i>s 91(3)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
<i>s 91(4)</i>	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
s 91	substituted by 34/2009 s 65	2.10.2009
Pt 6A	inserted by 67/2016 Sch 1 cl 19	uncommenced—not incorporated
Pt 7		
s 92		
s 92(1)	amended by 34/2009 Sch 1	2.10.2009
s 92(2) and (4)	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
s 92(6)	amended by 34/2009 Sch 1	2.10.2009
s 92(7)	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
Pt 8		
heading	amended by 34/2009 Sch 1	2.10.2009
Pt 8 Div 1		
heading	amended by 68/1989 s 37	31.3.1990
	substituted by 34/2009 s 66	2.10.2009
s 93		
s 93(1)	substituted by 68/1989 s 38	31.3.1990
	amended by 34/2009 s 67(1), Sch 1	2.10.2009
s 93(1a)	inserted by 68/1989 s 38	31.3.1990

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s 93(1b)	s 93(1ab) inserted by 68/1989 s 38	31.3.1990
	s 93(1ab) redesignated as s 93(1b) by 23/1990 s 3(1) (Sch 4)	1.8.1990
s 93(1c)	inserted by 68/1989 s 38	31.3.1990
s 93(2)	amended by 34/2009 s 67(2), (3), Sch 1	2.10.2009
s 93(2a)—(2c)	inserted by 34/2009 s 67(4)	2.10.2009
s 93(3)	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 s 67(5), Sch 1	2.10.2009
s 93AA	inserted by 47/1997 s 5	20.4.1998
s 93AA(6) and (7)	<i>deleted by 34/2009 Sch 1</i>	2.10.2009
s 93A	inserted by 68/1989 s 39	31.3.1990
s 93A(3)	inserted by 47/1997 s 6	20.4.1998
s 94		
s 94(1)	substituted by 68/1989 s 40	31.3.1990
s 94(2)	substituted by 34/2009 s 68(1)	2.10.2009
s 94(2a) and (2b)	inserted by 34/2009 s 68(1)	2.10.2009
s 94(3)	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 s 68(2), (3)	2.10.2009
s 94(4)	amended by 68/1989 Sch	1.8.1990
	substituted by 34/2009 s 68(4)	2.10.2009
s 94(5)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
s 94(6)	amended by 34/2009 Sch 1	2.10.2009
s 94(7)	inserted by 47/1997 s 7	20.4.1998
	amended by 34/2009 Sch 1	2.10.2009
<i>s 95 before substitution by 34/2009</i>		
s 95(1)	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
s 95(3)	<i>amended by 68/1989 s 41(a)</i>	<i>31.3.1990</i>
	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
s 95(4)	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
s 95(5) and (7)	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
s 95(8)	<i>amended by 68/1989 s 41(b)—(d)</i>	<i>31.3.1990</i>
	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
s 95(8a)	<i>inserted by 68/1989 s 41(e)</i>	<i>31.3.1990</i>
s 95(9)	<i>substituted by 68/1989 Sch</i>	<i>1.8.1990</i>
s 95	substituted by 34/2009 s 69	2.10.2009
s 95A	inserted by 34/2009 s 69	2.10.2009
s 95B	inserted by 34/2009 s 69	2.10.2009
	<b>amended by 63/2016 s 95</b>	<b>1.7.2017</b>
ss 95C and 95D	inserted by 34/2009 s 69	2.10.2009

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s 96		
s 96(1)	substituted by 68/1989 s 42(a)	31.3.1990
	(d) deleted by 25/1990 s 7(a)	24.5.1990
	amended by 34/2009 s 70(1), (2), Sch 1	2.10.2009
s 96(2)	substituted by 25/1990 s 7(b)	24.5.1990
	amended by 34/2009 Sch 1	2.10.2009
s 96(3)	amended by 68/1989 s 42(b)	31.3.1990
	amended by 68/1989 Sch	1.8.1990
s 96(3a) and (3b)	inserted by 34/2009 s 70(3)	2.10.2009
s 96(4)	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 s 70(4)	2.10.2009
s 96(5)	amended by 68/1989 Sch	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
s 96(6)	inserted by 34/2009 s 70(5)	2.10.2009
s 96A	inserted by 34/2009 s 71	2.10.2009
Pt 8 Div 2		
heading	substituted by 34/2009 s 72	2.10.2009
	<b>substituted by 63/2016 s 96</b>	<b>1.7.2017</b>
s 96B	inserted by 34/2009 s 73	2.10.2009
s 97	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
<i>s 98 before deletion by 63/2016</i>		
s 98(1)	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
s 98(2)	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
s 98(3) and (4)	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
s 98(5)	<i>amended by 34/2009 Sch 1</i>	<i>2.10.2009</i>
<b>s 98</b>	<b><i>deleted by 63/2016 s 97</i></b>	<b><i>1.7.2017</i></b>
Pt 9		
s 99	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
s 100		
s 100(1)	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
s 100(2)	amended by 68/1989 Sch	1.8.1990
	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
	substituted by 58/2009 s 6(1)	1.1.2010
s 100(3)	amended by 68/1989 s 43	31.3.1990
	amended by 25/1990 s 8(a), (b)	1.6.1991
	amended by 34/2009 s 74(1), Sch 1	2.10.2009
	amended by 58/2009 s 6(2)	1.1.2010
s 100(4)	amended by 68/1989 Sch	1.8.1990

