

*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and,  
having this day passed, is now ready for presentation to the LEGISLATIVE  
COUNCIL for its concurrence.*

R. E. WARD,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 24 November, 1976.*

## New South Wales



ANNO VICESIMO QUINTO

**ELIZABETHÆ II REGINÆ**

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**Act No.       , 1976.**

An Act to render unlawful racial, sex and other types of  
discrimination in certain circumstances and to promote  
equality of opportunity between all persons.

BE



*Anti-Discrimination.*

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.**

**PRELIMINARY.**

**1.** This Act may be cited as the "Anti-Discrimination Act, Short title. 1976".

**2.** (1) This section and section 1 shall commence on the date of assent to this Act. Commence-  
ment.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**3.** This Act is divided as follows:—

Division of  
Act.

**PART I.—PRELIMINARY—ss. 1–5.**

**PART II.—RACIAL DISCRIMINATION—ss. 6–23.**

**DIVISION 1.—General—ss. 6, 7.**

**DIVISION 2.—Discrimination in Work—ss. 8–17.**

**DIVISION 3.—Discrimination in Other Areas—ss. 18–21.**

**DIVISION 4.—Exceptions to Part II—ss. 22, 23.**

**PART**



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PART III.—SEX DISCRIMINATION—ss. 24–42.

DIVISION 1.—*General*—ss. 24, 25.

DIVISION 2.—*Discrimination in Work*—ss. 26–33.

5      DIVISION 3.—*Discrimination in Other Areas*—ss. 34–37.

DIVISION 4.—*Exceptions to Part III*—ss. 38–42.

PART IV.—DISCRIMINATION ON THE GROUND OF MARITAL STATUS—ss. 43–55.

DIVISION 1.—*General*—s. 43.

10      DIVISION 2.—*Discrimination in Work*—ss. 44–51.

DIVISION 3.—*Discrimination in Other Areas*—ss. 52, 53.

DIVISION 4.—*Exceptions to Part IV*—ss. 54, 55.

15      PART V.—DISCRIMINATION ON OTHER GROUNDS—ss. 56–60.

PART VI.—OTHER UNLAWFUL ACTS—ss. 61–64.

PART VII.—GENERAL EXCEPTIONS TO PARTS II TO V—ss. 65–68.

20      PART VIII.—THE COUNSELLOR FOR EQUAL OPPORTUNITY—ss. 69–78.

PART IX.—THE ANTI-DISCRIMINATION BOARD—ss. 79–95.

PART X.—THE FUNCTIONS OF THE COUNSELLOR AND THE BOARD—ss. 96–131.

25      DIVISION 1.—*General*—s. 96.

DIVISION 2.—*The Functions of the Counsellor*—ss. 97–103.

DIVISION



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DIVISION 3.—*The Functions of the Board in relation to Complaints*—ss. 104–127.

DIVISION 4.—*Other Functions of the Board*—ss. 128–131.

5 PART XI.—MISCELLANEOUS—ss. 132–137.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—Inter-pretation.

“accommodation” includes residential or business accommodation;

10 “Board” means the Anti-Discrimination Board constituted under this Act;

“commission agent” means an agent who is remunerated by commission;

15 “contract worker” means an employee who, under a contract of employment, performs work for an employer who has undertaken to perform that work for another person;

“corporation” has the meaning ascribed thereto in the Companies Act, 1961;

20 “council” has the meaning ascribed thereto in the Local Government Act, 1919, and includes a county council within the meaning of that Act;

“Counsellor” means the Counsellor for Equal Opportunity;

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

30 “employment” includes work under a contract for services;

“functions”



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“functions” includes powers, authorities and duties;

5 “employment agency” means a person who, for profit or not, provides services for the purpose of finding work or employment for others or for supplying employers with workers or employees;

“inquiry”, in relation to the Board, means an inquiry held under section 105;

“marital status” means the status or condition of being—

- 10 (a) single;
- (b) married;
- (c) married but living separately and apart from one’s spouse;
- (d) divorced;
- (e) widowed; or
- 15 (f) in cohabitation, otherwise than in marriage, with a person of the opposite sex;

“near relative”, in relation to a person, means his spouse, parent, child, grandparent, grandchild, brother or sister;

20 “principal” means—

- (a) in relation to a commission agent, a person for whom work is done by that commission agent; or
- 25 (b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

“Registrar” means the Registrar of the Board;

“regulation” means a regulation made under this Act;

“services”



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“services” includes—

- (a) services relating to banking, insurance and the provision of grants, loans, credit or finance;
- 5 (b) services relating to entertainment, recreation or refreshment;
- (c) services relating to transport or travel;
- (d) services of any profession or trade; and
- 10 (e) services provided by a council or public authority;

“trade union” means a trade union within the meaning of the Industrial Arbitration Act, 1940, or a registered organization within the meaning of the Conciliation and Arbitration Act 1904 of the  
15 Parliament of the Commonwealth;

“vehicle” includes a ship, an aircraft and a hovercraft.

(2) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that duty.

- 20 5. This Act binds the Crown not only in right of New Act binds South Wales but also, so far as the legislative power of Crown. Parliament permits, the Crown in all its other capacities.



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PART II.

RACIAL DISCRIMINATION.

DIVISION 1.—*General.*

6. (1) In this Part, "race" includes colour, nationality  
5 and ethnic or national origin.

Interpre-  
tation:  
Pt. II.

(2) For the purposes of this Part, the fact that a race  
may comprise two or more distinct races does not prevent it  
from being a race.

7. A person discriminates against another person on the  
10 ground of his race if, on the ground of—

Racial dis-  
crimination.

(a) his race;

(b) a characteristic that appertains generally to persons  
of his race; or

15 (c) a characteristic that is generally imputed to persons  
of his race,

he—

20 (d) treats him less favourably than in the same  
circumstances, or in circumstances which are not  
materially different, he treats or would treat a  
person of a different race; or

(e) segregates him from persons of a different race.

DIVISION 2.—*Discrimination in Work.*

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

Discrimina-  
tion  
against  
applicants  
and  
employees.

25 (a) in the arrangements he makes for the purpose of  
determining who should be offered employment;

(b)



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(b) in determining who should be offered employment;  
or

(c) in the terms on which he offers employment.

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

(a) in the terms or conditions of employment which  
he affords him;

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

(c) by dismissing him or subjecting him to any other  
detriment.

(3) Subsections (1) and (2) do not apply to  
15 employment for the purposes of a private household.

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

Discrimina-  
tion  
against  
commission  
agents.

(a) in the arrangements he makes for the purpose of  
20 determining who should be engaged as a  
commission agent;

(b) in determining who should be engaged as a  
commission agent; or

(c) in the terms on which he engages him as a  
commission agent.

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

(a) in the terms or conditions which he affords him as  
a commission agent;

(b)



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- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- 5 (c) by terminating his engagement or subjecting him to any other detriment.

**10.** It is unlawful for a principal to discriminate against a contract worker on the ground of his race—

Discrimination against contract workers.

- (a) in the terms on which he allows him to work;
- 10 (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

**11.** (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of his race—

Partnerships.

- (a) in the arrangements they make or he makes for the purpose of determining who should be offered a position as partner in the firm;
- 20 (b) in determining who should be offered a position as partner in the firm; or
- (c) in the terms on which they offer or he offers him a position as partner in the firm.
- 25

(2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of his race—

- (a) by denying him access, or limiting his access, to any benefit arising from membership of the firm; or
- 30

(b)



1. Pages 9 and 10, clause 11. Omit the clause.







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- (b) by expelling him from the firm or subjecting him to any other detriment.

**12.** (1) It is unlawful for a trade union to discriminate **Trade unions.** against a person who is not a member of the trade union on  
5 the ground of his race—

- (a) by refusing or failing to accept his application for membership; or  
(b) in the terms on which it is prepared to admit him to membership.

10 (2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his race—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;  
15 (b) by depriving him of membership or varying the terms of his membership; or  
(c) by subjecting him to any other detriment.

**13.** It is unlawful for an authority or a body which is **Qualifying bodies.** empowered to confer, renew or extend an authorisation or a  
20 qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his race—

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

**14.**



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**14.** It is unlawful for an employment agency to discriminate against a person on the ground of his race—

Employment agencies.

- (a) by refusing to provide him with any of its services;  
or
- 5 (b) in the terms on which it offers to provide him with any of its services.

**15.** Nothing in this Division applies to or in respect of any work or employment where that work or employment involves any one or more of the following :—

Exception—  
genuine  
occupational  
qualification.

- 10 (a) participation in a dramatic performance or other entertainment in a capacity for which a person of a particular race is required for reasons of authenticity;
- 15 (b) participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of a particular race is required for reasons of authenticity;
- 20 (c) working in a place where food or drink is, for payment or not, provided to and consumed by persons in circumstances in which a person of a particular race is required for reasons of authenticity; or
- 25 (d) providing persons of a particular race with services for the purpose of promoting their welfare where those services can most effectively be provided by a person of the same race.

**16.** Nothing in this Division applies to or in respect of anything done by an employer in or in connection with the employment in New South Wales of a person not ordinarily resident in New South Wales where that employment is intended to provide him with training in skills to be exercised by him wholly outside New South Wales.

Exception—  
employment intended to provide training in skills to be exercised outside New South Wales.

**17.**



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17. Nothing in this Division applies to or in respect of the employment of a person on a ship or an aircraft in New South Wales if that person was engaged for that employment outside New South Wales. Exception—  
employ-  
ment on  
ship or  
aircraft.

5 DIVISION 3.—*Discrimination in Other Areas.*

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

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

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

- 15 (a) by denying him access, or limiting his access, to any benefit provided by the educational authority; or
- (b) by expelling him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of a prescribed educational authority in relation to such 20 circumstances, if any, as may be prescribed.

19. It is unlawful for a person to discriminate against another person on the ground of his race— Access to  
places and  
vehicles.

- 25 (a) by refusing to allow him access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;
- (b) in the terms on which he is prepared to allow him access to or the use of any such place or vehicle

(c)



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- (c) by refusing to allow him the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not;
- 5 (d) in the terms on which he is prepared to allow him the use of any such facilities; or
- (e) by requiring him to leave or cease the use of any such place or vehicle or any such facilities.

20 **20.** It is unlawful for a person who provides, for pay- Provision  
ment or not, goods or services to the public or a section of of goods  
the public to discriminate against another person on the and  
ground of his race— services.

- (a) by refusing to provide him with those goods or services; or
  - 15 (b) by refusing to provide him with goods or services—
    - (i) of the like quality;
    - (ii) in the like manner; or
    - (iii) on the like terms,
- 20 as are normally provided by that firstmentioned person to the public, or where the person requesting those goods or services belongs to a section of the public, to that section.

**21.** (1) It is unlawful for a person, whether as principal Accommo-  
or agent, to discriminate against another person on the ground dation.  
25 of his race—

- (a) by refusing his application for accommodation;

(b)



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- (b) in the terms on which he offers him accommodation;  
or
- (c) by deferring his application for accommodation or  
according him a lower order of precedence in any  
5 list of applicants for that accommodation.

(2) It is unlawful for a person, whether as principal  
or agent, to discriminate against another person on the ground  
of his race—

- 10 (a) by denying him access, or limiting his access, to  
any benefit associated with accommodation occupied  
by him; or
- (b) by evicting him or subjecting him to any other  
detriment.

(3) Nothing in this section applies to or in respect  
15 of the provision of accommodation in premises if—

- (a) the person who provides or proposes to provide the  
accommodation or a near relative of that person  
resides, and intends to continue to reside, on those  
premises; and
- 20 (b) the accommodation provided in those premises is  
for no more than 6 persons.

*DIVISION 4.—Exceptions to Part II.*

**22.** Nothing in this Part applies to or in respect of any- Special  
thing done in affording persons of a particular race access to needs.  
25 facilities or services to meet the special needs of persons of  
that race in relation to their education, training or welfare,  
or any ancillary benefits.

**23.**



*Anti-Discrimination.*

**23.** Nothing in this Part applies to or in respect of any- Sport. thing done on the grounds of a person's nationality or place of birth or length of time for which he has been resident in a particular place or area—

- 5 (a) in selecting one or more persons to represent a place or an area in any sport or game; or
- (b) in pursuance of the rules of any competition in so far as they relate to eligibility to compete in any sport or game.

10

**PART III.**

**SEX DISCRIMINATION.**

**DIVISION 1.—General.**

**24.** In this Part—

15 “man” means a member of the male sex irrespective of his age;

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

**Interpre-  
tation:  
Pt. III.**

**25.** (1) A person discriminates against another person on the ground of his sex if, on the ground of— **Sex  
discrimina-  
tion.**

20 (a) his sex;

(b) a characteristic that appertains generally to persons of his sex; or

(c)



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- (c) a characteristic that is generally imputed to persons of his sex,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he 5 treats or would treat a person of the opposite sex.

(2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of the opposite sex are not materially different by reason of the fact that the persons between whom the discrimination 10 occurs are not of the same marital status.

*DIVISION 2.—Discrimination in Work.*

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

- 15 (a) in the arrangements he makes for the purpose of determining who should be offered employment; Discrimination against applicants and employees.
- (b) in determining who should be offered employment; or
- (c) in the terms on which he offers employment.

(2) It is unlawful for an employer to discriminate 20 against an employee on the ground of his sex—

- (a) in the terms or conditions of employment which he affords him;
- 25 (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
- (c) by dismissing him or subjecting him to any other detriment.

(3)



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(3) Subsections (1) and (2) do not apply to employment—

(a) for the purposes of a private household; or

5 (b) where the number of persons employed by the employer, disregarding any persons employed within his private household, does not exceed 5.

(4) For the purposes of subsection (3) (b)—

10 (a) a person shall be regarded as the employer of the employees of a controlled company as defined in section 100 (1) of the Stamp Duties Act, 1920, of which he is an associate as so defined; and

15 (b) a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.

27. (1) It is unlawful for a principal to discriminate against a person on the ground of his sex—

20 (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;

(b) in determining who should be engaged as a commission agent; or

25 (c) in the terms on which he engages him as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of his sex—

(a) in the terms or conditions which he affords him as a commission agent;

198—B

(b)



2. Page 17, clause 26, lines 7 to 16 inclusive.

Omit all words on these lines, insert--

"(4) For the purposes of subsection (3) (b), a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961."



Page 1 of 1

Subject: [illegible]

Statement of the purpose of subsection (2) (b) is contained in the report of the committee of the House of Commons on the subject of the investigation which, with respect to the investigation of the Commission, is a related corporation within the meaning of the Companies Act, 1929.



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- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- 5 (c) by terminating his engagement or subjecting him to any other detriment.

**28.** It is unlawful for a principal to discriminate against a contract worker on the ground of his sex—

Discrimination against contract workers.

- (a) in the terms on which he allows him to work;
- 10 (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

15 **29.** (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of his sex—

Partnerships.

- (a) in the arrangements they make or he makes for the purpose of determining who should be offered a position as partner in the firm;
- 20 (b) in determining who should be offered a position as partner in the firm; or
- (c) in the terms on which they offer or he offers him a position as partner in the firm.
- 25

(2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of his sex—

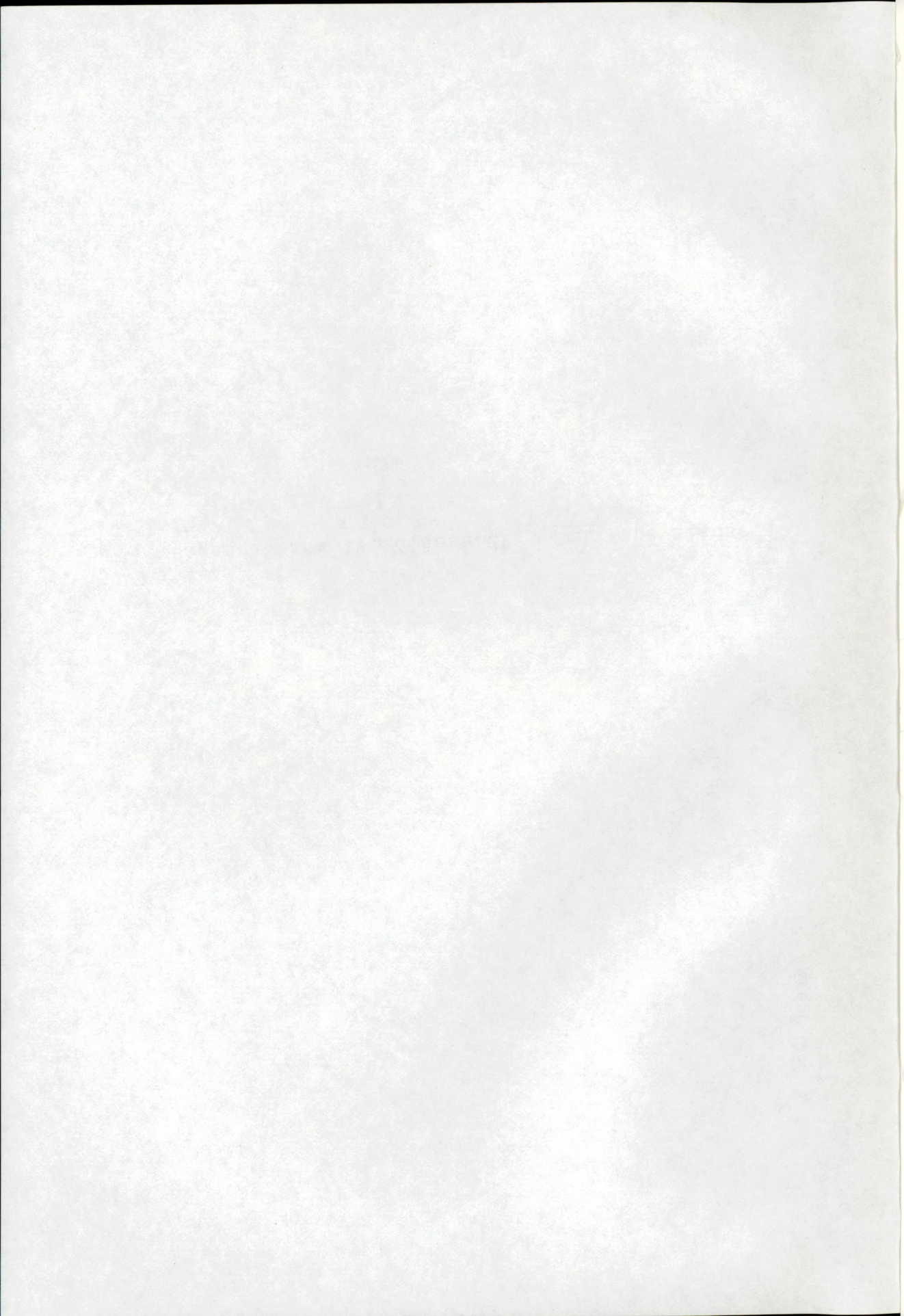
- (a) by denying him access, or limiting his access, to any benefit arising from membership of the firm; or
- 30

(b)



3. Pages 18 and 19, clause 29. Omit the clause.







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- (b) by expelling him from the firm or subjecting him to any other detriment.

**30.** (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his sex—

- (a) by refusing or failing to accept his application for membership; or  
(b) in the terms on which it is prepared to admit him to membership.

**10** (2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his sex—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;  
**15** (b) by depriving him of membership or varying the terms of his membership; or  
(c) by subjecting him to any other detriment.

**31.** It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his sex—

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;  
**25** (b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or  
(c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.  
**30**



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**32.** It is unlawful for an employment agency to discriminate against a person on the ground of his sex— Employment agencies.

(a) by refusing to provide him with any of its services;  
or

5 (b) in the terms on which it offers to provide him with any of its services.

**33.** (1) Nothing in this Division renders unlawful discrimination against a woman on the ground of her sex where being a man is a genuine occupational qualification for the Exception—  
genuine  
occupational  
qualifica-  
tion.  
10 job.

(2) Being a man is a genuine occupational qualification for a job where any one or more of the following requirements is satisfied :—

15 (a) the essential nature of the job calls for a man for reasons of physiology, excluding physical strength or stamina, or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman;

20 (b) the job needs to be held by a man to preserve decency or privacy because—

(i) it is likely to involve physical contact with men in circumstances where they might reasonably object to its being carried out by a woman; or  
25

(ii) the holder of the job is likely to do his work in circumstances where men might reasonably object to the presence of a woman because they are in a state of undress or are using sanitary facilities;  
30

(c)



4. Pages 20, 21, and 22, clause 33, line 20 on page 20 to line 6 on page 22 inclusive. Omit all words on these lines, insert--

- "(b) the job needs to be held by a man to preserve decency or privacy because it involves the fitting of men's clothing;
- (c) the job requires the holder of the job to enter a lavatory ordinarily used by men while it is used by men;
- (d) the job requires the holder of the job to search men;
- (e) the job requires the holder of the job to enter areas ordinarily used by men while men are in a state of undress or are bathing or showering;
- (f) the job requires the holder of the job to live in premises provided by the employer and--
  - (i) those premises are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men; and
  - (ii) it is not reasonable to expect the employer either to equip those premises with accommodation and facilities of that kind or to provide other premises for women;
- (g) the job requires the holder of the job to keep men in custody in a prison or other institution or in part of a prison or other institution;







"(h) the holder of the job provides men with personal services relating to their welfare or education, or similar personal services, and they or a substantial number of them might reasonably object to its being carried out by a woman; or

(i) the job is one of two to be held by a married couple.

(3) Being a man is a genuine occupational qualification for a prescribed job or a job of a prescribed class or description.

(4) Nothing in subsection (2) limits the Governor's power to make a regulation for the purposes of subsection (3).