	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 Sch 1	2.10.2009
s 100(5)	amended by 68/1989 s 43	31.3.1990
	amended by 25/1990 s 8(c), (d)	1.6.1991
	amended by 34/2009 s 74(2), Sch 1	2.10.2009
s 100(6)	inserted by 34/2009 s 74(3)	2.10.2009
	<b>substituted by 63/2016 s 98</b>	<b>1.7.2017</b>
<i>s 101 before deletion by 34/2009</i>		
s 101(1)	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
s 101(2)	<i>substituted by 68/1989 Sch</i>	<i>1.8.1990</i>
s 101(5)	<i>amended by 68/1989 Sch</i>	<i>1.8.1990</i>
	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
s 101(6) and (7)	<i>amended by 23/1990 s 3(1) (Sch 4)</i>	<i>1.8.1990</i>
s 101	<i>deleted by 34/2009 Sch 1</i>	<i>2.10.2009</i>
s 102	amended by 68/1989 Sch	1.8.1990
	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 s 75	2.10.2009
s 103		
s 103(1)	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 s 76	2.10.2009
s 103(2)	substituted by 68/1989 Sch	1.8.1990
s 104	substituted by 23/1990 s 3(1) (Sch 4)	1.8.1990
	substituted by 34/2009 s 77	2.10.2009
s 105	<b>deleted by 16/2017 Sch 1 cl 2</b>	<b>1.7.2017</b>
s 106		
s 106(1)	amended by 34/2009 s 78(1)	2.10.2009
s 106(2)	amended by 23/1990 s 3(1) (Sch 4)	1.8.1990
	amended by 34/2009 s 78(2), Sch 1	2.10.2009
Sch 1	<b>inserted by 63/2016 s 99</b>	<b>1.7.2017</b>

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Amendment (South Australian Employment Tribunal) Act 2016 as amended by South Australian Employment Tribunal (Miscellaneous) Amendment Act 2017, Sch 1***

#### **100—Transitional provisions**

(1) In this section—

***principal Act*** means the *Equal Opportunity Act 1984*;

***relevant day*** means the day on which this Part comes into operation;

***SAET*** means the South Australian Employment Tribunal;



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***Tribunal*** means the Equal Opportunity Tribunal established under the *Equal Opportunity Act 1984*.

- (2) The Tribunal is dissolved by force of this subsection (and so the commencement of this subsection brings to an end the appointment of a person as a member of the Tribunal).
- (3) No right of action arises, and no compensation is payable, in respect of an appointment coming to an end by virtue of the operation of subsection (2).
- (4) A decision, direction or order of the Tribunal under the principal Act in force immediately before the relevant day will, on and from the relevant day, be taken to be a decision, direction or order of SAET.
- (5) A right to take action with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Tribunal under the principal Act, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced instead before SAET.
- (6) Any proceedings before the Tribunal under the principal Act immediately before the relevant day will, subject to such directions as the President of SAET thinks fit, be transferred to SAET where they may proceed as if they had been commenced before SAET.
- (7) SAET may—
  - (a) receive in evidence any transcript of evidence in proceedings before the Tribunal, and draw any conclusions of fact from that evidence that appear proper; and
  - (b) adopt any findings or determinations of the Tribunal that may be relevant to proceedings before SAET; and
  - (c) adopt or make any decision (including a decision in the nature of a determination), direction or order in relation to proceedings before the Tribunal before the relevant day (including so as to make a decision or determination, or a direction or order, in relation to proceedings fully heard before the relevant day); and
  - (d) take other steps to promote or ensure the smoothest possible transition from 1 jurisdiction to another in connection with the operation of this section.

## Historical versions

Reprint —1.8.1990

Reprint No 1—1.7.1991

Reprint No 2—29.10.1992

Reprint No 3—13.5.1993

Reprint No 4—1.1.1994

Reprint No 5—12.12.1996

Reprint No 6—3.7.1997

Reprint No 7—20.4.1998

1.6.2007

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2.10.2009

1.1.2010

1.2.2010

3.10.2013

8.9.2016

5.12.2016

21.3.2017