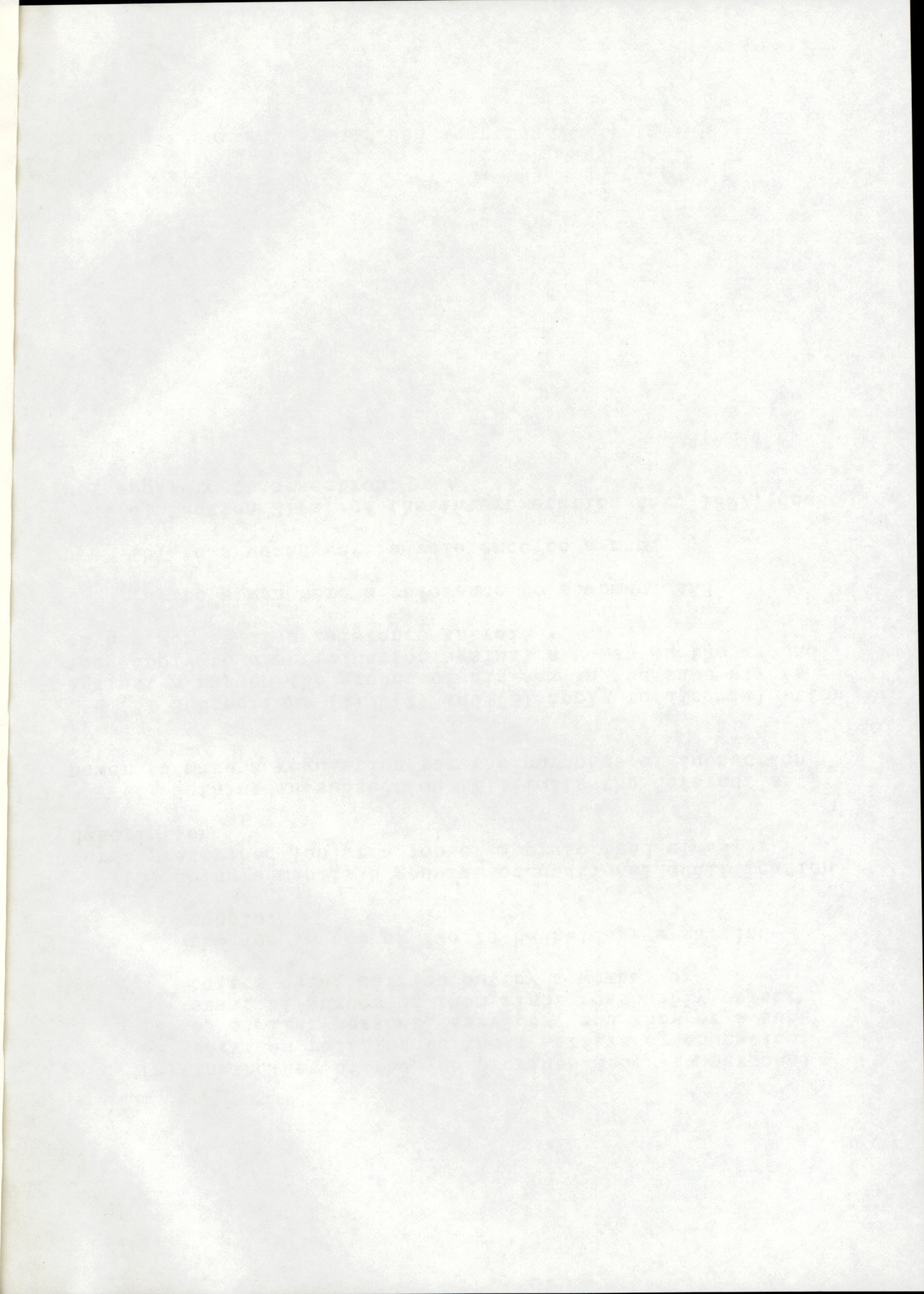
(5) Subsections (1), (2) and (3) apply to discrimination against a man on the ground of his sex in the same way as they apply to discrimination against a woman on the ground of her sex as if a reference therein--

(a) to a man were a reference to a woman; and

(b) to a woman were a reference to a man.

(6) Section 21(a) of the Interpretation Act, 1897, does not apply to this section."







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- 5 (c) the nature of the job or the location of the premises where the job is or is to be done makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer and—
- 10 (i) the only such premises which are available for persons holding that kind of job are lived in, or normally lived in, by men and are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men; and
- 15 (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for women;
- 20 (d) the nature of the premises where the job is or is to be done or of the part of them within which the job is done, requires the job to be held by a man because—
- 25 (i) they are, or are part of, a hospital, a prison or an establishment for persons requiring special care, supervision or attention;
- (ii) those persons are all men, disregarding any woman whose presence is exceptional; and
- (iii) it is reasonable, having regard to the essential character of the premises, or that part, that the job should not be held by a woman;
- 30 (e) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a man; or
- 35 (f) the job is one of two to be held by a married couple.



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(3) Subsections (1) and (2) apply to discrimination against a man on the ground of his sex in the same way as they apply to discrimination against a woman on the ground of her sex as if a reference therein—

- 5       (a) to a man were a reference to a woman; and  
         (b) to a woman were a reference to a man.

DIVISION 3.—*Discrimination in Other Areas.*

+ 34. (1) It is unlawful for an educational authority to Education.  
discriminate against a person on the ground of his sex—

- 10       (a) by refusing or failing to accept his application for  
         admission as a student; or  
         (b) in the terms of which it is prepared to admit him  
         as a student.

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

- (a) by denying him access, or limiting his access, to  
         any benefit provided by the educational authority;  
         or  
20       (b) by expelling him or subjecting him to any other  
         detriment.

(3) Nothing in this section applies to or in respect  
of a prescribed educational authority in relation to such  
circumstances, if any, as may be prescribed.

35. (1) It is unlawful for a person being the holder of a Access to  
25 licence, a permit or an authority under the Liquor Act, 1912, place where  
to discriminate against another person on the ground of his liquor is  
sex— sold.

- (a) by refusing to allow him access to or the use of any  
         place where liquor is sold or supplied;

(b)



5. Page 22, clause 34, line 12. Omit "of", insert "on".



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(b) in the terms on which he is prepared to allow him access to or the use of any such place; or

(c) by requiring him to leave or cease the use of any such place.

5 (2) Nothing in subsection (1) affects the operation of section 68.

36. (1) It is unlawful for a person who provides, for payment or not, goods or services to the public or a section of the public to discriminate against another person on the ground of his sex—

(a) by refusing to provide him with those goods or services; or

(b) by refusing to provide him with goods or services—

(i) of the like quality;

15 (ii) in the like manner; or

(iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those goods or services belongs to a section of the public, to that section.

20

(2) Where a skill is commonly exercised in a different way in relation to men and women, a person does not contravene subsection (1) by exercising the skill in relation to men only, or women only, in accordance with his normal practice.

25

37. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his sex—

(a) by refusing his application for accommodation;

(b)



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- (b) in the terms on which he offers him accommodation;  
or
- (c) by deferring his application for accommodation or  
according to him a lower order of precedence in  
5 any list of applicants for that accommodation.

(2) It is unlawful for a person, whether as principal  
or agent, to discriminate against another person on the ground  
of his sex—

- 10 (a) by denying him access, or limiting his access, to  
any benefit associated with accommodation occu-  
pied by him; or
- (b) by evicting him or subjecting him to any other  
detriment.

(3) Nothing in this section applies to or in respect  
15 of the provision of accommodation in premises if—

- (a) the person who provides or proposes to provide  
the accommodation or a near relative of that person  
resides, and intends to continue to reside, on those  
premises; and
- 20 (b) the accommodation provided in those premises is  
for no more than 6 persons.

*DIVISION 4.—Exceptions to Part III.*

38. Nothing in this Part renders unlawful discrimination  
by a person against a man on the ground of his sex by reason  
25 only of the fact that that person grants to a woman rights or  
privileges in connection with pregnancy or childbirth.  
Pregnancy or child-  
birth.



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*Anti-Discrimination.*

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**39.** Nothing in this Part renders unlawful discrimination **Salary, etc.** on the ground of sex in relation to rates of salary, wages or other remuneration.

**40.** Nothing in this Part renders unlawful discrimination **Superannua-** on the ground of sex in the terms or conditions appertaining **tion, etc.** to a superannuation or provident fund or scheme.

**41.** Nothing in this Part renders unlawful discrimination **Insurance,** on the ground of sex with respect to the terms on which an **etc.** annuity, a life assurance policy, an accident or insurance **10** policy or other policy of insurance is offered or may be obtained where—

(a) the discrimination is—

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

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

**20** (b) the source on which the actuarial or statistical data referred to in paragraph (a) (i) is based is disclosed to the person seeking or obtaining the annuity, life assurance policy, accident or insurance policy or other policy of insurance.

**42.** Nothing in this Part renders unlawful the exclusion **Sport.** of persons of the one sex from participation in any sporting **25** activity.



6. Page 25, clause 39. Omit the clause.

7. Page 25, clause 42, line 25. After "activity", insert--  
", not being the coaching of persons engaged in any  
sporting activity, the administration of any sport-  
ing activity or any prescribed sporting activity".



Page 22, clause 42, line 22. After "activity", insert--

"not being the coaching of persons engaged in any sporting activity, the administration of any sport-ing activity or any prescribed sporting activity".



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PART IV.

DISCRIMINATION ON THE GROUND OF MARITAL STATUS.

DIVISION 1.—*General.*

5 43. (1) A person discriminates against another person on the ground of his marital status if, on the ground of— Discrimination on the ground of marital status.

(a) his marital status;

(b) a characteristic that appertains generally to persons of his marital status; or

10 (c) a characteristic that is generally imputed to persons of his marital status,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of a different marital status.

15 (2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of a different marital status are not materially different by reason of the fact that the persons between whom the discrimination occurs are not of the same sex.

DIVISION 2.—*Discrimination in Work.*

20 44. (1) It is unlawful for an employer to discriminate against a person on the ground of his marital status— Discrimination against applicants and employees.

(a) in the arrangements he makes for the purpose of determining who should be offered employment;

25 (b) in determining who should be offered employment; or

(c) in the terms on which he offers employment.

(2)



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

- (a) in the terms or conditions of employment which he affords him;
- 5 (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
- 10 (c) by dismissing him or subjecting him to any other detriment.

(3) Subsections (1) and (2) do not apply to employment—

- (a) for the purposes of a private household; or
- 15 (b) where the number of persons employed by the employer, disregarding any persons employed within his private household, does not exceed 5.

(4) For the purposes of subsection (3) (b)—

- (a) a person shall be regarded as the employer of the employees of a controlled company as defined in section 100 (1) of the Stamp Duties Act, 1920, of which he is an associate as so defined; and
- 20
- (b) a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.
- 25

45. (1) It is unlawful for a principal to discriminate against a person on the ground of his marital status—

- 30 (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;

Discrimination against commission agents.

(b)



8. Page 27, clause 44, lines 17 to 26 inclusive. Omit  
all words on these lines, insert--

"(4) For the purposes of subsection (3) (b), a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the first-mentioned corporation, is a related corporation within the meaning of the Companies Act, 1961."







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- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which he engages him as a commission agent.

5       (2) It is unlawful for a principal to discriminate against a commission agent on the ground of his marital status—

- (a) in the terms or conditions which he affords him as a commission agent;
- 10       (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- 15       (c) by terminating his engagement or subjecting him to any other detriment.

46. It is unlawful for a principal to discriminate against a contract worker on the ground of his marital status—

Discrimination  
against  
contract  
workers.

- (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;
- 20       (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

47. (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of his marital status—

Partner-  
ships.

- 30       (a) in the arrangements they make or he makes for the purpose of determining who should be offered a position as partner in the firm;

(b)



9. Pages 28 and 29, clause 47. Omit the clause.







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(b) in determining who should be offered a position as partner in the firm; or

(c) in the terms on which they offer or he offers him a position as partner in the firm.

5 (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of his marital status—

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

(b) by expelling him from the firm or subjecting him to any other detriment.

15 **48.** (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his marital status—

(a) by refusing or failing to accept his application for membership; or

(b) in the terms on which it is prepared to admit him to membership.

20 (2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his marital status—

(a) by denying him access, or limiting his access, to any benefit provided by the trade union;

25 (b) by depriving him of membership or varying the terms of his membership; or

(c) by subjecting him to any other detriment.



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*Anti-Discrimination.*

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**49.** It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his marital status—

Qualifying  
bodies.

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

10

**50.** It is unlawful for an employment agency to discriminate against a person on the ground of his marital status—

Employment  
agencies.

- (a) by refusing to provide him with any of its services;  
or

- (b) in the terms on which it offers to provide him with any of its services.

20

**51.** Nothing in this Division renders unlawful discrimination against a person on the ground of his marital status in relation to a job which is one of two to be held by a married couple.

Exception—  
employment  
of married  
couple.



*Anti-Discrimination.*

DIVISION 3.—*Discrimination in Other Areas.*

52. It is unlawful for a person who provides, for payment or not, services to the public or a section of the public to discriminate against another person on the ground of his marital status—

Provision  
of services.

(a) by refusing to provide him with those services; or

(b) by refusing to provide him with services—

(i) of the like quality;

(ii) in the like manner; or

10 (iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those services belongs to a section of the public, to that section.

15 53. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his marital status—

Accommo-  
dation.

(a) by refusing his application for accommodation;

20 (b) in the terms on which he offers him accommodation;  
or

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

25 (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his marital status—

(a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or

(b)



10. Page 31, Part IV, Division 3. After line 1, insert  
the following new clause--

"52. (1) It is unlawful for an educational authority Education.  
to discriminate against a person on the ground of his  
marital status--

- (a) by refusing or failing to accept his appli-  
cation for admission as a student; or
- (b) in the terms on which it is prepared to  
admit him as a student.

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

- "(a) by denying him access, or limiting his  
access, to any benefit provided by the  
educational authority; or
- (b) by expelling him or subjecting him to  
any other detriment.

(3) Nothing in this section applies to or in  
respect of a prescribed educational authority in relation  
to such circumstances, if any, as may be prescribed."







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(b) by evicting him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if—

- 5 (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
- 10 (b) the accommodation provided in those premises is for no more than 6 persons.

DIVISION 4.—*Exceptions to Part IV.*

54. Nothing in this Part renders unlawful discrimination Salary, etc. on the ground of marital status in relation to rates of salary, wages or other remuneration.

15 55. Nothing in this Part renders unlawful discrimination Super-annuation, etc. on the ground of marital status in the terms or conditions appertaining to a superannuation or provident fund or scheme.

PART V.

DISCRIMINATION ON OTHER GROUNDS.

20 56. A person discriminates against another person on the Age discrimination. ground of his age if, on the ground of—

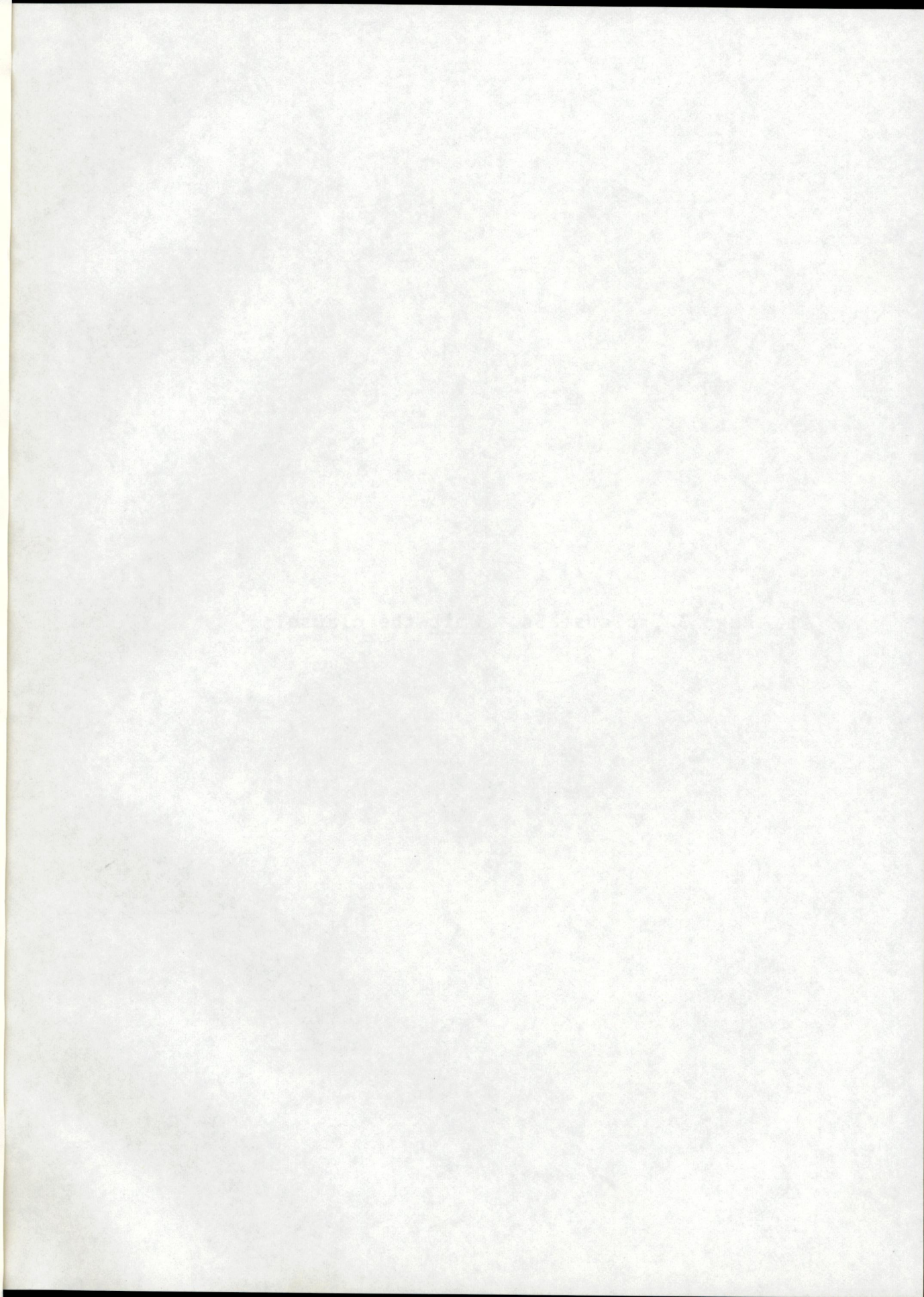
- (a) his age;
- (b) a characteristic that appertains generally to persons of his age; or

(c)



11. Page 32, clause 54. Omit the clause.







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(c) a characteristic that is generally imputed to persons of his age,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he 5 treats or would treat a person of a different age.

57. A person discriminates against another person on the ground of his religious or political conviction if, on the ground of—

Discrimination on the grounds of religious or political conviction.

(a) his religious or political conviction;

10 (b) a characteristic that appertains generally to persons of that religious or political conviction; or

(c) a characteristic that is generally imputed to persons of that religious or political conviction,

he treats him less favourably than in the same circumstances, 15 or in circumstances which are not materially different, he treats or would treat a person not of that religious or political conviction.

58. A person discriminates against another person on the ground of his physical handicap or condition or mental disability if, on the ground of—

Discrimination on the grounds of physical handicap or condition or mental disability.

(a) his physical handicap or condition or mental disability;

25 (b) a characteristic that appertains generally to persons having that physical handicap or condition or that mental disability;

(c) a characteristic that is generally imputed to persons having that physical handicap or condition or that mental disability,

he treats him less favourably than in the same circumstances, 30 or in circumstances which are not materially different, he treats or would treat a person not having that physical handicap or condition or that mental disability.



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**59.** A person discriminates against another person on the ground of his homosexuality if, on the ground of—

Homosexual discrimination.

- (a) his homosexuality;
- 5 (b) a characteristic that appertains generally to homosexuals; or
- (c) a characteristic that is generally imputed to homosexuals,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he  
10 treats or would treat a person who is not a homosexual.

**60.** Subject to this Act, and without limiting the generality of section 136, the regulations may make provision for or with respect to—

Making of regulations for the purposes of this Part.

- 15 (a) the circumstances in which discrimination on a ground referred to in this Part is unlawful or is not unlawful;
- (b) the persons or classes of persons by or against whom discrimination on a ground referred to in this Part is unlawful or is not unlawful;
- 20 (c) the circumstances in which there is or is not a material difference between the way in which a person treats or would treat another person in respect of a ground of discrimination referred to in this Part; and
- 25 (d) the exemption, in respect of a ground referred to in this Part, of all persons, any specified class of persons or all persons except a specified class of persons from all provisions, any specified provisions, or all provisions except specified provisions, of this  
30 Act in all circumstances, in specified circumstances or in all circumstances except specified circumstances.



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PART VI.

OTHER UNLAWFUL ACTS.

61. (1) It is unlawful for a person ("the discriminator") to subject another person ("the person victimised") to any  
5 detriment in any circumstances on the ground that the person  
victimised has—

- (a) brought proceedings against the discriminator or  
any other person under this Act;
- 10 (b) given evidence or information in connection with  
proceedings brought by any person against the  
discriminator or any other person under this Act;
- (c) alleged that the discriminator or any other person  
has committed an act which, whether or not the  
15 allegation so states, would amount to a contraven-  
tion of this Act; or
- (d) otherwise done anything under or by reference to  
this Act in relation to the discriminator or any  
other person,  
or by reason that the discriminator knows that the person  
20 victimised intends to do any of those things, or suspects that  
the person victimised has done, or intends to do, any of  
them.

(2) Subsection (1) does not apply to the subjecting  
of a person to a detriment by reason of an allegation made  
25 by him if the allegation was false and not made in good  
faith.



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**62.** (1) In this section, "advertisement" includes every Advertisements.  
form of advertisement or notice, whether to the public or  
not, and whether in a newspaper or other publication, by  
television or radio, by display of notices, signs, labels, show-  
5 cards or goods, by distribution of samples, circulars,  
catalogues, price lists or other material, by exhibition of  
pictures, models or films, or in any other way and the  
reference to publish or display, in relation to an advertise-  
ment, shall be construed accordingly.

10 **(2)** It is unlawful for a person to publish or display  
an advertisement that indicates, or could reasonably be  
understood as indicating, an intention to do an act that is  
unlawful by reason of this Act.

**63.** Where a person causes, instructs, induces, aids or Aiding  
15 permits another person do an act that is unlawful by reason unlawful  
of this Act, they both shall be subject, jointly and severally, acts.  
to any liability arising under this Act in respect of the doing  
of that act.

**64.** An act done in contravention of this Act by a person Liability  
20 as the agent or employee of another person shall be deemed, of princi-  
for the purposes of this Act, to be done by his principal or pals and  
employer as well as by him unless his principal or employer employers.  
did not, either before or after the doing of the act, authorise  
him, either expressly or by implication, to do the act.

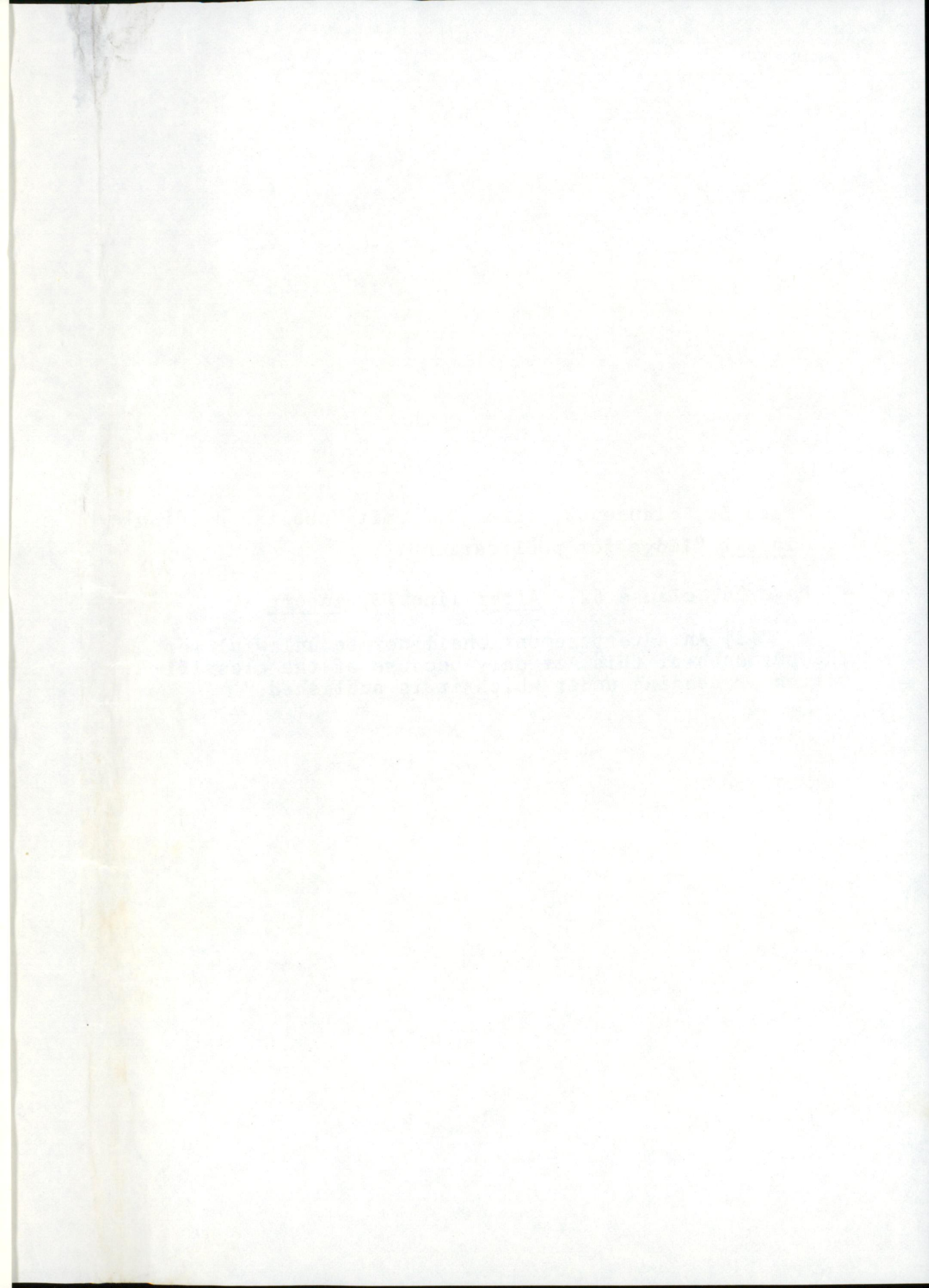
**PART**



12. Page 36, clause 62, line 10. Omit "publish or display",  
insert "lodge for publication".
13. Page 36, clause 62. After line 13, insert--

"(3) An advertisement shall not be unlawful for the purposes of this Act only because of the classification or heading under which it is published."







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PART VII.

GENERAL EXCEPTIONS TO PARTS II TO V.

**65.** Nothing in this Act affects anything done by a person in compliance with—

Acts done  
under  
statutory  
authority,  
etc.

- 5 (a) any other Act, whether passed before or after the date of assent to this Act;
- (b) an instrument made or approved under an Act referred to in paragraph (a);
- (c) an order of the Board; or
- 10 (d) an order of a court.

**66.** (1) Nothing in this Act affects—

Charities.

- 15 (a) a provision of a deed, will or other instrument, whether made before or after the day appointed and notified under section 2 (2), that confers charitable benefits or enables charitable benefits to be conferred on persons of a class identified by reference to any one or more of the grounds of discrimination referred to in this Act; or
- 20 (b) an act which is done in order to give effect to such a provision.

(2) In this section, "charitable benefits" means benefits for purposes that are exclusively charitable according to the law in force in any part of Australia.

**67.** Nothing in this Act affects—

Religious  
bodies.

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

(b)



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- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
  - 5 (c) the appointment of any other person in any capacity by a body established to propagate religion; or
  - (d) any other practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.
- 10
68. (1) In this section, "body" means—
- Registered clubs and voluntary bodies.
- (a) a club registered under Part X of the Liquor Act, 1912;
  - 15 (b) a club registered under Division 4 of Part IIIA of the Gaming and Betting Act, 1912; or
  - (c) a body—
    - (i) the activities of which are carried on otherwise than for profit; and
    - (ii) which is not established by an Act.
- 20 (2) Nothing in this Act affects—
- (a) any rule or practice of a body which restricts admission to membership of that body; or
  - (b) the provision of benefits, facilities or services to members of that body.



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PART VIII.

THE COUNSELLOR FOR EQUAL OPPORTUNITY.

69. There shall be a Counsellor for Equal Opportunity. The  
Counsellor.

70. The Counsellor shall be appointed by the Governor, Appointment  
of  
Counsellor.  
5 on the recommendation of the Minister, on such terms and conditions as are specified in the instrument of appointment.

71. Subject to this Act, the Counsellor holds office for Term of  
office.  
such period, not exceeding 7 years, as is specified in the instrument of his appointment and is eligible for re-  
10 appointment.

72. A person is not eligible for appointment as Counsellor Persons  
ineligible  
for  
appointment  
as  
Counsellor.  
if he is—

- (a) of or above the age of 65 years; or
- 15 (b) a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth.

73. The Counsellor vacates his office—

- (a) on the day on which he attains the age of 65 years; Vacation of  
office.
- 20 (b) if he engages in any paid employment outside the duties of his office;
- (c) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State  
25 or of the Commonwealth;

(d)



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(d) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation; or

5 (e) if he is removed from office by the Governor pursuant to section 74.

74. The Counsellor may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament. Removal  
from  
office.

75. The provisions of the Public Service Act, 1902, do not apply to the appointment of the Counsellor and the Counsellor is not subject to those provisions. Counsellor  
not subject  
to Public  
Service Act,  
1902.

76. The Counsellor is entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and Remunera-  
tion and  
allowances.
- 15 (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

77. (1) The Minister may appoint an acting Counsellor during the absence of the Counsellor or during a vacancy in his office. Acting  
Counsellor.

20

(2) An acting Counsellor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

25 (3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Counsellor to act as Counsellor.

(4)



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(4) A person appointed an acting Counsellor shall, while so acting, be deemed to be the Counsellor and shall have the immunities and functions of the Counsellor.

(5) The Minister may, for any cause which to him seems sufficient, remove an acting Counsellor from office.

78. (1) The Governor may appoint and employ, under Staff, and subject to the Public Service Act, 1902, such officers and employees as may be necessary to enable the Counsellor to exercise his functions.

10 (2) A person who is employed for the purposes of subsection (1) is, while he is so employed, an officer of the Counsellor.

**PART IX.**

**THE ANTI-DISCRIMINATION BOARD.**

15 79. In this Part—

“meeting”, in relation to the Board, includes an inquiry; **Pt. IX.**

“member” means a member of the Board and includes the President;

“President” means the President of the Board.

20 80. There shall be an Anti-Discrimination Board.

Interpre-  
tation:

Constitution  
of Board.



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**81.** The Board shall consist of one full-time member and Appointment of members.  
2 part-time members appointed by the Governor.

**82.** A member shall, subject to this Part, hold office for a Term of office.  
period of 3 years and is eligible for re-appointment as a  
5 member.

**83.** (1) The full-time member shall be— Eligibility for appointment to Board.

- (a) a judge of the District Court of New South Wales;
- (b) a member of the Workers' Compensation Commission of New South Wales; or

10 (c) a person who is qualified for appointment as a judge of the District Court of New South Wales or a member of the Workers' Compensation Commission of New South Wales.

(2) A person is not eligible for appointment as a  
15 part-time member if he is—

- (a) of or above the age of 65 years; or
- (b) a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth.

20

**84.** A member shall be deemed to have vacated his Vacation of office.  
office—

- (a) if he dies;
- (b) if, being the President, he engages in any paid  
25 employment outside the duties of his office;

(c)



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- 5 (c) if, being the President, he absents himself from duty for a period exceeding 14 consecutive days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless his absence is occasioned by illness or other unavoidable cause;
- 10 (d) if, being a member other than the President, he is unavailable for duty for a period exceeding 28 days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless his unavailability is occasioned by illness or other unavoidable cause;
- 15 (e) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth;
- 20 (f) if he resigns his office by writing under his hand addressed to the Governor; or
- (g) if, being a member other than the President, he is removed from office by the Governor pursuant to section 85.

**85.** The Governor may for any cause which to him seems sufficient remove any part-time member from office. **Removal from office.**

**86.** On the occurrence of a vacancy in the office of a member, otherwise than by the expiration of the term for which he was appointed, the Governor may appoint a person to hold that office for the residue of his predecessor's term of office, being, where the vacancy occurs in the office of the full-time member, a person qualified for appointment in accordance with section 83. **Filling casual vacancy.**



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87. The provisions of the Public Service Act, 1902, shall not apply to or in respect of the appointment of a member, and a member shall not be subject to the provisions of that Act during his term of office. Member not subject to Public Service Act, 1902.

5 88. A part-time member shall be entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him. Remuneration of part-time members.

89. (1) The full-time member shall be the President. President.

10 (2) The President shall devote the whole of his time to the duties of his office and shall be entitled to be paid—

(a) remuneration of the same amount as is payable in accordance with the Statutory and Other Offices Remuneration Act, 1975, to a judge of the District Court, other than the Chief Judge; and

15 (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

(3) Where upon the appointment of the President he is the holder of an office referred to in section 83 (1) (a) or (b), his appointment as the President, subject to subsection (2), shall not, nor shall his service as the President, affect his tenure of that office or his rank, title, status, precedence, salary or other rights or privileges as the holder of that office.

25 (4) The President may only be removed from office in the same manner as a judge of the District Court may be removed from office.

90. (1) The Minister may at any time appoint a person qualified for appointment as a full-time member in accordance with section 83 (1) to act as President during the absence or illness of the President. Acting President.

(2)



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(2) A person appointed under subsection (1) shall have and may exercise, while acting as President, the functions of the President.

91. (1) The Minister may at any time appoint a person Alternate members.  
5 as an alternate member to act during the absence or illness of a part-time member.

(2) An alternate member shall have and may exercise, while acting as a member, the functions of the person for whom he is the alternate member.

10 92. Where the President or acting President is qualified in accordance with section 83 (1) (a) or (b), he shall retain his office as a judge of the District Court of New South Wales or a member of the Workers' Compensation Commission of New South Wales, as the case may be, and any period during  
15 which he serves as President or acting President shall be computed as part of his service as such a judge or member, as the case may be, for the purposes of the Judges' Pensions Act, 1953. Preservation of rights of full-time member holding judicial office.

93. (1) In this section, "superannuation scheme" means  
20 a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act. Preservation of rights of full-time member previously public servant, etc.

(2) Subject to subsection (3) and to the terms of his appointment, where a full-time member qualified in  
25 accordance with section 83 (1) (c) was, immediately before his appointment as a full-time member—

- (a) an officer of the Public Service; or
- (b) contributor to a superannuation scheme,

he



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he—

(c) shall retain any rights accrued or accruing to him as such an officer or contributor;

5 (d) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a full-time member; and

(e) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer or contributor  
10 during his service as a full-time member, and—

(f) his service as a full-time member shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and  
15

(g) he shall be deemed to be an officer or employee, and the Board shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this subsection.  
20

(3) A full-time member who, but for this subsection, would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or  
25 gratuity under that scheme shall not be so entitled upon his becoming (whether upon his appointment as a full-time member or at any later time while he holds office as a full-time member) a contributor to any other superannuation scheme, and the provisions of subsection (2) (g) cease to apply to or  
30 in respect of him and the Board in any case where he becomes a contributor to such another superannuation scheme.

(4) Subsection (3) does not prevent the payment to a full-time member upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been  
35 payable to him if he had ceased, by way of resignation, to be an officer or employee for the purposes of that scheme.

(5)



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(5) A full-time member shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

94. (1) The procedure for the calling of meetings of the Board and for the conduct of business at those meetings, including the procedure to be followed in an inquiry, shall, subject to this Act, be as determined by the Board. Meetings of the Board.

(2) The President shall preside at all meetings of the Board at which he is present.

10 (3) Three members shall form a quorum at any meeting of the Board and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Board.

(4) A decision of a majority of the members present at a meeting of the Board at which a quorum is present shall be the decision of the Board. 15

(5) The President or member presiding shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

20 95. (1) The Governor may appoint and employ, under and subject to the Public Service Act, 1902, a Registrar of the Board and such officers and employees as may be necessary to enable the Board and the Registrar to exercise their functions. Registrar.

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



*Anti-Discrimination.*

PART X.

THE FUNCTIONS OF THE COUNSELLOR AND THE BOARD.

DIVISION 1.—*General.*

96. In this Part—

Interpre-  
tation:  
Pt. X.

5 “complainant”, in relation to a complaint, means the person or each of the persons by whom that complaint is lodged;

“complaint” means—

10 (a) a complaint, not being a representative complaint, lodged under section 97 (1) or (2); and

(b) a matter referred to the Board for inquiry as a complaint pursuant to section 104,

and includes a representative complaint;

15 “Court” means the Supreme Court of New South Wales;

“representative complaint” means a complaint lodged under section 97 (1) by a person on behalf of himself and other persons, or two or more persons on behalf of themselves and other persons, and which is treated by the Board as a representative complaint;

20 “respondent”, in relation to a complaint, means the person or each of the persons against whom that complaint is lodged.

25 DIVISION 2.—*The Functions of the Counsellor.*

97. (1) A person on his own behalf or on behalf of himself and other persons, or two or more persons on their own behalf or on behalf of themselves and other persons, may lodge a complaint in writing with the Counsellor or the Registrar in respect of any contravention of this Act or the

regulations



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regulations which is alleged to have been committed by any other person or persons, other than a contravention in respect of which a specific penalty is imposed.

(2) A person may lodge a complaint in writing with  
5 the Counsellor or the Registrar in respect of any refusal, neglect or failure to obey or comply with an order or interim order of the Board.

(3) A complaint shall be lodged within 6 months  
10 after the date on which the contravention of this Act or the regulations which is the subject of that complaint is alleged to have been committed.

(4) Notwithstanding subsection (3), the Counsellor or the Registrar, on good cause being shown, may accept a complaint which is lodged more than 6 months after the date  
15 referred to in that subsection.

(5) Where a complaint is lodged with the Registrar, the Registrar shall forthwith refer that complaint to the Counsellor.

98. The Counsellor shall investigate each complaint  
20 lodged with him under section 97 (1) or (2) or referred to him by the Registrar under section 97 (5). Investigation of complaints by the Counsellor.

99. (1) Where, at any stage of his investigation of a  
25 complaint, the Counsellor is satisfied that the complaint is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the complaint should not be entertained, he may, by notification in writing addressed to the complainant, decline to entertain the complaint. Counsellor may decline to entertain complaint.



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(2) The Counsellor shall, in a notification under subsection (1), advise the complainant of—

(a) the reason for declining to entertain the complaint;  
and

5 (b) the rights of the complainant under section 100 (1).

**100.** (1) Where the Counsellor has given a complainant a notification under section 99 (1), the complainant may, within 21 days after the date of that notification, by notice in writing served on the Counsellor, require the Counsellor to refer the complaint to the Board.

Reference of complaint to Board at requirement of complainant.

(2) On receipt of a notice under subsection (1), the Counsellor shall refer the complaint to the Board together with a report relating to any inquiries made by him into the complaint.

**101.** (1) Where the Counsellor is of the opinion that a complaint, other than a complaint that he has declined to entertain under section 99 (1), may be resolved by conciliation, he shall endeavour to resolve the complaint by conciliation.

Resolution of complaint by conciliation.

20 (2) The Counsellor may, by notice in writing, require the complainant and the respondent, or either of them, to appear before him, either separately or together, for the purpose of endeavouring to resolve the complaint by conciliation.

25 (3) A person shall not fail to comply with the terms of a notice under subsection (2).

Penalty : \$500.

**102.** A complainant or respondent in conciliation proceedings before the Counsellor shall not be represented by any other person except by leave of the Counsellor.

No right to representation.

**103.**



*Anti-Discrimination.*

**103.** (1) Where the Counsellor—

Reference  
of com-  
plaints  
to the  
Board.

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

5 (b) has endeavoured to resolve a complaint by conciliation but has not been successful in his endeavours; or

(c) is of the opinion that the nature of a complaint is such that it should be referred to the Board,

10 he shall refer the complaint to the Board together with a report relating to any inquiries made by him into the complaint.

(2) Evidence of anything said or done in the course of conciliation proceedings under section 101 shall not be admissible in subsequent proceedings under this Part relating  
15 to the complaint.

*DIVISION 3.—The Functions of the Board in relation to Complaints.*

**104.** The Minister may refer any matter to the Board for inquiry as a complaint under this Part.

Reference  
of matter  
to the  
Board by  
the Minister.

20 **105.** The Board shall hold an inquiry into each complaint or matter referred to it under section 100 (2), 103 (1) or 104.

Inquiries  
into  
complaints.

25 **106.** Where the Board is of the opinion that two or more complaints arise out of the same or substantially the same circumstances or subject-matter, it may hold a single inquiry in relation to those complaints.

Single  
inquiry in  
relation  
to several  
complaints.

**107.**



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**107.** Where, before the holding of an inquiry, or at any stage during the holding of an inquiry, the Board is of the opinion that a person ought to be joined as a party to the inquiry, it may, by notice in writing given to that person, join that person as a party to the inquiry.

Joinder of parties by the Board.

**108.** (1) The Board—

Notice of inquiry and rights of parties at inquiry.

(a) shall give a party to an inquiry, other than a person to whom the Board grants leave to appear as a party to the inquiry, such notice in such manner as the Board determines of the time and place at which it intends to hold the inquiry; and

(b) shall give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Board.

(2) If a party to an inquiry to whom notice has been given under subsection (1) (a) fails to attend at the time and place specified for the inquiry, the Board may hold the inquiry in the absence of that party.

**109.** The parties to an inquiry shall be the Counsellor, the complainant, the respondent, any person joined by the Board as a party to the inquiry and any person to whom the Board grants leave to appear as a party to the inquiry.

Parties to an inquiry.

**110.** (1) A party to an inquiry—

Right of appearance and to representation.

(a) is entitled to appear personally or by his solicitor or counsel; and

(b) may, by leave of the Board, be represented by a person other than a solicitor or counsel.

(2)



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(2) No person, other than a solicitor or counsel, is entitled to demand or receive any fee or reward for representing a party to an inquiry.

111. At an inquiry held in respect of a representative complaint, the Board shall determine, as a preliminary matter, whether that complaint should be dealt with as a representative complaint.

Determina-  
tion of  
representa-  
tive com-  
plaints.

112. (1) The Board shall not permit a complaint to be dealt with as a representative complaint unless it is satisfied that the complaint is made bona fide and in good faith as a representative complaint.

Matters to  
be consid-  
ered in  
determina-  
tion of  
representa-  
tive com-  
plaints.

(2) In considering whether a complaint is made bona fide and in good faith as a representative complaint, the Board shall satisfy itself—

(a) that—

(i) the complainant is a member of a class of persons, the members of which class have been affected, or may reasonably be likely to be affected, by the conduct of the respondent;

(ii) the complainant has in fact been affected by the conduct of the respondent;

(iii) the class is so numerous that joinder of all its members is impracticable;

(iv) there are questions of law or fact common to all members of the class;

(v) the claims of the complainant are typical of the claims of the class:

(vi)



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- (vi) multiple complaints would be likely to produce varying determinations which could have incompatible or inconsistent results for the individual members of the class; and
- 5 (vii) the respondent has acted on grounds apparently applying to the class as a whole, thereby making relief appropriate for the class as a whole; or
- 10 (b) that notwithstanding that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint.

**113.** Where the Board is satisfied—

Amendment  
of represen-  
tative  
complaints.

- 15 (a) that the complaint could be dealt with as a representative complaint if the class of persons on whose behalf that complaint is lodged is increased, reduced or otherwise altered, the Board may amend the complaint so that the complaint can be dealt
- 20 with as a representative complaint; or
- (b) that the complaint has been wrongly made as a representative complaint, the Board may amend the complaint by removing the names of the persons
- 25 or the class of persons on whose behalf that complaint was lodged so that the complaint can be dealt with as a complaint other than a representative complaint.

- 114.** Nothing in this Part shall prevent a person from lodging a complaint, other than a representative complaint,
- 30 under section 97 (1) or (2), notwithstanding that the conduct in respect of which the complaint is lodged has also been the conduct in respect of which a representative complaint has been lodged.

Ordinary  
complaints  
not  
precluded  
by  
represen-  
tative  
complaints.

**115.**



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**115.** The Board—

Resolution  
of complaint  
by  
conciliation.

- (a) may endeavour, by all such means as to it seem reasonable, to resolve a complaint the subject of an inquiry by conciliation; and

- 5 (b) shall take all such steps as to it seem reasonable to effect an amicable settlement of a complaint the subject of an inquiry and for this purpose may adjourn an inquiry at any stage to enable the parties to negotiate with a view to settlement of the  
10 complaint by amicable arrangements.

**116.** In the course of an inquiry, the Board may, in its discretion—

Evidence  
and findings  
in other  
proceedings.

- 15 (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal and draw any conclusions of fact therefrom that it considers proper;
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the inquiry; and
- 20 (c) receive in evidence any report of the Counsellor that may be relevant to the inquiry if a copy of that report has been made available to every other party to the inquiry.

**117.** (1) For the purposes of any inquiry, the Board—

Application  
of rules of  
evidence,  
etc.

- 25 (a) shall not be bound by the rules of evidence and may inform itself on any matter it thinks fit;
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and

(c)



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(c) may give directions relating to procedure that, in its opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties.

5 (2) The President shall determine any question relating to the admissibility of evidence and any other question of law or procedure.

118. Where by any provision of this Act or the regulations, conduct is excepted from conduct that is unlawful under this Act or the regulations or that is a contravention of this Act or the regulations, the onus of proving the exception in any inquiry lies upon the respondent. Proof of exceptions.

119. Subject to this Part, the Board shall, for the purposes of an inquiry held by it, have the powers, authorities, provisions and immunities conferred by the Royal Commissions Act, 1923, on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part II of that Act, and that Act, Division 2 of Part II excepted, shall apply to any witness summoned by or appearing before the Board in the same way as it applies to any witness summoned by or appearing before a commission. Application of Royal Commissions Act, 1923, to inquiries held by the Board.

120. (1) Where, at any stage of an inquiry, the Board is satisfied that a complaint is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the complaint should not be entertained, it may dismiss the complaint. Board may dismiss frivolous, etc., complaints.

(2) Where the Board dismisses a complaint under subsection (1), it may order the complainant to pay the costs of the inquiry.



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**121.** The Board may, on the application of a complainant at any time after the lodgment of his complaint, make an interim order to preserve—

Making of  
interim  
orders.

- 5 (a) the status quo between the parties to the complaint;  
or  
(b) the rights of the parties to the complaint,  
pending determination of the matter the subject of the complaint.

**122.** After holding an inquiry, the Board may—

Order or  
other  
decision of  
the Board.

- 10 (a) dismiss the complaint the subject of that inquiry;  
or  
(b) find the complaint substantiated and do any one or  
more of the following :—  
15 (i) except in respect of a representative complaint or a matter referred to the Board for inquiry as a complaint pursuant to section 104, order the respondent to pay to the complainant damages not exceeding \$20,000 by way of compensation for any loss or damage suffered by reason of the respondent's conduct;  
20 (ii) make an order enjoining the respondent from continuing or repeating any conduct rendered unlawful by this Act or the regulations;  
25 (iii) except in respect of a representative complaint or a matter referred to the Board for inquiry as a complaint pursuant to section 104, order the respondent to perform any act or course of conduct to redress any  
30 loss or damage suffered by the complainant;

(iv)



14. Page 57, clause 121, line 1. Omit "complainant",  
insert "party to an inquiry".
15. Page 57, clause 121, line 2. Omit "his complaint",  
insert "the complaint into which that inquiry is held".







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- 5 (iv) make an order declaring void in whole or in part and either ab initio or from such other time as is specified in the order any contract or agreement made in contravention of this Act or the regulations; or
- (v) decline to take any further action in the matter.

**123.** (1) Except as provided by section 120 (2) and subsection (2), each party to an inquiry shall pay his own costs.

(2) Where the Board is of the opinion in a particular case that there are circumstances that justify it doing so, it may make such order as to costs and security for costs, whether by way of interim order or otherwise, as it thinks fit.

15 **124.** Any amount ordered to be paid by the Board under this Part may be registered as a judgment debt in a court of competent jurisdiction.

Recovery of amounts payable under an order of the Board.

**125.** A person shall not refuse, neglect or for any reason fail to obey or comply with an order referred to in section 122 (b) (ii) or (iii), or an interim order, of the Board.

Compliance with order of the Board.

Penalty : \$1,000.

25 **126.** (1) Where the Board does not state its reasons for any decision or order made in relation to an inquiry, a party to the inquiry may, by notice in writing served on the Board within 7 days after the date of that decision or order, require the Board to state its reasons.

Reasons for decision or order.

(2) The Board shall, within 14 days after the service of a notice under subsection (1), state its reasons for the decision or order referred to in the notice.

**127.**



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**127.** (1) A party aggrieved by a decision or an order Appeals.  
of the Board may appeal to the Court—

- (a) except as provided in paragraph (b), within 21 days after the date of that decision or order; or
- 5 (b) where a notice has been served on the Board under section 126 (1), within 21 days after the date on which the Board states its reasons for that decision or order under section 126 (2).

(2) The Court, on the hearing of an appeal, shall  
10 have the same functions as the Board in hearing and determining the complaint the subject of the appeal.

(3) The Court may, on the hearing of the appeal—

- (a) confirm, vary or quash the decision or order appealed from, or substitute, or make in addition,  
15 any decision or order that might have been made by the Board under this Part;
- (b) remit the matter to the Board for re-inquiry or further inquiry; or
- (c) make such order as to costs as it determines.

20 (4) For the purposes of section 125, an order of the Court of the nature referred to in section 122 (b) (ii) or (iii) shall be deemed to be an order referred to in section 122 (b) (ii) or (iii), as the case may be, of the Board.

*DIVISION 4.—Other Functions of the Board.*

25 **128.** For the purpose of eliminating discrimination and promoting equality and equal treatment of all human beings, the Board may— General  
functions  
of the  
Board.

- (a) carry out investigations, research and inquiries relating to discrimination;
- 30 (b) acquire and disseminate knowledge on all matters relating to the elimination of discrimination and the achievement of equal rights;

(c)



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- (c) arrange and co-ordinate consultations, discussions, seminars and conferences;
- (d) review, from time to time, the laws of the State;
- 5 (e) consult with governmental, business, industrial and community groups and organisations in order to ascertain means of improving services and conditions affecting minority groups and other groups which are the subject of discrimination and inequality;
- 10 (f) hold public inquiries; and
- (g) develop human rights programmes and policies.

**129.** (1) The Minister may refer to the Board for report any matter relating to—

Reference of certain matters to the Board by the Minister.

- (a) a law or a proposed law; or
- 15 (b) a practice, an alleged practice or a proposed practice of any person or class of persons,

which conflicts with or may give rise to conflict with this Act or the regulations.

- (2) The Board shall conduct an examination into
- 20 any matter referred to it by the Minister under subsection (1) and report to the Minister its findings and conclusions.

**130.** The Board shall, as soon as possible after the day appointed and notified under section 2 (2), undertake a review of—

Review of legislation, etc.

- 25 (a) the legislation of the State; and
- (b) governmental policies and practices,

with a view to identifying circumstances where discrimination on a ground referred to in this Act occurs, in substance or effect, against any person or class of persons and shall furnish

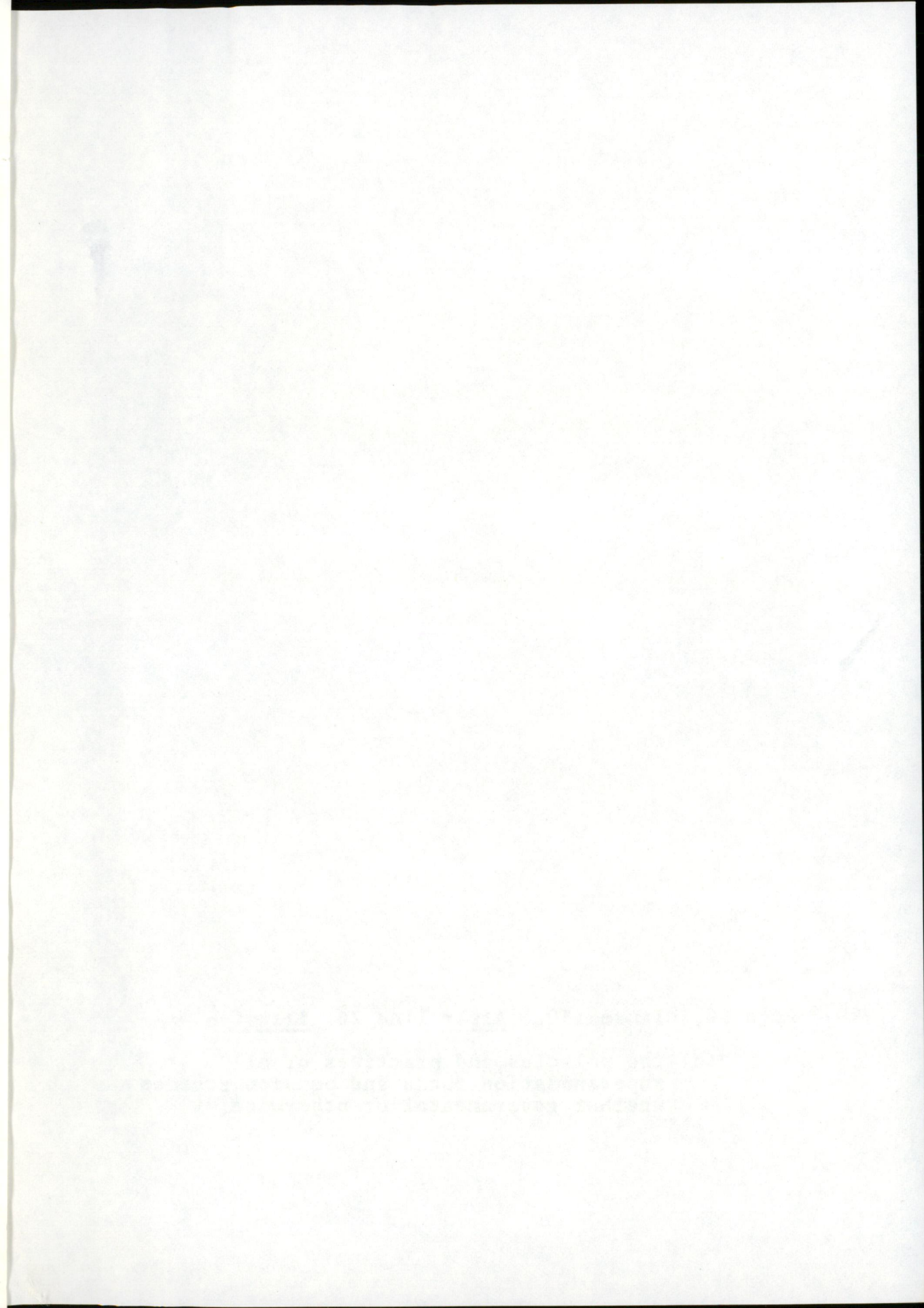
30 a report of its findings to the Minister within 12 months after that date.



16. Page 60, clause 130. After line 26, insert--

"(c) the policies and practices of all  
superannuation funds and pension schemes  
whether governmental or otherwise,"







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**131.** (1) The Board shall, on or before the thirtieth day of September each year, prepare and present to the Minister a report on—

- 5 (a) the administration of this Act and the regulations during the period of 12 months ending on the preceding thirtieth day of June; and
- (b) the research undertaken by the Board during that period and any recommendations that the Board considers appropriate for the elimination or  
10 modification of legislative provisions that discriminate on a ground referred to in this Act against any person or class of persons.

(2) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as  
15 practicable after its receipt by him.

**PART XI.**

**MISCELLANEOUS.**

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

Effect of  
contraven-  
tion  
of Act.

(2) Nothing in subsection (1) prevents an action for defamation.

**133.** A person shall not, without lawful excuse, wilfully obstruct, hinder or resist the Counsellor, an officer of the  
25 Counsellor, the Registrar or a member of the Board in the exercise of his functions under this Act or the regulations.

Obstruction.

Penalty : \$1,000.

**134.**



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**134.** Any penalty imposed by this Act or the regulations may be recovered in a court of petty sessions held before a stipendiary magistrate sitting alone. Recovery of penalties.

**135.** (1) The Minister, on the recommendation of the Board, may, by order published in the Gazette, grant an exemption from this Act or the regulations or such parts of this Act or the regulations as are specified in the order in respect of— Granting of exemptions by the Minister.

- (a) a person or class of persons;
- 10** (b) an activity or class of activity; or
- (c) any other matter or circumstance specified in the order.

(2) An exemption granted under subsection (1) shall remain in force for such period, not exceeding 5 years, **15** as is specified in the order and may, by order made in the manner referred to in subsection (1), be extended for a further period not exceeding 5 years.

(3) The power conferred by subsection (1) to make an order includes power, exercisable in the same manner **20** and subject to the same conditions, to vary or revoke any order so made.

**136.** (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or **25** that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) Before making a recommendation to the Governor for the making of any regulation, the Minister shall take into consideration any recommendation of the Board **30** with respect to the subject-matter of the proposed regulation.

(3)



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(3) A regulation shall, unless disallowed by either House of Parliament, take effect upon—

- 5 (a) the expiration of a period of 14 sitting days after the day or the later day it is laid before either such House; or
- (b) a date specified in the regulation which is later than the period determined under paragraph (a).

(4) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect  
10 to—

- (a) the forms to be used for the purposes of this Act or the regulations;
- (b) the fees to be paid in respect of the lodging of any complaint under Part X;
- 15 (c) the manner of serving any notice or other document;
- (d) the procedure of the Board at any inquiry; and
- (e) exempting—
  - (i) any person or class of persons;
  - (ii) any activity or class of activity; or
  - 20 (iii) any other matter or circumstance, specified in the regulations from this Act or such parts of this Act as may be so specified.

(5) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

25 (6) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.



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**137.** (1) The Statutory and Other Offices Remuneration Act, 1975, is amended by inserting at the end of Schedule 1 the words "Counsellor for Equal Opportunity".

Amendment  
of Act No.  
4, 1976.  
Schedule 1.

(2) The Defamation Act, 1974, is amended—

Amendment  
of Act No.  
18, 1974.

5 (a) by inserting before section 18 the following section :—

Sec. 17D.

10 17D. (1) There is a defence of absolute privilege for a publication to or by the Counsellor for Equal Opportunity appointed under the Anti-Discrimination Act, 1976, to a member of the Anti-Discrimination Board constituted under that Act, to any officer of that Counsellor, to the Registrar of that Board or to any officer of the Public Service appointed or employed to assist in the execution or administration of that Act, if the publication is made for the purpose of the execution or administration of that Act.

Matters  
arising  
under  
Anti-  
Discrimina-  
tion Act,  
1976.

(2) There is a defence of absolute privilege for the publication of a report—

20 (a) referred to in section 100 (2) or 103 (1) of the Anti-Discrimination Act, 1976, of the Counsellor for Equal Opportunity appointed under that Act made to the Anti-Discrimination Board constituted under that Act; or

25

(b) referred to in section 129 (2), 130 or 131 (1) of that Act to the Minister administering that Act.

(b)



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(b) (i) by omitting from clause 2 (10) of Schedule 2 Sch. 2.  
the word "or";

5 (ii) by omitting from clause 2 (11) of Schedule  
2 the word "Act." where secondly occurring  
and by inserting instead the following matter  
and subclause :—

Act; or

10 (12) proceedings at an inquiry conducted by  
the Anti-Discrimination Board consti-  
tuted under the Anti-Discrimination  
Act, 1976.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1976  
[72c]







*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

R. E. WARD,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 24 November, 1976.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.*

*Clerk of the Parliaments.*

*Legislative Council Chamber,  
Sydney, March, 1977.*

## **New South Wales**



ANNO VICESIMO QUINTO

**ELIZABETHÆ II REGINÆ**

\*\*\*\*\*

**Act No. , 1976.**

An Act to render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons.

BE



*Anti-Discrimination.*

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.**

**PRELIMINARY.**

**1.** This Act may be cited as the "Anti-Discrimination Act, Short title. 1976".

**2.** (1) This section and section 1 shall commence on the Commence-  
date of assent to this Act. ment.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**3.** This Act is divided as follows:—

Division of  
Act.

**PART I.—PRELIMINARY—ss. 1–5.**

**PART II.—RACIAL DISCRIMINATION—ss. 6–~~23~~ 22.**

**DIVISION 1.—General—ss. 6, 7.**

**DIVISION 2.—Discrimination in Work—ss. 8–~~17~~ 16.**

**DIVISION 3.—Discrimination in Other Areas—ss. ~~18–21~~ 17–20.**

**DIVISION 4.—Exceptions to Part II—ss. ~~22, 23~~ 21, 22.**

**PART**



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PART III.—SEX DISCRIMINATION—ss. ~~24-42~~ **23-38.**

DIVISION 1.—*General*—ss. ~~24, 25~~ **23, 24.**

DIVISION 2.—*Discrimination in Work*—ss. ~~26-33~~ **25-31.**

5 DIVISION 3.—*Discrimination in Other Areas*—ss. ~~34-37~~ **32-34.**

DIVISION 4.—*Exceptions to Part III*—ss. ~~38-42~~ **35-38.**

10 PART IV.—DISCRIMINATION ON THE GROUND OF MARITAL STATUS—ss. ~~43-55~~ **39-49.**

DIVISION 1.—*General*—s. ~~43~~ **39.**

DIVISION 2.—*Discrimination in Work*—ss. ~~44-51~~ **40-46.**

15 DIVISION 3.—*Discrimination in Other Areas*—ss. ~~52, 53~~ **47, 48.**

DIVISION 4.—*Exceptions to Part IV*—ss. ~~54, 55~~ **Exception to Part IV—s. 49.**

PART V.—DISCRIMINATION ON OTHER GROUNDS—ss. ~~56-60.~~

20 ~~PART VI.—OTHER UNLAWFUL ACTS—ss. 61-64~~  
**PART V.—Other Unlawful Acts—ss. 50-53.**

~~PART VII.—GENERAL EXCEPTIONS TO PARTS II to V—ss. 65-68~~ **PART VI.—General Exceptions to Parts II to IV—ss. 54-59.**

25 ~~PART VIII.—THE COUNSELLOR FOR EQUAL OPPORTUNITY—ss. 69-78~~ **PART VII.—The Counsellor for Equal Opportunity—ss. 60-69.**

30 ~~PART IX.—THE ANTI-DISCRIMINATION BOARD—ss. 79-95~~ **PART VIII.—The Anti-Discrimination Board—ss. 70-86.**

**PART**



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~~PART X.—THE FUNCTIONS OF THE COUNSELLOR AND THE BOARD—ss. 96-131~~ **PART IX.—The Functions of the Counsellor and the Board—ss 87-122.**

DIVISION 1.—*General*—s. 96 **87.**

5 DIVISION 2.—*The Functions of the Counsellor*—ss. 97-103 **88-94.**

DIVISION 3.—*The Functions of the Board in relation to Complaints*—ss. 104-127 **95-118.**

10 DIVISION 4.—*Other Functions of the Board*—ss. 128-131 **119-122.**

~~PART XI.—MISCELLANEOUS—ss. 132-137~~ **PART X.—Miscellaneous—ss. 123-128.**

4. (1) In this Act, except in so far as the context or **Inter-**  
subject-matter otherwise indicates or requires— **pretation.**

15 “accommodation” includes residential or business accommodation;

“Board” means the Anti-Discrimination Board constituted under this Act;

20 “commission agent” means an agent who is remunerated by commission;

“contract worker” means an employee who, under a contract of employment, performs work for an employer who has undertaken to perform that work for another person;

25 “corporation” has the meaning ascribed thereto in the Companies Act, 1961;

“council” has the meaning ascribed thereto in the Local Government Act, 1919, and includes a county council within the meaning of that Act;

30 “Counsellor” means the Counsellor for Equal Opportunity;

“educational



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

5 "employment" includes work under a contract for services;

~~"functions" includes powers, authorities and duties;~~

10 "employment agency" means a person who, for profit or not, provides services for the purpose of finding work or employment for others or for supplying employers with workers or employees;

**"functions" includes powers, authorities and duties;**

"inquiry", in relation to the Board, means an inquiry held under section 105 96;

15 "marital status" means the status or condition of being—

(a) single;

(b) married;

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

20 (d) divorced;

(e) widowed; or

(f) in cohabitation, otherwise than in marriage, with a person of the opposite sex;

25 "near relative", in relation to a person, means his spouse, parent, child, grandparent, grandchild, brother or sister;

"principal" means—

(a) in relation to a commission agent, a person for whom work is done by that commission agent; or

30

(b)



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- (b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

5 "Registrar" means the Registrar of the Board;

"regulation" means a regulation made under this Act;

"services" includes—

- 10 (a) services relating to banking, insurance and the provision of grants, loans, credit or finance;
- (b) services relating to entertainment, recreation or refreshment;
- (c) services relating to transport or travel;
- (d) services of any profession or trade; and
- 15 (e) services provided by a council or public authority;

20 "trade union" means a trade union within the meaning of the Industrial Arbitration Act, 1940, or a registered organization within the meaning of the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth;

"vehicle" includes a ship, an aircraft and a hovercraft.

(2) A reference in this Act to the exercise of a function includes, where that function is a duty, the  
25 performance of that duty.

5. This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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PART



*Anti-Discrimination.*

PART II.

RACIAL DISCRIMINATION.

DIVISION 1.—*General.*

6. (1) In this Part, "race" includes colour, nationality  
5 and ethnic or national origin. Interpretation: Pt. II.

(2) For the purposes of this Part, the fact that a race may comprise two or more distinct races does not prevent it from being a race.

7. A person discriminates against another person on the  
10 ground of his race if, on the ground of— Racial discrimination.

(a) his race;

(b) a characteristic that appertains generally to persons of his race; or

(c) a characteristic that is generally imputed to persons  
15 of his race,

he—

(d) treats him less favourably than in the same  
circumstances, or in circumstances which are not  
materially different, he treats or would treat a  
20 person of a different race; or

(e) segregates him from persons of a different race.

DIVISION 2.—*Discrimination in Work.*

8. (1) It is unlawful for an employer to discriminate  
against a person on the ground of his race— Discrimination against applicants and employees.

25 (a) in the arrangements he makes for the purpose of determining who should be offered employment;

(b)



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- (b) in determining who should be offered employment;  
or
- (c) in the terms on which he offers employment.

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

- (a) in the terms or conditions of employment which  
he affords him;
- (b) by denying him access, or limiting his access, to  
10 opportunities for promotion, transfer or training, or  
to any other benefits associated with employment;  
or
- (c) by dismissing him or subjecting him to any other  
detriment.

(3) Subsections (1) and (2) do not apply to  
15 employment for the purposes of a private household.

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

Discrimina-  
tion  
against  
commission  
agents.

- (a) in the arrangements he makes for the purpose of  
determining who should be engaged as a  
20 commission agent;
- (b) in determining who should be engaged as a  
commission agent; or
- (c) in the terms on which he engages him as a  
commission agent.

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

- (a) in the terms or conditions which he affords him as  
a commission agent;

(b)



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- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- 5 (c) by terminating his engagement or subjecting him to any other detriment.

**10.** It is unlawful for a principal to discriminate against a contract worker on the ground of his race—

Discrimination against contract workers.

- (a) in the terms on which he allows him to work;
- 10 (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

**11.** (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of his race—

Partnerships.

- (a) in the arrangements they make or he makes for the purpose of determining who should be offered a position as partner in the firm;
- 20 (b) in determining who should be offered a position as partner in the firm; or
- (c) in the terms on which they offer or he offers him a position as partner in the firm.
- 25

(2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of his race—

- (a) by denying him access, or limiting his access, to any benefit arising from membership of the firm; or
- 30

(b)



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- (b) by expelling him from the firm or subjecting him to any other detriment.

~~12~~ 11. (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his race—

Trade unions.

- (a) by refusing or failing to accept his application for membership; or  
(b) in the terms on which it is prepared to admit him to membership.

10 (2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his race—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;  
15 (b) by depriving him of membership or varying the terms of his membership; or  
(c) by subjecting him to any other detriment.

~~12~~ 12. It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his race—

Qualifying bodies.

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;  
25 (b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or  
(c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.  
30



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14 13. It is unlawful for an employment agency to discriminate against a person on the ground of his race—

Employment agencies.

(a) by refusing to provide him with any of its services; or

5 (b) in the terms on which it offers to provide him with any of its services.

15 14. Nothing in this Division applies to or in respect of any work or employment where that work or employment involves any one or more of the following :—

Exception—  
genuine  
occupational  
qualification.

10 (a) participation in a dramatic performance or other entertainment in a capacity for which a person of a particular race is required for reasons of authenticity;

15 (b) participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of a particular race is required for reasons of authenticity;

20 (c) working in a place where food or drink is, for payment or not, provided to and consumed by persons in circumstances in which a person of a particular race is required for reasons of authenticity; or

25 (d) providing persons of a particular race with services for the purpose of promoting their welfare where those services can most effectively be provided by a person of the same race.

30 15. Nothing in this Division applies to or in respect of anything done by an employer in or in connection with the employment in New South Wales of a person not ordinarily resident in New South Wales where that employment is intended to provide him with training in skills to be exercised by him wholly outside New South Wales.

Exception—  
employment  
intended  
to provide  
training  
in skills  
to be  
exercised  
outside  
New South  
Wales.

17 16.



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~~17~~ 16. Nothing in this Division applies to or in respect of the employment of a person on a ship or an aircraft in New South Wales if that person was engaged for that employment outside New South Wales.

Exception—  
employ-  
ment on  
ship or  
aircraft.

5 DIVISION 3.—*Discrimination in Other Areas.*

~~18~~ 17. (1) It is unlawful for an educational authority to discriminate against a person on the ground of his race—

Education.

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

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

- 15 (a) by denying him access, or limiting his access, to any benefit provided by the educational authority; or
- (b) by expelling him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of a prescribed educational authority in relation to such 20 circumstances, if any, as may be prescribed.

~~19~~ 18. It is unlawful for a person to discriminate against another person on the ground of his race—

Access to  
places and  
vehicles.

- 25 (a) by refusing to allow him access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;
- (b) in the terms on which he is prepared to allow him access to or the use of any such place or vehicle;

(c)



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- (c) by refusing to allow him the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not;
- 5 (d) in the terms on which he is prepared to allow him the use of any such facilities; or
- (e) by requiring him to leave or cease the use of any such place or vehicle or any such facilities.

~~20~~ 19. It is unlawful for a person who provides, for pay- Provision 10  
ment or not, goods or services to the public or a section of of goods  
the public to discriminate against another person on the and  
ground of his race— services.

- (a) by refusing to provide him with those goods or services; or
- 15 (b) by refusing to provide him with goods or services—
  - (i) of the like quality;
  - (ii) in the like manner; or
  - (iii) on the like terms,
- 20 as are normally provided by that firstmentioned person to the public, or where the person requesting those goods or services belongs to a section of the public, to that section.

~~21~~ 20. (1) It is unlawful for a person, whether as prin- Accommo-  
cipal or agent, to discriminate against another person on the dation.  
25 ground of his race—

- (a) by refusing his application for accommodation;

(b)



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- (b) in the terms on which he offers him accommodation ;  
or
- (c) by deferring his application for accommodation or  
according him a lower order of precedence in any  
list of applicants for that accommodation.

(2) It is unlawful for a person, whether as principal  
or agent, to discriminate against another person on the ground  
of his race—

- (a) by denying him access, or limiting his access, to  
any benefit associated with accommodation occupied  
by him ; or
- (b) by evicting him or subjecting him to any other  
detriment.

(3) Nothing in this section applies to or in respect  
of the provision of accommodation in premises if—

- (a) the person who provides or proposes to provide the  
accommodation or a near relative of that person  
resides, and intends to continue to reside, on those  
premises ; and
- (b) the accommodation provided in those premises is  
for no more than 6 persons.

*DIVISION 4.—Exceptions to Part II.*

21. Nothing in this Part applies to or in respect of  
anything done in affording persons of a particular race access  
to facilities or services to meet the special needs of persons of  
that race in relation to their education, training or welfare,  
or any ancillary benefits.

22.



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23 22. Nothing in this Part applies to or in respect of Sport.  
anything done on the grounds of a person's nationality or  
place of birth or length of time for which he has been resident  
in a particular place or area—

- 5 (a) in selecting one or more persons to represent a  
place or an area in any sport or game; or
- (b) in pursuance of the rules of any competition in so  
far as they relate to eligibility to compete in any  
sport or game.

PART III.

SEX DISCRIMINATION.

DIVISION 1.—*General.*

24 23. In this Part—

Interpre-  
tation:  
Pt. III.

15 “man” means a member of the male sex irrespective of  
his age;

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

25 24. (1) A person discriminates against another Sex  
person on the ground of his sex if, on the ground of— discrimination.

- 20 (a) his sex;
- (b) a characteristic that appertains generally to persons  
of his sex; or

(c)

(2.)



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(c) a characteristic that is generally imputed to persons of his sex,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of the opposite sex.

(2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of the opposite sex are not materially different by reason of the fact that the persons between whom the discrimination occurs are not of the same marital status.

*DIVISION 2.—Discrimination in Work.*

26 25. (1) It is unlawful for an employer to discriminate against a person on the ground of his sex—

- 15 (a) in the arrangements he makes for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment; or
- (c) in the terms on which he offers employment.

Discrimination against applicants and employees.

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

- (a) in the terms or conditions of employment which he affords him;
- 25 (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment; or
- (c) by dismissing him or subjecting him to any other detriment.

(3)



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(3) Subsections (1) and (2) do not apply to employment—

(a) for the purposes of a private household; or

5 (b) where the number of persons employed by the employer, disregarding any persons employed within his private household, does not exceed 5.

~~(4) For the purposes of subsection (2) (b)—~~

10 ~~(a) a person shall be regarded as the employer of the employees of a controlled company as defined in section 100 (1) of the Stamp Duties Act, 1920, of which he is an associate as so defined; and~~

15 ~~(b) a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.~~

20 **(4) For the purposes of subsection (3) (b), a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.**

27 **26. (1) It is unlawful for a principal to discriminate against a person on the ground of his sex—**

25 (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;

(b) in determining who should be engaged as a commission agent; or

30 (c) in the terms on which he engages him as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of his sex—

35 (a) in the terms or conditions which he affords him as a commission agent;

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(b)

Discrimination against commission agents.



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- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- 5 (c) by terminating his engagement or subjecting him to any other detriment.

28 27. It is unlawful for a principal to discriminate against a contract worker on the ground of his sex—

Discrimination against contract workers.

- (a) in the terms on which he allows him to work;
- 10 (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

15 29. (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of his sex—

Partnerships.

- (a) in the arrangements they make or he makes for the purpose of determining who should be offered a position as partner in the firm;
- 20 (b) in determining who should be offered a position as partner in the firm; or
- (c) in the terms on which they offer or he offers him a position as partner in the firm.
- 25

(2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of his sex—

- (a) by denying him access, or limiting his access, to any benefit arising from membership of the firm; or
- 30

(b)



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- (b) by expelling him from the firm or subjecting him to any other detriment.

28. (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his sex—

- (a) by refusing or failing to accept his application for membership; or  
(b) in the terms on which it is prepared to admit him to membership.

29. (2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his sex—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;  
(b) by depriving him of membership or varying the terms of his membership; or  
(c) by subjecting him to any other detriment.

30. It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his sex—

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



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32 30. It is unlawful for an employment agency to discriminate against a person on the ground of his sex— Employment agencies.

- (a) by refusing to provide him with any of its services;  
or  
5 (b) in the terms on which it offers to provide him with any of its services.

33 31. (1) Nothing in this Division renders unlawful discrimination against a woman on the ground of her sex where being a man is a genuine occupational qualification for the Exception—  
genuine  
occupational  
qualification.  
10 job.

(2) Being a man is a genuine occupational qualification for a job where any one or more of the following requirements is satisfied :—

- 15 (a) the essential nature of the job calls for a man for reasons of physiology, excluding physical strength or stamina, or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman;  
20 (b) the job needs to be held by a man to preserve decency or privacy because—  
(i) it is likely to involve physical contact with men in circumstances where they might reasonably object to its being carried out by a woman; or  
25 (ii) the holder of the job is likely to do his work in circumstances where men might reasonably object to the presence of a woman because they are in a state of undress or are using sanitary facilities;  
30



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- 5 (c) the nature of the job or the location of the premises where the job is or is to be done makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer and—
- 10 (i) the only such premises which are available for persons holding that kind of job are lived in, or normally lived in, by men and are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men; and
- 15 (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for women;
- 20 (d) the nature of the premises where the job is or is to be done or of the part of them within which the job is done, requires the job to be held by a man because—
- 25 (i) they are, or are part of, a hospital, a prison or an establishment for persons requiring special care, supervision or attention;
- (ii) those persons are all men, disregarding any woman whose presence is exceptional; and
- 30 (iii) it is reasonable, having regard to the essential character of the premises, or that part, that the job should not be held by a woman;
- (e) the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and those services can most effectively be provided by a man; or
- 35 (f) the job is one of two to be held by a married couple.



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(3) Subsections (1) and (2) apply to discrimination against a man on the ground of his sex in the same way as they apply to discrimination against a woman on the ground of her sex as if a reference  
5 therein—

(a) to a man were a reference to a woman; and

(b) to a woman were a reference to a man.

10 (b) the job needs to be held by a man to preserve decency or privacy because it involves the fitting of men's clothing;

(c) the job requires the holder of the job to enter a lavatory ordinarily used by men while it is used by men;

(d) the job requires the holder of the job to search men;

15 (e) the job requires the holder of the job to enter areas ordinarily used by men while men are in a state of undress or are bathing or showering;

(f) the job requires the holder of the job to live in premises provided by the employer and—

20 (i) those premises are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men; and

25 (ii) it is not reasonable to expect the employer either to equip those premises with accommodation and facilities of that kind or to provide other premises for women;

30 (g) the job requires the holder of the job to keep men in custody in a prison or other institution or in part of a prison or other institution;

(h)



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(h) the holder of the job provides men with personal services relating to their welfare or education, or similar personal services, and they or a substantial number of them might reasonably object to its being carried out by a woman; or

(i) the job is one of two to be held by a married couple.

(3) Being a man is a genuine occupational qualification for a prescribed job or a job of a prescribed class or description.

(4) Nothing in subsection (2) limits the Governor's power to make a regulation for the purposes of subsection (3).

(5) Subsections (1), (2) and (3) apply to discrimination against a man on the ground of his sex in the same way as they apply to discrimination against a woman on the ground of her sex as if a reference therein—

(a) to a man were a reference to a woman; and

(b) to a woman were a reference to a man.

(6) Section 21 (a) of the Interpretation Act, 1897, does not apply to this section.

DIVISION 3.—*Discrimination in Other Areas.*

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

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

(b) in the terms of which it is prepared to admit him as a student.

(2)



*Anti-Discrimination.*

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

- 5 (a) by denying him access, or limiting his access, to any benefit provided by the educational authority; or
- (b) by expelling him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in  
10 respect of a prescribed educational authority in relation to such circumstances, if any, as may be prescribed.

35 32. (1) It is unlawful for a person being the holder of a licence, a permit or an authority under the Liquor Act, 1912, to discriminate against another person on the ground  
15 of his sex—

- (a) by refusing to allow him access to or the use of any place where liquor is sold or supplied;
- (b) in the terms on which he is prepared to allow him access to or the use of any such place; or
- 20 (c) by requiring him to leave or cease the use of any such place.

(2) Nothing in subsection (1) affects the operation of section 57.

26 33. (1) It is unlawful for a person who provides, for  
25 payment or not, goods or services to the public or a section of the public to discriminate against another person on the ground of his sex—

- (a) by refusing to provide him with those goods or services; or

(b)



*Anti-Discrimination.*

- (b) by refusing to provide him with goods or services—
- (i) of the like quality;
  - (ii) in the like manner; or
  - (iii) on the like terms,
- 5 as are normally provided by that firstmentioned person to the public, or where the person requesting those goods or services belongs to a section of the public, to that section.

(2) Where a skill is commonly exercised in a different way in relation to men and women, a person does not contravene subsection (1) by exercising the skill in relation to men only, or women only, in accordance with his normal practice.

37 34. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his sex— Accommodation.

- (a) by refusing his application for accommodation;
- (b) in the terms on which he offers him accommodation; or
- 20 (c) by deferring his application for accommodation or according to him a lower order of precedence in any list of applicants for that accommodation.

(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his sex—

- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
  - (b) by evicting him or subjecting him to any other detriment.
- 30

(3)



*Anti-Discrimination.*

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if—

- 5 (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
- (b) the accommodation provided in those premises is for no more than 6 persons.

*DIVISION 4.—Exceptions to Part III.*

10 ~~38~~ 35. Nothing in this Part renders unlawful discrimination by a person against a man on the ground of his sex by reason only of the fact that that person grants to a woman rights or privileges in connection with pregnancy or childbirth. Pregnancy or childbirth.

15 ~~39. Nothing in this Part renders unlawful discrimination on the ground of sex in relation to rates of salary, wages or other remuneration.~~ Salary,<sup>1</sup> etc.

40 36. Nothing in this Part renders unlawful discrimination on the ground of sex in the terms or conditions appertaining to a superannuation or provident fund or scheme. Superannuation, etc.

20 ~~41~~ 37. Nothing in this Part renders unlawful discrimination on the ground of sex with respect to the terms on which an annuity, a life assurance policy, an accident or insurance policy or other policy of insurance is offered or may be obtained where— Insurance, etc.

- 25 (a) the discrimination is—
  - (i) based upon actuarial or statistical data from a source on which it is reasonable to rely; and

(ii)



*Anti-Discrimination.*

- (ii) reasonable having regard to the data and any other relevant factors; and
- (b) the source on which the actuarial or statistical data referred to in paragraph (a) (i) is based is disclosed to the person seeking or obtaining the annuity, life assurance policy, accident or insurance policy or other policy of insurance the Board, where the Board so requires.

42 38. Nothing in this Part renders unlawful the exclusion Sport.  
10 of persons of the one sex from participation in any sporting activity, **not being the coaching of persons engaged in any sporting activity, the administration of any sporting activity or any prescribed sporting activity.**

PART IV.

15 DISCRIMINATION ON THE GROUND OF MARITAL STATUS.

DIVISION 1.—*General.*

- 43 39. (1) A person discriminates against another person on the ground of his marital status if, on the ground of—
- 20 (a) his marital status;
- (b) a characteristic that appertains generally to persons of his marital status; or
- (c) a characteristic that is generally imputed to persons of his marital status,
- 25 he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of a different marital status.



*Anti-Discrimination.*

(2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of a different marital status are not materially different by reason of the fact that the persons between whom the discrimination occurs are not of the same sex.

*DIVISION 2.—Discrimination in Work.*

44 40. (1) It is unlawful for an employer to discriminate against a person on the ground of his marital status—

Discrimination against applicants and employees.

- 10 (a) in the arrangements he makes for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment;
- or
- (c) in the terms on which he offers employment.

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

- (a) in the terms or conditions of employment which he affords him;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;
- 20 or
- (c) by dismissing him or subjecting him to any other detriment.

(3) Subsections (1) and (2) do not apply to employment—

- (a) for the purposes of a private household; or
- (b) where the number of persons employed by the employer, disregarding any persons employed within his private household, does not exceed 5.

~~(4)~~



*Anti-Discrimination.*

~~(4) For the purposes of subsection (3) (b)—~~

~~(a) a person shall be regarded as the employer of the employees of a controlled company as defined in section 100 (1) of the Stamp Duties Act, 1920, of which he is an associate as so defined; and~~

~~(b) a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.~~

**(4) For the purposes of subsection (3) (b), a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.**

**41. (1) It is unlawful for a principal to discriminate against a person on the ground of his marital status—**

**(a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;**

**(b) in determining who should be engaged as a commission agent; or**

**(c) in the terms on which he engages him as a commission agent.**

**(2) It is unlawful for a principal to discriminate against a commission agent on the ground of his marital status—**

**(a) in the terms or conditions which he affords him as a commission agent;**

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

**(c)**

Discrimination against commission agents.



*Anti-Discrimination.*

- (c) by terminating his engagement or subjecting him to any other detriment.

46 42. It is unlawful for a principal to discriminate against a contract worker on the ground of his marital status—

Discrimination against contract workers.

- 5 (a) in the terms on which he allows him to work ;  
 (b) by not allowing him to work or continue to work ;  
 (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made ; or  
 10 (d) by subjecting him to any other detriment.

47. (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to discriminate against a person on the ground of his

Partnership.

15 marital status—

- (a) in the arrangements they make or he makes for the purpose of determining who should be offered a position as partner in the firm ;  
 20 (b) in determining who should be offered a position as partner in the firm ; or  
 (c) in the terms on which they offer or he offers him a position as partner in the firm.

(2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the  
 25 ground of his marital status—

- (a) by denying him access, or limiting his access, to any benefit arising from membership of the firm ; or  
 30 (b) by expelling him from the firm or subjecting him to any other detriment.



*Anti-Discrimination.*

48 43. (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his marital status—

Trade  
unions.

- 5 (a) by refusing or failing to accept his application for membership; or
- (b) in the terms on which it is prepared to admit him to membership.

(2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his marital status—

- 10 (a) by denying him access, or limiting his access, to any benefit provided by the trade union;
- (b) by depriving him of membership or varying the terms of his membership; or
- 15 (c) by subjecting him to any other detriment.

49 44. It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his marital status—

Qualifying  
bodies.

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



*Anti-Discrimination.*

~~50~~ 45. It is unlawful for an employment agency to discriminate against a person on the ground of his marital status— <sup>Employment agencies.</sup>

(a) by refusing to provide him with any of its services;  
or

(b) in the terms on which it offers to provide him with any of its services.

~~51~~ 46. Nothing in this Division renders unlawful discrimination against a person on the ground of his marital status in relation to a job which is one of two to be held by a married couple. <sup>Exception—employment of married couple.</sup>

*DIVISION 3.—Discrimination in Other Areas.*

~~52~~ 47. It is unlawful for a person who provides, for payment or not, services to the public or a section of the public to discriminate against another person on the ground of his marital status— <sup>Provision of services.</sup>

(a) by refusing to provide him with those services; or

(b) by refusing to provide him with services—

(i) of the like quality;

(ii) in the like manner; or

(iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those services belongs to a section of the public, to that section.



*Anti-Discrimination.*

53 48. (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his marital status—

- (a) by refusing his application for accommodation;
- 5 (b) in the terms on which he offers him accommodation; or
- (c) by deferring his application for accommodation or according him a lower order of precedence in any list of applicants for that accommodation.

10 (2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his marital status—

- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
- 15 (b) by evicting him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if—

- 20 (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
- (b) the accommodation provided in those premises is
- 25 for no more than 6 persons.

DIVISION 4.—*Exceptions* **Exception to Part IV.**Salar<sup>y</sup>, etc.

54. ~~Nothing in this Part renders unlawful discrimination on the ground of marital status in relation to rates of salary, wages or other remuneration.~~



*Anti-Discrimination.*

55 49. Nothing in this Part renders unlawful discrimination on the ground of marital status in the terms or conditions appertaining to a superannuation or provident fund or scheme. Super-annuation, etc.

PART V.

5 DISCRIMINATION ON OTHER GROUNDS.

56. A person discriminates against another person on the ground of his age if, on the ground of— Age discrimination.

- (a) his age;
- 10 (b) a characteristic that appertains generally to persons of his age; or
- (c) a characteristic that is generally imputed to persons of his age,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he 15 treats or would treat a person of a different age.

57. A person discriminates against another person on the ground of his religious or political conviction if, on the ground of— Discrimination on the ground of religious or political conviction.

- (a) his religious or political conviction;
- 20 (b) a characteristic that appertains generally to persons of that religious or political conviction; or

(e)



*Anti-Discrimination.*

(c) a characteristic that is generally imputed to persons of that religious or political conviction, he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he 5 treats or would treat a person not of that religious or political conviction.

58. A person discriminates against another person on the ground of his physical handicap or condition or mental disability if, on the ground of—

- 10 (a) his physical handicap or condition or mental disability; Discrimination on the grounds of physical handicap or condition or mental disability.
- (b) a characteristic that appertains generally to persons having that physical handicap or condition or that mental disability;
- 15 (c) a characteristic that is generally imputed to persons having that physical handicap or condition or that mental disability,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he 20 treats or would treat a person not having that physical handicap or condition or that mental disability.

59. A person discriminates against another person on the ground of his homosexuality, on the ground of—

- (a) his homosexuality; Homosexual discrimination.
- 25 (b) a characteristic that appertains generally to homosexuals; or
- (c) a characteristic that is generally imputed to homosexuals,

he treats him less favourably than in the same circumstances, 30 or in circumstances which are not materially different, he treats or would treat a person who is not a homosexual.



*Anti-Discrimination.*

60. Subject to this Act, and without limiting the generality of section 136, the regulations may make provision for or with respect to—

Making of  
regulations  
for the  
purposes of  
this Part.

- 5 (a) the circumstances in which discrimination on a ground referred to in this Part is unlawful or is not unlawful;
- (b) the persons or classes of persons by or against whom discrimination on a ground referred to in this Part is unlawful or is not unlawful;
- 10 (c) the circumstances in which there is or is not a material difference between the way in which a person treats or would treat another person in respect of a ground of discrimination referred to in this Part; and
- 15 (d) the exemption, in respect of a ground referred to in this Part, of all persons, any specified class of persons or all persons except a specified class of persons from all provisions, any specified provisions, or all provisions except specified provisions, of this
- 20 Act in all circumstances, in specified circumstances or in all circumstances except specified circumstances.

## PART VI V.

## OTHER UNLAWFUL ACTS.

25 ~~61~~ 50. (1) It is unlawful for a person ("the discriminator") to subject another person ("the person victimised") to any detriment in any circumstances on the ground that the person victimised has—

- 30 (a) brought proceedings against the discriminator or any other person under this Act;

(b)



*Anti-Discrimination.*

- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act;
  - (c) alleged that the discriminator or any other person has committed an act which, whether or not the allegation so states, would amount to a contravention of this Act; or
  - (d) otherwise done anything under or by reference to this Act in relation to the discriminator or any other person,
- or by reason that the discriminator knows that the person victimised intends to do any of those things, or suspects that the person victimised has done, or intends to do, any of them.

(2) Subsection (1) does not apply to the subjecting of a person to a detriment by reason of an allegation made by him if the allegation was false and not made in good faith.

**62 51.** (1) In this section, "advertisement" includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, show-cards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way and the reference to publish or display, in relation to an advertisement, shall be construed accordingly.

(2) It is unlawful for a person to ~~publish or display~~ **lodge for publication** an advertisement that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of this Act.



*Anti-Discrimination.*

(3) An advertisement shall not be unlawful for the purposes of this Act only because of the classification or heading under which it is published.

63 52. Where a person causes, instructs, induces, aids or permits another person to do an act that is unlawful by reason of this Act, they both shall be subject, jointly and severally, to any liability arising under this Act in respect of the doing of that act. Aiding unlawful acts.

64 53. An act done in contravention of this Act by a person as the agent or employee of another person shall be deemed, for the purposes of this Act, to be done by his principal or employer as well as by him unless his principal or employer did not, either before or after the doing of the act, authorise him, either expressly or by implication, to do the act. Liability of principals and employers.

15

PART VII VI.

GENERAL EXCEPTIONS TO PARTS II TO V IV.

65 54. Nothing in this Act affects anything done by a person in compliance with— Acts done under statutory authority, etc.

- 20
- (a) any other Act, whether passed before or after the date of assent to this Act;
  - (b) an instrument made or approved under an Act referred to in paragraph (a);
  - (c) an order of the Board; or
  - ~~(d) an order of a court.~~ (d) an order of a court; or

(e)



*Anti-Discrimination.*

- 5 (e) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment (including the payment by an employer of a salary, wage or other remuneration in excess of the amount fixed by such a court or tribunal and whether or not the payment of such salary, wage or other remuneration, but for this provision would constitute unlawful discrimination).

- 66 55. (1) Nothing in this Act affects— Charities.
- 10 (a) a provision of a deed, will or other instrument, whether made before or after the day appointed and notified under section 2 (2), that confers charitable benefits or enables charitable benefits to be conferred on persons of a class identified by
- 15 reference to any one or more of the grounds of discrimination referred to in this Act; or
- (b) an act which is done in order to give effect to such a provision.

(2) In this section, "charitable benefits" means  
20 benefits for purposes that are exclusively charitable according to the law in force in any part of Australia.

- 67 56. Nothing in this Act affects— Religious bodies.
- (a) the ordination or appointment of priests, ministers of religion or members of any religious order;
- 25 (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;

(c)



*Anti-Discrimination.*

- (c) the appointment of any other person in any capacity by a body established to propagate religion; or
- (d) any other practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

57. (1) In this section, "body" means—

Registered clubs and voluntary bodies.

- (a) a club registered under Part X of the Liquor Act, 1912;
- (b) a club registered under Division 4 of Part IIIA of the Gaming and Betting Act, 1912; or
- (c) a body—
  - (i) the activities of which are carried on otherwise than for profit; and
  - (ii) which is not established by an Act.

(2) Nothing in this Act affects—

- (a) any rule or practice of a body which restricts admission to membership of that body; or
- (b) the provision of benefits, facilities or services to members of that body.

58. Nothing in this Act affects—

Education or religious establishments.

- (a) any rule or practice of an education or religious establishment which restricts admission to membership of that establishment; or
- (b) the provision of benefits, facilities or services to pupils, students, members or staff of such establishments.

59.



*Anti-Discrimination.*

59. (1) In this section, "institution" means an establishment which provides housing accommodation and ancillary services for aged persons, whether by statute or otherwise.

Establishments providing housing accommodation, etc. for aged persons.

(2) Nothing in this Act affects—

- 5 (a) any rule or practice of an institution which restricts admission thereto to any class, type, sex, race or age of applicant; or
- (b) the provision of benefits, facilities or services to such persons as are admitted to such institution.

10

PART VIII VII.

THE COUNSELLOR FOR EQUAL OPPORTUNITY.

69 60. There shall be a Counsellor for Equal The  
Opportunity. Counsellor.

70 61. The Counsellor shall be appointed by the Gov- Appointment  
15 ernor, on the recommendation of the Minister, on such terms of  
and conditions as are specified in the instrument of Counsellor.  
appointment.

71 62. Subject to this Act, the Counsellor holds office for Term of  
such period, not exceeding 7 years, as is specified in the office.  
20 instrument of his appointment and is eligible for re-  
appointment.

72 63. A person is not eligible for appointment as Persons  
Counsellor if he is— ineligible for  
appointment  
as  
Counsellor.

(a) of or above the age of 65 years; or

25 (b) a member of the Legislative Council or the  
Legislative Assembly or a member of a House of  
Parliament of another State or of the Common-  
wealth.

73 64.



*Anti-Discrimination.*

73 64. The Counsellor vacates his office—

Vacation of  
office.

(a) on the day on which he attains the age of 65 years;

(b) if he engages in any paid employment outside the duties of his office;

5 (c) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth;

10 (d) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation; or

(e) if he is removed from office by the Governor pursuant to section 74 65.

74 65. The Counsellor may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament.

Removal  
from  
office.

75 66. The provisions of the Public Service Act, 1902, do not apply to the appointment of the Counsellor and the Counsellor is not subject to those provisions.

Counsellor  
not subject  
to Public  
Service Act,  
1902.

20 76 67. The Counsellor is entitled to be paid—

Remunera-  
tion and  
allowances.

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and

25 (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

77 68. (1) The Minister may appoint an acting Counsellor during the absence of the Counsellor or during a vacancy in his office.

Acting  
Counsellor.



*Anti-Discrimination.*

(2) An acting Counsellor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

5 (3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Counsellor to act as Counsellor.

(4) A person appointed an acting Counsellor shall, while so acting, be deemed to be the Counsellor and shall  
10 have the immunities and functions of the Counsellor.

(5) The Minister may, for any cause which to him seems sufficient, remove an acting Counsellor from office.

78 69. (1) The Governor may appoint and employ, Staff.  
under and subject to the Public Service Act, 1902, such  
15 officers and employees as may be necessary to enable the Counsellor to exercise his functions.

(2) A person who is employed for the purposes of subsection (1) is, while he is so employed, an officer of the Counsellor.

20

PART ~~IX~~ VIII.

THE ANTI-DISCRIMINATION BOARD.

79 70. In this Part—

“meeting”, in relation to the Board, includes an inquiry; Interpretation: Pt. IX.

25 “member” means a member of the Board and includes the President;

“President” means the President of the Board.

80 71. There shall be an Anti-Discrimination Board. Constitution of Board.

81 72.



*Anti-Discrimination.*

81 72. The Board shall consist of one full-time member and 2 part-time members appointed by the Governor. Appointment  
of members.

82 73. A member shall, subject to this Part, hold office for a period of 3 years and is eligible for re-appointment as a member. Term of  
office.

83 74. (1) The full-time member shall be—

(a) a judge of the District Court of New South Wales; Eligibility  
for appoint-  
ment to  
Board.

(b) a member of the Workers' Compensation Commission of New South Wales; or

10 (c) a person who is qualified for appointment as a judge of the District Court of New South Wales or a member of the Workers' Compensation Commission of New South Wales.

(2) A person is not eligible for appointment as a part-time member if he is—

(a) of or above the age of 65 years; or

(b) a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth. 20

84 75. A member shall be deemed to have vacated his office— Vacation  
of office.

(a) if he dies;

25 (b) if, being the President, he engages in any paid employment outside the duties of his office;

(c)



---

*Anti-Discrimination.*

---

- 5 (c) if, being the President, he absents himself from duty for a period exceeding 14 consecutive days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless his absence is occasioned by illness or other unavoidable cause;
- 10 (d) if, being a member other than the President, he is unavailable for duty for a period exceeding 28 days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless his unavailability is occasioned by illness or other unavoidable cause;
- 15 (e) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth;
- 20 (f) if he resigns his office by writing under his hand addressed to the Governor; or
- (g) if, being a member other than the President, he is removed from office by the Governor pursuant to section 85 76.

85 76. The Governor may for any cause which to him seems sufficient remove any part-time member from office. Removal from office.

25 86 77. On the occurrence of a vacancy in the office of a member, otherwise than by the expiration of the term for which he was appointed, the Governor may appoint a person to hold that office for the residue of his predecessor's term of office, being, where the vacancy occurs in the office of the full-time member, a person qualified for appointment in accordance with section 83 74. Filling casual vacancy.

30

87 78.



*Anti-Discrimination.*

87 78. The provisions of the Public Service Act, 1902, shall not apply to or in respect of the appointment of a member, and a member shall not be subject to the provisions of that Act during his term of office. Member not subject to Public Service Act, 1902.

5 88 79. A part-time member shall be entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him. Remuneration of part-time members.

89 80. (1) The full-time member shall be the President. President.

10 (2) The President shall devote the whole of his time to the duties of his office and shall be entitled to be paid—

- 15 (a) remuneration of the same amount as is payable in accordance with the Statutory and Other Offices Remuneration Act, 1975, to a judge of the District Court, other than the Chief Judge; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

(3) Where upon the appointment of the President he is the holder of an office referred to in section 83 74 (1) (a) or (b), his appointment as the President, subject to subsection (2), shall not, nor shall his service as the President, affect his tenure of that office or his rank, title, status, precedence, salary or other rights or privileges as the holder of that office.

(4) The President may only be removed from office in the same manner as a judge of the District Court may be removed from office.

90 81. (1) The Minister may at any time appoint a person qualified for appointment as a full-time member in accordance with section 83 74 (1) to act as President during the absence or illness of the President. Acting President.

(2)



*Anti-Discrimination.*

(2) A person appointed under subsection (1) shall have and may exercise, while acting as President, the functions of the President.

~~91~~ **82.** (1) The Minister may at any time appoint a <sup>Alternate</sup> person as an alternate member to act during the absence or <sup>members.</sup> illness of a part-time member.

(2) An alternate member shall have and may exercise, while acting as a member, the functions of the person for whom he is the alternate member.

10 ~~92~~ **83.** Where the President or acting President is qualified in accordance with section ~~83~~ **74** (1) (a) or (b), he shall retain his office as a judge of the District Court of New South Wales or a member of the Workers' Compensation Commission of New South Wales, as the case may be, and any period <sup>Preservation of rights of full-time member holding judicial office.</sup>   
15 during which he serves as President or acting President shall be computed as part of his service as such a judge or member, as the case may be, for the purposes of the Judges' Pensions Act, 1953.

~~93~~ **84.** (1) In this section, "superannuation scheme" <sup>Preservation of rights of full-time member previously public servant, etc.</sup>   
20 means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

(2) Subject to subsection (3) and to the terms of his appointment, where a full-time member qualified in   
25 accordance with section ~~83~~ **74** (1) (c) was, immediately before his appointment as a full-time member—

- (a) an officer of the Public Service; or
- (b) contributor to a superannuation scheme,

he



*Anti-Discrimination.*

he—

- (c) shall retain any rights accrued or accruing to him as such an officer or contributor;
- 5 (d) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a full-time member; and
- (e) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,
- as if he had continued to be such an officer or contributor
- 10 during his service as a full-time member, and—
- (f) his service as a full-time member shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to
- 15 contribute or by which that entitlement is conferred; and
- (g) he shall be deemed to be an officer or employee, and the Board shall be deemed to be his employer, for the purpose of the superannuation scheme to
- 20 which he is entitled to contribute under this subsection.

(3) A full-time member who, but for this subsection, would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or

25 gratuity under that scheme shall not be so entitled upon his becoming (whether upon his appointment as a full-time member or at any later time while he holds office as a full-time member) a contributor to any other superannuation scheme, and the provisions of subsection (2) (g) cease to apply to or

30 in respect of him and the Board in any case where he becomes a contributor to such another superannuation scheme.

(4) Subsection (3) does not prevent the payment to a full-time member upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been

35 payable to him if he had ceased, by way of resignation, to be an officer or employee for the purposes of that scheme.

(5)



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(5) A full-time member shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

94 85. (1) The procedure for the calling of meetings of Meetings  
5 the Board and for the conduct of business at those meetings, of the  
including the procedure to be followed in an inquiry, shall, Board.  
subject to this Act, be as determined by the Board.

(2) The President shall preside at all meetings of the Board at which he is present.

10 (3) Three members shall form a quorum at any meeting of the Board and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Board.

(4) A decision of a majority of the members present  
15 at a meeting of the Board at which a quorum is present shall be the decision of the Board.

(5) The President or member presiding shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

20 95 86. (1) The Governor may appoint and employ, Registrar.  
under and subject to the Public Service Act, 1902, a Registrar of the Board and such officers and employees as may be necessary to enable the Board and the Registrar to exercise their functions.

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



*Anti-Discrimination.*

PART X IX.

THE FUNCTIONS OF THE COUNSELLOR AND THE BOARD.

DIVISION 1.—*General.*

96 87. In this Part—

5 “complainant”, in relation to a complaint, means the person or each of the persons by whom that complaint is lodged;

Interpre-  
tation:  
Pt. X.

“complaint” means—

10 (a) a complaint, not being a representative complaint, lodged under section 97 88 (1) or (2); and

(b) a matter referred to the Board for inquiry as a complaint pursuant to section 104 95,

and includes a representative complaint;

15 “Court” means the Supreme Court of New South Wales;

20 “representative complaint” means a complaint lodged under section 97 88 (1) by a person on behalf of himself and other persons, or two or more persons on behalf of themselves and other persons, and which is treated by the Board as a representative complaint;

“respondent”, in relation to a complaint, means the person or each of the persons against whom that complaint is lodged.

25 DIVISION 2.—*The Functions of the Counsellor.*

97 88. (1) A person on his own behalf or on behalf of himself and other persons, or two or more persons on their own behalf or on behalf of themselves and other persons, may lodge a complaint in writing with the Counsellor or the Registrar in respect of any contravention of this Act or the

Making  
of  
complaints.

regulations



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*Anti-Discrimination.*

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regulations which is alleged to have been committed by any other person or persons, other than a contravention in respect of which a specific penalty is imposed.

(2) A person may lodge a complaint in writing with  
5 the Counsellor or the Registrar in respect of any refusal, neglect or failure to obey or comply with an order or interim order of the Board.

(3) A complaint shall be lodged within 6 months  
after the date on which the contravention of this Act or the  
10 regulations which is the subject of that complaint is alleged to have been committed.

(4) Notwithstanding subsection (3), the Counsellor  
or the Registrar, on good cause being shown, may accept a  
complaint which is lodged more than 6 months after the date  
15 referred to in that subsection.

(5) Where a complaint is lodged with the Registrar,  
the Registrar shall forthwith refer that complaint to the  
Counsellor.

98 89. The Counsellor shall investigate each complaint  
20 lodged with him under section 97 88 (1) or (2) or referred to  
him by the Registrar under section 97 88 (5).  
Investigation of complaints by the Counsellor.

99 90. (1) Where, at any stage of his investigation of a  
complaint, the Counsellor is satisfied that the complaint is  
frivolous, vexatious, misconceived or lacking in substance, or  
25 that for any other reason the complaint should not be  
entertained, he may, by notification in writing addressed to  
the complainant, decline to entertain the complaint.  
Counsellor may decline to entertain complaint.

(2)



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(2) The Counsellor shall, in a notification under subsection (1), advise the complainant of—

(a) the reason for declining to entertain the complaint; and

5 (b) the rights of the complainant under section ~~100~~ 91 (1).

~~100~~ 91. (1) Where the Counsellor has given a com-  
plainant a notification under section ~~99~~ 90 (1), the  
complainant may, within 21 days after the date of that  
10 notification, by notice in writing served on the Counsellor,  
require the Counsellor to refer the complaint to the Board.

Reference of  
complaint to  
Board at  
require-  
ment of  
complainant.

(2) On receipt of a notice under subsection (1),  
the Counsellor shall refer the complaint to the Board together  
with a report relating to any inquiries made by him into the  
15 complaint.

~~101~~ 92. (1) Where the Counsellor is of the opinion that  
a complaint, other than a complaint that he has declined to  
entertain under section ~~99~~ 90 (1), may be resolved by  
conciliation, he shall endeavour to resolve the complaint by  
20 conciliation.

Resolution  
of complaint  
by  
conciliation.

(2) The Counsellor may, by notice in writing,  
require the complainant and the respondent, or either of  
them, to appear before him, either separately or together, for  
the purpose of endeavouring to resolve the complaint by  
25 conciliation.

(3) A person shall not fail to comply with the  
terms of a notice under subsection (2).

Penalty : \$500.

~~102~~ 93. A complainant or respondent in conciliation  
30 proceedings before the Counsellor shall not be represented  
by any other person except by leave of the Counsellor.

No right to  
representa-  
tion.

~~103~~ 94.



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~~103~~ 94. (1) Where the Counsellor—

Reference  
of com-  
plaints  
to the  
Board.

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

5 (b) has endeavoured to resolve a complaint by conciliation but has not been successful in his endeavours; or

(c) is of the opinion that the nature of a complaint is such that it should be referred to the Board,

10 he shall refer the complaint to the Board together with a report relating to any inquiries made by him into the complaint.

(2) Evidence of anything said or done in the course of conciliation proceedings under section ~~101~~ 92 shall not be admissible in subsequent proceedings under this Part relating  
15 to the complaint.

*DIVISION 3.—The Functions of the Board in relation to Complaints.*

~~104~~ 95. The Minister may refer any matter to the Board for inquiry as a complaint under this Part.

Reference  
of matter  
to the  
Board by  
the Minister.

20 ~~105~~ 96. The Board shall hold an inquiry into each complaint or matter referred to it under section ~~100~~ (2), ~~103~~  
(1) ~~or~~ ~~104~~ 91 (2), 94 (1) or 95. Inquiries  
into  
complaints.

25 ~~106~~ 97. Where the Board is of the opinion that two or more complaints arise out of the same or substantially the same circumstances or subject-matter, it may hold a single inquiry in relation to those complaints. Single  
inquiry in  
relation  
to several  
complaints.

~~107~~ 98.



*Anti-Discrimination.*

107 98. Where, before the holding of an inquiry, or at any stage during the holding of an inquiry, the Board is of the opinion that a person ought to be joined as a party to the inquiry, it may, by notice in writing given to that person, 5 join that person as a party to the inquiry.

Joinder of parties by the Board.

108 99. (1) The Board—

10 (a) shall give a party to an inquiry, other than a person to whom the Board grants leave to appear as a party to the inquiry, such notice in such manner as the Board determines of the time and place at which it intends to hold the inquiry; and

Notice of inquiry and rights of parties at inquiry.

15 (b) shall give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Board.

(2) If a party to an inquiry to whom notice has been given under subsection (1) (a) fails to attend at the time and place specified for the inquiry, the Board may hold the inquiry in the absence of that party.

20 109 100. The parties to an inquiry shall be the Counsellor, the complainant, the respondent, any person joined by the Board as a party to the inquiry and any person to whom the Board grants leave to appear as a party to the inquiry.

Parties to an inquiry.

110 101. (1) A party to an inquiry—

25 (a) is entitled to appear personally or by his solicitor or counsel; and

Right of appearance and to representation.

(b) may, by leave of the Board, be represented by a person other than a solicitor or counsel.

(2)



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(2) No person, other than a solicitor or counsel, is entitled to demand or receive any fee or reward for representing a party to an inquiry.

~~111~~ 102. At an inquiry held in respect of a representative complaint, the Board shall determine, as a preliminary matter, whether that complaint should be dealt with as a representative complaint.

Determina-  
tion of  
representa-  
tive com-  
plaints.

~~112~~ 103. (1) The Board shall not permit a complaint to be dealt with as a representative complaint unless it is satisfied that the complaint is made bona fide and in good faith as a representative complaint.

Matters to  
be consid-  
ered in  
determina-  
tion of  
representa-  
tive com-  
plaints.

(2) In considering whether a complaint is made bona fide and in good faith as a representative complaint, the Board shall satisfy itself—

15 (a) that—

- 20 (i) the complainant is a member of a class of persons, the members of which class have been affected, or may reasonably be likely to be affected, by the conduct of the respondent;
- (ii) the complainant has in fact been affected by the conduct of the respondent;
- (iii) the class is so numerous that joinder of all its members is impracticable;
- 25 (iv) there are questions of law or fact common to all members of the class;
- (v) the claims of the complainant are typical of the claims of the class;

(vi)



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- (vi) multiple complaints would be likely to produce varying determinations which could have incompatible or inconsistent results for the individual members of the class; and
- 5 (vii) the respondent has acted on grounds apparently applying to the class as a whole, thereby making relief appropriate for the class as a whole; or
- 10 (b) that notwithstanding that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint.

~~113~~ 104. Where the Board is satisfied—

Amendment  
of represen-  
tative  
complaints.

- 15 (a) that the complaint could be dealt with as a representative complaint if the class of persons on whose behalf that complaint is lodged is increased, reduced or otherwise altered, the Board may amend the complaint so that the complaint can be dealt
- 20 with as a representative complaint; or
- (b) that the complaint has been wrongly made as a representative complaint, the Board may amend the complaint by removing the names of the persons or the class of persons on whose behalf that
- 25 complaint was lodged so that the complaint can be dealt with as a complaint other than a representative complaint.

- ~~114~~ 105. Nothing in this Part shall prevent a person from lodging a complaint, other than a representative complaint,
- 30 under section ~~97~~ 88 (1) or (2), notwithstanding that the conduct in respect of which the complaint is lodged has also been the conduct in respect of which a representative complaint has been lodged.

Ordinary  
complaints  
not  
precluded  
by  
represen-  
tative  
complaints.

~~115~~ 106.



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~~115~~ 106. The Board—

Resolution  
of complaint  
by  
conciliation.

- (a) may endeavour, by all such means as to it seem reasonable, to resolve a complaint the subject of an inquiry by conciliation; and
- 5 (b) shall take all such steps as to it seem reasonable to effect an amicable settlement of a complaint the subject of an inquiry and for this purpose may adjourn an inquiry at any stage to enable the parties to negotiate with a view to settlement of the
- 10 complaint by amicable arrangements.

~~116~~ 107. In the course of an inquiry, the Board may, in its discretion—

Evidence  
and findings  
in other  
proceedings.

- (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal and draw
- 15 any conclusions of fact therefrom that it considers proper;
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the inquiry; and
- (c) receive in evidence any report of the Counsellor that
- 20 may be relevant to the inquiry if a copy of that report has been made available to every other party to the inquiry.

~~117~~ 108. (1) For the purposes of any inquiry, the Board—

Application  
of rules of  
evidence,  
etc.

- 25 (a) shall not be bound by the rules of evidence and may inform itself on any matter it thinks fit;
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and

(c)



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(c) may give directions relating to procedure that, in its opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties.

5 (2) The President shall determine any question relating to the admissibility of evidence and any other question of law or procedure.

~~118~~ 109. Where by any provision of this Act or the regulations, conduct is excepted from conduct that is unlawful under this Act or the regulations or that is a contravention of this Act or the regulations, the onus of proving the exception in any inquiry lies upon the respondent. Proof of exceptions.

~~119~~ 110. Subject to this Part, the Board shall, for the purposes of an inquiry held by it, have the powers, authorities, Application of Royal Commissions Act, 1923, to inquiries held by the Board.  
 15 protections and immunities conferred by the Royal Commissions Act, 1923, on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part II of that Act, and that Act, Division 2 of Part II excepted, shall apply to any witness summoned by or appearing before  
 20 the Board in the same way as it applies to any witness summoned by or appearing before a commission.

~~120~~ 111. (1) Where, at any stage of an inquiry, the Board is satisfied that a complaint is frivolous, vexatious, misconceived or lacking in substance, or that for any other Board may dismiss frivolous, etc., complaints.  
 25 reason the complaint should not be entertained, it may dismiss the complaint.

(2) Where the Board dismisses a complaint under subsection (1), it may order the complainant to pay the costs of the inquiry.

~~121~~ 112.



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~~121~~ **112.** The Board may, on the application of a <sup>Making of</sup> complainant **party to an inquiry** at any time after the <sup>interim</sup> lodgment of his ~~complaint~~ **the complaint into which that** <sup>orders.</sup> **inquiry is held**, make an interim order to preserve—

- 5 (a) the status quo between the parties to the complaint;  
or
  - (b) the rights of the parties to the complaint,
- pending determination of the matter the subject of the complaint.

**10** ~~122~~ **113.** After holding an inquiry, the Board may— <sup>Order or</sup>  
<sup>other</sup>  
<sup>decision of</sup>  
<sup>the Board.</sup>

- (a) dismiss the complaint the subject of that inquiry;  
or
  - (b) find the complaint substantiated and do any one or more of the following :—
- 15 (i) except in respect of a representative complaint or a matter referred to the Board for inquiry as a complaint pursuant to section ~~104~~ **95**, order the respondent to pay to the complainant damages not exceeding
  - 20 \$20,000 by way of compensation for any loss or damage suffered by reason of the respondent's conduct;
  - (ii) make an order enjoining the respondent from continuing or repeating any conduct rendered unlawful by this Act or the regulations;
  - 25 (iii) except in respect of a representative complaint or a matter referred to the Board for inquiry as a complaint pursuant to section ~~104~~ **95**, order the respondent to perform any **reasonable** act or course of conduct to redress any loss or damage suffered by the complainant;
  - 30

(iv)



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- (iv) make an order declaring void in whole or in part and either ab initio or from such other time as is specified in the order any contract or agreement made in contravention of this Act or the regulations; or
- (v) decline to take any further action in the matter.

~~123~~ 114. (1) Except as provided by section ~~120~~ 111 (2) Costs. and subsection (2), each party to an inquiry shall pay his own costs.

(2) Where the Board is of the opinion in a particular case that there are circumstances that justify it doing so, it may make such order as to costs and security for costs, whether by way of interim order or otherwise, as it thinks fit.

15 ~~124~~ 115. Any amount ordered to be paid by the Board under this Part may be registered as a judgment debt in a court of competent jurisdiction.

Recovery of amounts payable under an order of the Board.

~~125~~ 116. A person shall not refuse, neglect or for any reason fail to obey or comply with an order referred to in ~~122~~ 113 (b) (ii) or (iii), or an interim order, of the Board.

Compliance with order of the Board.

Penalty : \$1,000.

~~126~~ 117. (1) Where the Board does not state its reasons for any decision or order made in relation to an inquiry, a party to the inquiry may, by notice in writing served on the Board within 7 days after the date of that decision or order, require the Board to state its reasons.

Reasons for decision or order.

(2) The Board shall, within 14 days after the service of a notice under subsection (1), state its reasons for the decision or order referred to in the notice.

~~127~~ 118.



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~~127~~ **118.** (1) A party aggrieved by a decision or an order Appeals of the Board may appeal to the Court—

- (a) except as provided in paragraph (b), within 21 days after the date of that decision or order; or
- 5 (b) where a notice has been served on the Board under section ~~126~~ **117** (1), within 21 days after the date on which the Board states its reasons for that decision or order under section ~~126~~ **117** (2).

(2) The Court, on the hearing of an appeal, shall  
10 have the same functions as the Board in hearing and determining the complaint the subject of the appeal.

(3) The Court may, on the hearing of the appeal—

- (a) confirm, vary or quash the decision or order appealed from, or substitute, or make in addition,  
15 any decision or order that might have been made by the Board under this Part;
- (b) remit the matter to the Board for re-inquiry or further inquiry; or
- (c) make such order as to costs as it determines.

20 (4) For the purposes of section ~~125~~ **116**, an order of the Court of the nature referred to in section ~~122~~ **113** (b) (ii) or (iii) shall be deemed to be an order referred to in section ~~122~~ **113** (b) (ii) or (iii), as the case may be, of the Board.

25 **DIVISION 4.—Other Functions of the Board.**

~~128~~ **119.** For the purpose of eliminating discrimination and promoting equality and equal treatment of all human beings, the Board may— General  
functions  
of the  
Board.

- 30 (a) carry out investigations, research and inquiries relating to discrimination **and in particular discrimination against a person or persons on the ground of—**

(i) age;

(ii)



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- (ii) a characteristic that appertains generally to persons of a particular age;
- (iii) a characteristic that is generally imputed to persons of a particular age;
- 5 (iv) religious or political conviction;
- (v) a characteristic that appertains generally to persons of a particular religious or political conviction;
- 10 (vi) a characteristic that is generally imputed to persons of a particular religious or political conviction;
- (vii) physical handicap or condition or mental disability;
- 15 (viii) a characteristic that appertains generally to persons having that physical handicap or condition or that mental disability;
- (ix) a characteristic that is generally imputed to persons having that physical handicap or condition or that mental disability;
- 20 (x) homosexuality;
- (xi) a characteristic that appertains generally to homosexuals;
- (xii) a characteristic that is generally imputed to homosexuals;
- 25 (xiii) membership or non-membership of a trade union; or
- (xiv) a characteristic that appertains generally to membership or non-membership of a trade union or a characteristic that is generally imputed to members or non-members of a trade union;
- 30

(b) acquire and disseminate knowledge on all matters relating to the elimination of discrimination and the achievement of equal rights;

(c)



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- (c) arrange and co-ordinate consultations, discussions, seminars and conferences;
- (d) review, from time to time, the laws of the State;
- 5 (e) consult with governmental, business, industrial and community groups and organisations in order to ascertain means of improving services and conditions affecting minority groups and other groups which are the subject of discrimination and inequality;
- 10 (f) hold public inquiries; and
- (g) develop human rights programmes and policies.

~~129~~ 120. (1) The Minister may refer to the Board for report any matter relating to—

Reference of certain matters to the Board by the Minister.

- (a) a law or a proposed law; or
- 15 (b) a practice, an alleged practice or a proposed practice of any person or class of persons,

which conflicts with or may give rise to conflict with this Act or the regulations.

- (2) The Board shall conduct an examination into
- 20 any matter referred to it by the Minister under subsection (1) and report to the Minister its findings and conclusions.

~~120~~ 121. The Board shall, as soon as possible after the day appointed and notified under section 2 (2), undertake a review of—

Review of legislation, etc.

- 25 (a) the legislation of the State; and
- (b) governmental policies and practices; and
- (c) the policies and practices of all superannuation funds and pension schemes whether governmental or otherwise,

with



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with a view to identifying circumstances where discrimination on a ground referred to in this Act occurs, in substance or effect, against any person or class of persons and shall furnish a report of its findings to the Minister within 12 months after that date.

~~121~~ 122. (1) The Board shall, on or before the thirtieth day of September each year, prepare and present to the Minister a report on—

- 10 (a) the administration of this Act and the regulations during the period of 12 months ending on the preceding thirtieth day of June; and
- 15 (b) the research undertaken by the Board during that period and any recommendations that the Board considers appropriate for the elimination or modification of legislative provisions that discriminate on a ground referred to in this Act against any person or class of persons.

(2) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after its receipt by him.

PART XI X.

MISCELLANEOUS.

~~122~~ 123. (1) A contravention of this Act shall attract no sanction or consequence, whether criminal or civil, except to the extent expressly provided by this Act.

Effect of  
contraven-  
tion  
of Act.

(2) Nothing in subsection (1) prevents an action for defamation.

~~123~~ 124.



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~~133~~ 124. A person shall not, without lawful excuse, wil- Obstruction.  
fully obstruct, hinder or resist the Counsellor, an officer of the  
Counsellor, the Registrar or a member of the Board in the  
exercise of his functions under this Act or the regulations.

5 Penalty : \$1,000.

~~134~~ 125. Any penalty imposed by this Act or the Recovery of  
regulations may be recovered in a court of petty sessions held penalties.  
before a stipendiary magistrate sitting alone.

~~135~~ 126. (1) The Minister, on the recommendation of Granting of  
the Board, may, by order published in the Gazette, grant an exemptions  
exemption from this Act or the regulations or such parts of by the  
this Act or the regulations as are specified in the order in Minister.  
respect of—

- (a) a person or class of persons;
- 15 (b) an activity or class of activity; or
- (c) any other matter or circumstance specified in the  
order.

(2) An exemption granted under subsection (1)  
shall remain in force for such period, not exceeding 5 years,  
20 as is specified in the order and may, by order made in the  
manner referred to in subsection (1), be extended for a further  
period not exceeding 5 years.

(3) The power conferred by subsection (1) to  
make an order includes power, exercisable in the same manner  
25 and subject to the same conditions, to vary or revoke any order  
so made.

~~136~~ 127. (1) The Governor may make regulations, not Regula-  
inconsistent with this Act, for or with respect to any matter tions.  
that by this Act is required or permitted to be prescribed or  
30 that is necessary or convenient to be prescribed for carrying  
out or giving effect to this Act.



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(2) Before making a recommendation to the Governor for the making of any regulation, the Minister shall take into consideration any recommendation of the Board with respect to the subject-matter of the proposed regulation.

5 (3) A regulation shall, unless disallowed by either House of Parliament, take effect upon—

(a) the expiration of a period of 14 sitting days after the day or the later day it is laid before either such House; or

10 (b) a date specified in the regulation which is later than the period determined under paragraph (a).

(4) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

15 (a) the forms to be used for the purposes of this Act or the regulations;

(b) the fees to be paid in respect of the lodging of any complaint under Part ~~X~~ IX;

(c) the manner of serving any notice or other document;

20 (d) the procedure of the Board at any inquiry; and

(e) exempting—

(i) any person or class of persons;

(ii) any activity or class of activity; or

(iii) any other matter or circumstance,

25 specified in the regulations from this Act or such parts of this Act as may be so specified.

(5) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(6) Regulations may be made so as to apply  
30 differently according to such factors as may be specified in the regulations.



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~~127~~ **128.** (1) The Statutory and Other Offices Remuneration Act, 1975, is amended by inserting at the end of Schedule 1 the words "Counsellor for Equal Opportunity".

Amendment  
of Act No.  
4, 1976.  
Schedule 1.

(2) The Defamation Act, 1974, is amended—

Amendment  
of Act No.  
18, 1974.

5 (a) by inserting before section 18 the following section :—

10 17D. (1) There is a defence of absolute privilege for a publication to or by the Counsellor for Equal Opportunity appointed under the Anti-Discrimination Act, 1976, to a member of the Anti-Discrimination Board constituted under that Act, to any officer of that Counsellor, to the Registrar of that Board or to any officer of the Public Service appointed or employed to assist in the execution or administration of that Act, if the publication is made for the purpose of the execution or administration of that Act.

Matters  
arising  
under  
Anti-  
Discrimina-  
tion Act,  
1976.

(2) There is a defence of absolute privilege for the publication of a report—

20 (a) referred to in section ~~100 (2) or 103 (1)~~  
**91 (2) or 94 (1)** of the Anti-Discrimination Act, 1976, of the Counsellor for Equal Opportunity appointed under that Act made to the Anti-Discrimination Board constituted under that Act; or

25

(b) referred to in section ~~120 (2), 130 or 131~~  
**120 (2), 121 or 122 (1)** of that Act to the Minister administering that Act.

(b)



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(b) (i) by omitting from clause 2 (10) of Schedule 2 Sch. 2.  
the word "or";

5 (ii) by omitting from clause 2 (11) of Schedule  
2 the word "Act." where secondly occurring  
and by inserting instead the following matter  
and subclause :—

Act; or

10 (12) proceedings at an inquiry conducted by  
the Anti-Discrimination Board consti-  
tuted under the Anti-Discrimination  
Act, 1976.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977



# New South Wales



ANNO VICESIMO SEXTO

## ELIZABETHÆ II REGINÆ

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### Act No. 48, 1977.

An Act to render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons. [Assented to, 28th April, 1977.]

BE



*Anti-Discrimination.*

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.****PRELIMINARY.**

**Short title.**      **1.** This Act may be cited as the "Anti-Discrimination Act, 1977".

**Commence-  
ment.**            **2.** (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Division of  
Act.**              **3.** This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1-5.

PART II.—RACIAL DISCRIMINATION—ss. 6-22.

DIVISION 1.—*General*—ss. 6, 7.

DIVISION 2.—*Discrimination in Work*—ss. 8-16.

DIVISION 3.—*Discrimination in Other Areas*—ss. 17-20.

DIVISION 4.—*Exceptions to Part II*—ss. 21, 22.

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PART III.—SEX DISCRIMINATION—ss. 23–38.

DIVISION 1.—*General*—ss. 23, 24.

DIVISION 2.—*Discrimination in Work*—ss. 25–31.

DIVISION 3.—*Discrimination in Other Areas*—ss.  
32–34.

DIVISION 4.—*Exceptions to Part III*—ss. 35–38.

PART IV.—DISCRIMINATION ON THE GROUND OF  
MARITAL STATUS—ss. 39–49.

DIVISION 1.—*General*—s. 39.

DIVISION 2.—*Discrimination in Work*—ss. 40–46.

DIVISION 3.—*Discrimination in Other Areas*—ss.  
47, 48.

DIVISION 4.—*Exception to Part IV*—s. 49.

PART V.—OTHER UNLAWFUL ACTS—ss. 50–53.

PART VI.—GENERAL EXCEPTIONS TO PARTS II TO IV  
—ss. 54–59.

PART VII.—THE COUNSELLOR FOR EQUAL OPPOR-  
TUNITY—ss. 60–69.

PART VIII.—THE ANTI-DISCRIMINATION BOARD—ss.  
70–86.

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**PART IX.—THE FUNCTIONS OF THE COUNSELLOR AND THE BOARD—ss. 87–122.**

**DIVISION 1.—***General*—s. 87.

**DIVISION 2.—***The Functions of the Counsellor*—ss. 88–94.

**DIVISION 3.—***The Functions of the Board in relation to Complaints*—ss. 95–118.

**DIVISION 4.—***Other Functions of the Board*—ss. 119–122.

**PART X.—MISCELLANEOUS—ss. 123–128.**

**Inter-pretation.**

**4. (1)** In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“accommodation” includes residential or business accommodation;

“Board” means the Anti-Discrimination Board constituted under this Act;

“commission agent” means an agent who is remunerated by commission;

“contract worker” means an employee who, under a contract of employment, performs work for an employer who has undertaken to perform that work for another person;

“corporation” has the meaning ascribed thereto in the Companies Act, 1961;

“council” has the meaning ascribed thereto in the Local Government Act, 1919, and includes a county council within the meaning of that Act;

“Counsellor” means the Counsellor for Equal Opportunity;

“educational



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

“employment” includes work under a contract for services;

“employment agency” means a person who, for profit or not, provides services for the purpose of finding work or employment for others or for supplying employers with workers or employees;

“functions” includes powers, authorities and duties;

“inquiry”, in relation to the Board, means an inquiry held under section 96;

“marital status” means the status or condition of being—

- (a) single;
- (b) married;
- (c) married but living separately and apart from one's spouse;
- (d) divorced;
- (e) widowed; or
- (f) in cohabitation, otherwise than in marriage, with a person of the opposite sex;

“near relative”, in relation to a person, means his spouse, parent, child, grandparent, grandchild, brother or sister;

“principal” means—

- (a) in relation to a commission agent, a person for whom work is done by that commission agent; or

(b)



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- (b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

“Registrar” means the Registrar of the Board;

“regulation” means a regulation made under this Act;

“services” includes—

- (a) services relating to banking, insurance and the provision of grants, loans, credit or finance;
- (b) services relating to entertainment, recreation or refreshment;
- (c) services relating to transport or travel;
- (d) services of any profession or trade; and
- (e) services provided by a council or public authority;

“trade union” means a trade union within the meaning of the Industrial Arbitration Act, 1940, or a registered organization within the meaning of the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth;

“vehicle” includes a ship, an aircraft and a hovercraft.

(2) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that duty.

Act binds  
Crown.

5. This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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**PART II.**

**RACIAL DISCRIMINATION.**

**DIVISION 1.—General.**

6. (1) In this Part, "race" includes colour, nationality and ethnic or national origin. Interpretation:  
Pt. II.

(2) For the purposes of this Part, the fact that a race may comprise two or more distinct races does not prevent it from being a race.

7. A person discriminates against another person on the ground of his race if, on the ground of— Racial discrimination.

- (a) his race;
- (b) a characteristic that appertains generally to persons of his race; or
- (c) a characteristic that is generally imputed to persons of his race,

he—

- (d) treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of a different race; or
- (e) segregates him from persons of a different race.

**DIVISION 2.—Discrimination in Work.**

8. (1) It is unlawful for an employer to discriminate against a person on the ground of his race— Discrimination against applicants and employees.

- (a) in the arrangements he makes for the purpose of determining who should be offered employment;

(b)



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- (b) in determining who should be offered employment;  
or
- (c) in the terms on which he offers employment.

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

- (a) in the terms or conditions of employment which he affords him;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;  
or
- (c) by dismissing him or subjecting him to any other detriment.

(3) Subsections (1) and (2) do not apply to employment for the purposes of a private household.

**Discrimination  
against  
commission  
agents.**

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

- (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which he engages him as a commission agent.

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

- (a) in the terms or conditions which he affords him as a commission agent;

(b)



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- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- (c) by terminating his engagement or subjecting him to any other detriment.

**10.** It is unlawful for a principal to discriminate against a contract worker on the ground of his race—

Discrimination  
against  
contract  
workers.

- (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

**11.** (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his race—

Trade  
unions.

- (a) by refusing or failing to accept his application for membership; or
- (b) in the terms on which it is prepared to admit him to membership.

(2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his race—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;

(b)



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- (b) by depriving him of membership or varying the terms of his membership; or
- (c) by subjecting him to any other detriment.

**Qualifying  
bodies.**

**12.** It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his race—

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

**Employ-  
ment  
agencies.**

**13.** It is unlawful for an employment agency to discriminate against a person on the ground of his race—

- (a) by refusing to provide him with any of its services; or
- (b) in the terms on which it offers to provide him with any of its services.

**Exception—  
genuine  
occupa-  
tional  
qualifica-  
tion.**

**14.** Nothing in this Division applies to or in respect of any work or employment where that work or employment involves any one or more of the following :—

- (a) participation in a dramatic performance or other entertainment in a capacity for which a person of a particular race is required for reasons of authenticity;

(b)



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- (b) participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of a particular race is required for reasons of authenticity;
- (c) working in a place where food or drink is, for payment or not, provided to and consumed by persons in circumstances in which a person of a particular race is required for reasons of authenticity; or
- (d) providing persons of a particular race with services for the purpose of promoting their welfare where those services can most effectively be provided by a person of the same race.

15. Nothing in this Division applies to or in respect of anything done by an employer in or in connection with the employment in New South Wales of a person not ordinarily resident in New South Wales where that employment is intended to provide him with training in skills to be exercised by him wholly outside New South Wales.

Exception—  
employ-  
ment  
intended  
to provide  
training  
in skills  
to be  
exercised  
outside  
New South  
Wales.

16. Nothing in this Division applies to or in respect of the employment of a person on a ship or an aircraft in New South Wales if that person was engaged for that employment outside New South Wales.

Exception—  
employ-  
ment on  
ship or  
aircraft.

*DIVISION 3.—Discrimination in Other Areas.*

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

Education.

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

(2)



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

- (a) by denying him access, or limiting his access, to any benefit provided by the educational authority; or
- (b) by expelling him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of a prescribed educational authority in relation to such circumstances, if any, as may be prescribed.

**Access to  
places and  
vehicles.**

**18.** It is unlawful for a person to discriminate against another person on the ground of his race—

- (a) by refusing to allow him access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;
- (b) in the terms on which he is prepared to allow him access to or the use of any such place or vehicle;
- (c) by refusing to allow him the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not;
- (d) in the terms on which he is prepared to allow him the use of any such facilities; or
- (e) by requiring him to leave or cease the use of any such place or vehicle or any such facilities.



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**19.** It is unlawful for a person who provides, for payment or not, goods or services to the public or a section of the public to discriminate against another person on the ground of his race—

- (a) by refusing to provide him with those goods or services; or
- (b) by refusing to provide him with goods or services—
  - (i) of the like quality;
  - (ii) in the like manner; or
  - (iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those goods or services belongs to a section of the public, to that section.

**20.** (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his race—

- (a) by refusing his application for accommodation;
- (b) in the terms on which he offers him accommodation; or
- (c) by deferring his application for accommodation or according him a lower order of precedence in any list of applicants for that accommodation.



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(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his race—

- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
- (b) by evicting him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if—

- (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
- (b) the accommodation provided in those premises is for no more than 6 persons.

**DIVISION 4.—*Exceptions to Part II.***

**Special  
needs.**

**21.** Nothing in this Part applies to or in respect of anything done in affording persons of a particular race access to facilities or services to meet the special needs of persons of that race in relation to their education, training or welfare, or any ancillary benefits.

**Sport.**

**22.** Nothing in this Part applies to or in respect of anything done on the grounds of a person's nationality or place of birth or length of time for which he has been resident in a particular place or area—

- (a) in selecting one or more persons to represent a place or an area in any sport or game; or

(b)



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- (b) in pursuance of the rules of any competition in so far as they relate to eligibility to compete in any sport or game.

PART III.

SEX DISCRIMINATION.

DIVISION 1.—*General.*

23. In this Part—

Interpre-  
tation:  
Pt. III.

“man” means a member of the male sex irrespective of his age;

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

24. (1) A person discriminates against another person on the ground of his sex if, on the ground of—

Sex  
discrimina-  
tion.

(a) his sex;

(b) a characteristic that appertains generally to persons of his sex; or

(c)



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(c) a characteristic that is generally imputed to persons of his sex,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of the opposite sex.

(2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of the opposite sex are not materially different by reason of the fact that the persons between whom the discrimination occurs are not of the same marital status.

DIVISION 2.—*Discrimination in Work.*

Discrimination  
against  
applicants  
and  
employees.

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

- (a) in the arrangements he makes for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment;  
or
- (c) in the terms on which he offers employment.

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

- (a) in the terms or conditions of employment which he affords him;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;  
or
- (c) by dismissing him or subjecting him to any other detriment.



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(3) Subsections (1) and (2) do not apply to employment—

- (a) for the purposes of a private household; or
- (b) where the number of persons employed by the employer, disregarding any persons employed within his private household, does not exceed 5.

(4) For the purposes of subsection (3) (b), a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.

**26.** (1) It is unlawful for a principal to discriminate against a person on the ground of his sex—

Discrimination  
against  
commission  
agents.

- (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which he engages him as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of his sex—

- (a) in the terms or conditions which he affords him as a commission agent;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- (c) by terminating his engagement or subjecting him to any other detriment.



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*Anti-Discrimination.*

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Discrimination  
against  
contract  
workers.

**27.** It is unlawful for a principal to discriminate against a contract worker on the ground of his sex—

- (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

Trade  
unions.

**28.** (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his sex—

- (a) by refusing or failing to accept his application for membership; or
- (b) in the terms on which it is prepared to admit him to membership.

(2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his sex—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;
- (b) by depriving him of membership or varying the terms of his membership; or
- (c) by subjecting him to any other detriment.

Qualifying  
bodies.

**29.** It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his sex—

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;

(b)



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- (b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

**30.** It is unlawful for an employment agency to discriminate against a person on the ground of his sex— to Employment agencies.

- (a) by refusing to provide him with any of its services; or
- (b) in the terms on which it offers to provide him with any of its services.

**31.** (1) Nothing in this Division renders unlawful discrimination against a woman on the ground of her sex where being a man is a genuine occupational qualification for the job. Exception—  
genuine  
occupational  
qualifica-  
tion.

(2) Being a man is a genuine occupational qualification for a job where any one or more of the following requirements is satisfied :—

- (a) the essential nature of the job calls for a man for reasons of physiology, excluding physical strength or stamina, or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman;
- (b) the job needs to be held by a man to preserve decency or privacy because it involves the fitting of men's clothing;

(c)



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- (c) the job requires the holder of the job to enter a lavatory ordinarily used by men while it is used by men;
  - (d) the job requires the holder of the job to search men;
  - (e) the job requires the holder of the job to enter areas ordinarily used by men while men are in a state of undress or are bathing or showering;
  - (f) the job requires the holder of the job to live in premises provided by the employer and—
    - (i) those premises are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men; and
    - (ii) it is not reasonable to expect the employer either to equip those premises with accommodation and facilities of that kind or to provide other premises for women;
  - (g) the job requires the holder of the job to keep men in custody in a prison or other institution or in part of a prison or other institution;
  - (h) the holder of the job provides men with personal services relating to their welfare or education, or similar personal services, and they or a substantial number of them might reasonably object to its being carried out by a woman; or
  - (i) the job is one of two to be held by a married couple.
- (3) Being a man is a genuine occupational qualification for a prescribed job or a job of a prescribed class or description.



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(4) Nothing in subsection (2) limits the Governor's power to make a regulation for the purposes of subsection (3).

(5) Subsections (1), (2) and (3) apply to discrimination against a man on the ground of his sex in the same way as they apply to discrimination against a woman on the ground of her sex as if a reference therein—

- (a) to a man were a reference to a woman; and
- (b) to a woman were a reference to a man.

(6) Section 21 (a) of the Interpretation Act, 1897, does not apply to this section.

*DIVISION 3.—Discrimination in Other Areas.*

**32.** (1) It is unlawful for a person being the holder of a licence, a permit or an authority under the Liquor Act, 1912, to discriminate against another person on the ground of his sex—

Access to  
place where  
liquor is  
sold.

- (a) by refusing to allow him access to or the use of any place where liquor is sold or supplied;
- (b) in the terms on which he is prepared to allow him access to or the use of any such place; or
- (c) by requiring him to leave or cease the use of any such place.

(2) Nothing in subsection (1) affects the operation of section 57.



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*Anti-Discrimination.*

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**Provision  
of goods  
and  
services.**

**33.** (1) It is unlawful for a person who provides, for payment or not, goods or services to the public or a section of the public to discriminate against another person on the ground of his sex—

- (a) by refusing to provide him with those goods or services; or
- (b) by refusing to provide him with goods or services—
  - (i) of the like quality;
  - (ii) in the like manner; or
  - (iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those goods or services belongs to a section of the public, to that section.

(2) Where a skill is commonly exercised in a different way in relation to men and women, a person does not contravene subsection (1) by exercising the skill in relation to men only, or women only, in accordance with his normal practice.

**Accommo-  
dation.**

**34.** (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his sex—

- (a) by refusing his application for accommodation;
- (b) in the terms on which he offers him accommodation;  
or
- (c) by deferring his application for accommodation or according to him a lower order of precedence in any list of applicants for that accommodation.



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*Anti-Discrimination.*

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(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his sex—

- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
- (b) by evicting him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if—

- (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
- (b) the accommodation provided in those premises is for no more than 6 persons.

*DIVISION 4.—Exceptions to Part III.*

**35.** Nothing in this Part renders unlawful discrimination by a person against a man on the ground of his sex by reason only of the fact that that person grants to a woman rights or privileges in connection with pregnancy or childbirth. Pregnancy or child-birth.

**36.** Nothing in this Part renders unlawful discrimination on the ground of sex in the terms or conditions appertaining to a superannuation or provident fund or scheme. Super-annuation, etc.



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*Anti-Discrimination.*


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Insurance,  
etc.

**37.** Nothing in this Part renders unlawful discrimination on the ground of sex with respect to the terms on which an annuity, a life assurance policy, an accident or insurance policy or other policy of insurance is offered or may be obtained where—

(a) the discrimination is—

- (i) based upon actuarial or statistical data from a source on which it is reasonable to rely; and
- (ii) reasonable having regard to the data and any other relevant factors; and

(b) the source on which the actuarial or statistical data referred to in paragraph (a) (i) is based is disclosed to the Board, where the Board so requires.

Sport.

**38.** Nothing in this Part renders unlawful the exclusion of persons of the one sex from participation in any sporting activity, not being the coaching of persons engaged in any sporting activity, the administration of any sporting activity or any prescribed sporting activity.

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**PART IV.**

**DISCRIMINATION ON THE GROUND OF MARITAL STATUS.**

**DIVISION 1.—General.**

Discrimina-  
tion on the  
ground of  
marital  
status.

**39.** (1) A person discriminates against another person on the ground of his marital status if, on the ground of—

- (a) his marital status;
- (b) a characteristic that appertains generally to persons of his marital status; or

(c)



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*Anti-Discrimination.*

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- (c) a characteristic that is generally imputed to persons of his marital status,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of a different marital status.

(2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of a different marital status are not materially different by reason of the fact that the persons between whom the discrimination occurs are not of the same sex.

DIVISION 2.—*Discrimination in Work.*

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

Discrimination  
against  
applicants  
and  
employees.

- (a) in the arrangements he makes for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment;  
or
- (c) in the terms on which he offers employment.

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

- (a) in the terms or conditions of employment which he affords him;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;  
or
- (c) by dismissing him or subjecting him to any other detriment.

(3)



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*Anti-Discrimination.*

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(3) Subsections (1) and (2) do not apply to employment—

- (a) for the purposes of a private household; or
- (b) where the number of persons employed by the employer, disregarding any persons employed within his private household, does not exceed 5.

(4) For the purposes of subsection (3) (b), a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.

Discrimina-  
tion  
against  
commission  
agents.

**41.** (1) It is unlawful for a principal to discriminate against a person on the ground of his marital status—

- (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which he engages him as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of his marital status—

- (a) in the terms or conditions which he affords him as a commission agent;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- (c) by terminating his engagement or subjecting him to any other detriment.



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*Anti-Discrimination.*

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**42.** It is unlawful for a principal to discriminate against a contract worker on the ground of his marital status—

Discrimination  
against  
contract  
workers.

- (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

**43.** (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his marital status—

Trade  
unions.

- (a) by refusing or failing to accept his application for membership; or
- (b) in the terms on which it is prepared to admit him to membership.

(2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his marital status—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;
- (b) by depriving him of membership or varying the terms of his membership; or
- (c) by subjecting him to any other detriment.

**44.** It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his marital status—

Qualifying  
bodies.

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;

(b)



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*Anti-Discrimination.*

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- (b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

**Employment agencies.**

**45.** It is unlawful for an employment agency to discriminate against a person on the ground of his marital status—

- (a) by refusing to provide him with any of its services; or
- (b) in the terms on which it offers to provide him with any of its services.

**Exception—employment of married couple.**

**46.** Nothing in this Division renders unlawful discrimination against a person on the ground of his marital status in relation to a job which is one of two to be held by a married couple.

**DIVISION 3.—*Discrimination in Other Areas.***

**Provision of services.**

**47.** It is unlawful for a person who provides, for payment or not, services to the public or a section of the public to discriminate against another person on the ground of his marital status—

- (a) by refusing to provide him with those services; or
- (b) by refusing to provide him with services—
  - (i) of the like quality;

(ii)



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*Anti-Discrimination.*

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(ii) in the like manner; or

(iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those services belongs to a section of the public, to that section.

**48.** (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his marital status—

- (a) by refusing his application for accommodation;
- (b) in the terms on which he offers him accommodation;  
or
- (c) by deferring his application for accommodation or according him a lower order of precedence in any list of applicants for that accommodation.

(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his marital status—

- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
- (b) by evicting him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if—

- (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
- (b) the accommodation provided in those premises is for no more than 6 persons.



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*Anti-Discrimination.*

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DIVISION 4.—*Exception to Part IV.*

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Super-  
annuation,  
etc.

**49.** Nothing in this Part renders unlawful discrimination on the ground of marital status in the terms or conditions appertaining to a superannuation or provident fund or scheme.

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PART V.

## OTHER UNLAWFUL ACTS.

Victimisa-  
tion.

**50.** (1) It is unlawful for a person ("the discriminator") to subject another person ("the person victimised") to any detriment in any circumstances on the ground that the person victimised has—

- (a) brought proceedings against the discriminator or any other person under this Act;
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act;
- (c) alleged that the discriminator or any other person has committed an act which, whether or not the allegation so states, would amount to a contravention of this Act; or
- (d) otherwise done anything under or by reference to this Act in relation to the discriminator or any other person,

or by reason that the discriminator knows that the person victimised intends to do any of those things, or suspects that the person victimised has done, or intends to do, any of them.



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*Anti-Discrimination.*

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(2) Subsection (1) does not apply to the subjecting of a person to a detriment by reason of an allegation made by him if the allegation was false and not made in good faith.

**51.** (1) In this section, "advertisement" includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, show-cards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way and the reference to publish or display, in relation to an advertisement, shall be construed accordingly. Advertisements.

(2) It is unlawful for a person to lodge for publication an advertisement that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of this Act.

(3) An advertisement shall not be unlawful for the purposes of this Act only because of the classification or heading under which it is published.

**52.** Where a person causes, instructs, induces, aids or permits another person to do an act that is unlawful by reason of this Act, they both shall be subject, jointly and severally, to any liability arising under this Act in respect of the doing of that act. Aiding unlawful acts.

**53.** An act done in contravention of this Act by a person as the agent or employee of another person shall be deemed, for the purposes of this Act, to be done by his principal or employer as well as by him unless his principal or employer did not, either before or after the doing of the act, authorise him, either expressly or by implication, to do the act. Liability of principals and employers.



*Anti-Discrimination.***PART VI.****GENERAL EXCEPTIONS TO PARTS II TO IV.**

Acts done  
under  
statutory  
authority,  
etc.

**54.** Nothing in this Act affects anything done by a person in compliance with—

- (a) any other Act, whether passed before or after the date of assent to this Act;
- (b) an instrument made or approved under an Act referred to in paragraph (a);
- (c) an order of the Board;
- (d) an order of a court; or
- (e) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment (including the payment by an employer of a salary, wage or other remuneration in excess of the amount fixed by such a court or tribunal and whether or not the payment of such salary, wage or other remuneration, but for this provision would constitute unlawful discrimination).

Charities.

**55.** (1) Nothing in this Act affects—

- (a) a provision of a deed, will or other instrument, whether made before or after the day appointed and notified under section 2 (2), that confers charitable benefits or enables charitable benefits to be conferred on persons of a class identified by reference to any one or more of the grounds of discrimination referred to in this Act; or
- (b) an act which is done in order to give effect to such a provision.

(2) In this section, "charitable benefits" means benefits for purposes that are exclusively charitable according to the law in force in any part of Australia.



*Anti-Discrimination.*

**56.** Nothing in this Act affects—

Religious  
bodies.

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- (c) the appointment of any other person in any capacity by a body established to propagate religion; or
- (d) any other practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

**57.** (1) In this section, "body" means—

Registered  
clubs and  
voluntary  
bodies.

- (a) a club registered under Part X of the Liquor Act, 1912;
- (b) a club registered under Division 4 of Part IIIA of the Gaming and Betting Act, 1912; or
- (c) a body—
  - (i) the activities of which are carried on otherwise than for profit; and
  - (ii) which is not established by an Act.



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*Anti-Discrimination.*

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(2) Nothing in this Act affects—

- (a) any rule or practice of a body which restricts admission to membership of that body; or
- (b) the provision of benefits, facilities or services to members of that body.

**Education  
or religious  
establish-  
ments.**

**58.** Nothing in this Act affects—

- (a) any rule or practice of an education or religious establishment which restricts admission to membership of that establishment; or
- (b) the provision of benefits, facilities or services to pupils, students, members or staff of such establishments.

**Establish-  
ments pro-  
viding  
housing  
accommo-  
dation, etc.  
for aged  
persons.**

**59.** (1) In this section, “institution” means an establishment which provides housing accommodation and ancillary services for aged persons, whether by statute or otherwise.

(2) Nothing in this Act affects—

- (a) any rule or practice of an institution which restricts admission thereto to any class, type, sex, race or age of applicant; or
- (b) the provision of benefits, facilities or services to such persons as are admitted to such institution.



*Anti-Discrimination.*

PART VII.

THE COUNSELLOR FOR EQUAL OPPORTUNITY.

60. There shall be a Counsellor for Equal <sup>The</sup> Opportunity. <sup>Counsellor.</sup>

61. The Counsellor shall be appointed by the Governor, on the recommendation of the Minister, on such terms and conditions as are specified in the instrument of appointment. <sup>Appointment of Counsellor.</sup>

62. Subject to this Act, the Counsellor holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment and is eligible for re-appointment. <sup>Term of office.</sup>

63. A person is not eligible for appointment as Counsellor if he is— <sup>Persons ineligible for appointment as Counsellor.</sup>

(a) of or above the age of 65 years; or

(b) a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth.

64. The Counsellor vacates his office—

<sup>Vacation of office.</sup>

(a) on the day on which he attains the age of 65 years;

(b) if he engages in any paid employment outside the duties of his office;

(c)



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- (c) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth;
- (d) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation; or
- (e) if he is removed from office by the Governor pursuant to section 65.

Removal  
from  
office.

**65.** The Counsellor may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament.

Counsellor  
not subject  
to Public  
Service Act,  
1902.

**66.** The provisions of the Public Service Act, 1902, do not apply to the appointment of the Counsellor and the Counsellor is not subject to those provisions.

Remunera-  
tion and  
allowances.

**67.** The Counsellor is entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

Acting  
Counsellor.

**68.** (1) The Minister may appoint an acting Counsellor during the absence of the Counsellor or during a vacancy in his office.

(2)



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*Anti-Discrimination.*

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(2) An acting Counsellor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Counsellor to act as Counsellor.

(4) A person appointed an acting Counsellor shall, while so acting, be deemed to be the Counsellor and shall have the immunities and functions of the Counsellor.

(5) The Minister may, for any cause which to him seems sufficient, remove an acting Counsellor from office.

**69.** (1) The Governor may appoint and employ, **Staff.** under and subject to the Public Service Act, 1902, such officers and employees as may be necessary to enable the Counsellor to exercise his functions.

(2) A person who is employed for the purposes of subsection (1) is, while he is so employed, an officer of the Counsellor.

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PART VIII.

THE ANTI-DISCRIMINATION BOARD.

**70.** In this Part—

“meeting”, in relation to the Board, includes an inquiry; **Interpretation: Pt. VIII.**

“member” means a member of the Board and includes the President;

“President” means the President of the Board.

**71.** There shall be an Anti-Discrimination Board. **Constitution of Board.**

**72.**



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*Anti-Discrimination.*

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**Appointment  
of members.**

**72.** The Board shall consist of one full-time member and 2 part-time members appointed by the Governor.

**Term of  
office.**

**73.** A member shall, subject to this Part, hold office for a period of 3 years and is eligible for re-appointment as a member.

**Eligibility  
for appoint-  
ment to  
Board.**

**74.** (1) The full-time member shall be—

- (a) a judge of the District Court of New South Wales;
- (b) a member of the Workers' Compensation Commission of New South Wales; or
- (c) a person who is qualified for appointment as a judge of the District Court of New South Wales or a member of the Workers' Compensation Commission of New South Wales.

(2) A person is not eligible for appointment as a part-time member if he is—

- (a) of or above the age of 65 years; or
- (b) a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth.

**Vacation  
of office.**

**75.** A member shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if, being the President, he engages in any paid employment outside the duties of his office;
- (c)



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- (c) if, being the President, he absents himself from duty for a period exceeding 14 consecutive days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless his absence is occasioned by illness or other unavoidable cause;
- (d) if, being a member other than the President, he is unavailable for duty for a period exceeding 28 days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless his unavailability is occasioned by illness or other unavoidable cause;
- (e) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth;
- (f) if he resigns his office by writing under his hand addressed to the Governor; or
- (g) if, being a member other than the President, he is removed from office by the Governor pursuant to section 76.

**76.** The Governor may for any cause which to him seems sufficient remove any part-time member from office. **Removal from office.**

**77.** On the occurrence of a vacancy in the office of a member, otherwise than by the expiration of the term for which he was appointed, the Governor may appoint a person to hold that office for the residue of his predecessor's term of office, being, where the vacancy occurs in the office of the full-time member, a person qualified for appointment in accordance with section 74. **Filling casual vacancy.**



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**Member not  
subject to  
Public  
Service  
Act, 1902.**

**78.** The provisions of the Public Service Act, 1902, shall not apply to or in respect of the appointment of a member, and a member shall not be subject to the provisions of that Act during his term of office.

**Remunera-  
tion of  
part-time  
members.**

**79.** A part-time member shall be entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

**President.**

**80.** (1) The full-time member shall be the President.

(2) The President shall devote the whole of his time to the duties of his office and shall be entitled to be paid—

(a) remuneration of the same amount as is payable in accordance with the Statutory and Other Offices Remuneration Act, 1975, to a judge of the District Court, other than the Chief Judge; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

(3) Where upon the appointment of the President he is the holder of an office referred to in section 74 (1) (a) or (b), his appointment as the President, subject to subsection (2), shall not, nor shall his service as the President, affect his tenure of that office or his rank, title, status, precedence, salary or other rights or privileges as the holder of that office.

(4) The President may only be removed from office in the same manner as a judge of the District Court may be removed from office.

**Acting  
President.**

**81.** (1) The Minister may at any time appoint a person qualified for appointment as a full-time member in accordance with section 74 (1) to act as President during the absence or illness of the President.

(2)



*Anti-Discrimination.*

(2) A person appointed under subsection (1) shall have and may exercise, while acting as President, the functions of the President.

**82.** (1) The Minister may at any time appoint a **Alternate** person as an alternate member to act during the absence or **members.** illness of a part-time member.

(2) An alternate member shall have and may exercise, while acting as a member, the functions of the person for whom he is the alternate member.

**83.** Where the President or acting President is qualified in accordance with section 74 (1) (a) or (b), he shall retain his office as a judge of the District Court of New South Wales or a member of the Workers' Compensation Commission of New South Wales, as the case may be, and any period during which he serves as President or acting President shall be computed as part of his service as such a judge or member, as the case may be, for the purposes of the Judges' Pensions Act, 1953. Preservation of rights of full-time member holding judicial office.

**84.** (1) In this section, "superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act. Preservation of rights of full-time member previously public servant, etc.

(2) Subject to subsection (3) and to the terms of his appointment, where a full-time member qualified in accordance with section 74 (1) (c) was, immediately before his appointment as a full-time member—

- (a) an officer of the Public Service; or
- (b) contributor to a superannuation scheme,

he—

- (c) shall retain any rights accrued or accruing to him as such an officer or contributor;

(d)



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(d) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a full-time member; and

(e) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer or contributor during his service as a full-time member, and—

(f) his service as a full-time member shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and

(g) he shall be deemed to be an officer or employee, and the Board shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this subsection.

(3) A full-time member who, but for this subsection, would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme shall not be so entitled upon his becoming (whether upon his appointment as a full-time member or at any later time while he holds office as a full-time member) a contributor to any other superannuation scheme, and the provisions of subsection (2) (g) cease to apply to or in respect of him and the Board in any case where he becomes a contributor to such another superannuation scheme.

(4) Subsection (3) does not prevent the payment to a full-time member upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by way of resignation, to be an officer or employee for the purposes of that scheme.



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(5) A full-time member shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

**85.** (1) The procedure for the calling of meetings of the Board and for the conduct of business at those meetings, including the procedure to be followed in an inquiry, shall, subject to this Act, be as determined by the Board. <sup>Meetings of the Board.</sup>

(2) The President shall preside at all meetings of the Board at which he is present.

(3) Three members shall form a quorum at any meeting of the Board and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Board.

(4) A decision of a majority of the members present at a meeting of the Board at which a quorum is present shall be the decision of the Board.

(5) The President or member presiding shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

**86.** (1) The Governor may appoint and employ, under and subject to the Public Service Act, 1902, a Registrar of the Board and such officers and employees as may be necessary to enable the Board and the Registrar to exercise their functions.

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



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## PART IX.

## THE FUNCTIONS OF THE COUNSELLOR AND THE BOARD.

DIVISION 1.—*General.*

Interpre-  
tation:  
Pt. IX.

**87.** In this Part—

“complainant”, in relation to a complaint, means the person or each of the persons by whom that complaint is lodged;

“complaint” means—

(a) a complaint, not being a representative complaint, lodged under section 88 (1) or (2); and

(b) a matter referred to the Board for inquiry as a complaint pursuant to section 95,

and includes a representative complaint;

“Court” means the Supreme Court of New South Wales;

“representative complaint” means a complaint lodged under section 88 (1) by a person on behalf of himself and other persons, or two or more persons on behalf of themselves and other persons, and which is treated by the Board as a representative complaint;

“respondent”, in relation to a complaint, means the person or each of the persons against whom that complaint is lodged.

DIVISION 2.—*The Functions of the Counsellor.*

Making  
of  
complaints.

**88.** (1) A person on his own behalf or on behalf of himself and other persons, or two or more persons on their own behalf or on behalf of themselves and other persons, may lodge a complaint in writing with the Counsellor or the Registrar in respect of any contravention of this Act or the

regulations



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regulations which is alleged to have been committed by any other person or persons, other than a contravention in respect of which a specific penalty is imposed.

(2) A person may lodge a complaint in writing with the Counsellor or the Registrar in respect of any refusal, neglect or failure to obey or comply with an order or interim order of the Board.

(3) A complaint shall be lodged within 6 months after the date on which the contravention of this Act or the regulations which is the subject of that complaint is alleged to have been committed.

(4) Notwithstanding subsection (3), the Counsellor or the Registrar, on good cause being shown, may accept a complaint which is lodged more than 6 months after the date referred to in that subsection.

(5) Where a complaint is lodged with the Registrar, the Registrar shall forthwith refer that complaint to the Counsellor.

**89.** The Counsellor shall investigate each complaint lodged with him under section 88 (1) or (2) or referred to him by the Registrar under section 88 (5). Investigation of complaints by the Counsellor.

**90.** (1) Where, at any stage of his investigation of a complaint, the Counsellor is satisfied that the complaint is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the complaint should not be entertained, he may, by notification in writing addressed to the complainant, decline to entertain the complaint. Counsellor may decline to entertain complaint.



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(2) The Counsellor shall, in a notification under subsection (1), advise the complainant of—

- (a) the reason for declining to entertain the complaint; and
- (b) the rights of the complainant under section 91 (1).

Reference of  
complaint to  
Board at  
require-  
ment of  
complain-  
ant.

**91.** (1) Where the Counsellor has given a complainant a notification under section 90 (1), the complainant may, within 21 days after the date of that notification, by notice in writing served on the Counsellor, require the Counsellor to refer the complaint to the Board.

(2) On receipt of a notice under subsection (1), the Counsellor shall refer the complaint to the Board together with a report relating to any inquiries made by him into the complaint.

Resolution  
of complaint  
by  
conciliation.

**92.** (1) Where the Counsellor is of the opinion that a complaint, other than a complaint that he has declined to entertain under section 90 (1), may be resolved by conciliation, he shall endeavour to resolve the complaint by conciliation.

(2) The Counsellor may, by notice in writing, require the complainant and the respondent, or either of them, to appear before him, either separately or together, for the purpose of endeavouring to resolve the complaint by conciliation.

(3) A person shall not fail to comply with the terms of a notice under subsection (2).

Penalty : \$500.

No right to  
representa-  
tion.

**93.** A complainant or respondent in conciliation proceedings before the Counsellor shall not be represented by any other person except by leave of the Counsellor.

**94.**



*Anti-Discrimination.***94. (1) Where the Counsellor—**Reference  
of com-  
plaints  
to the  
Board.

- (a) is of the opinion that a complaint cannot be resolved by conciliation;
- (b) has endeavoured to resolve a complaint by conciliation but has not been successful in his endeavours; or
- (c) is of the opinion that the nature of a complaint is such that it should be referred to the Board,

he shall refer the complaint to the Board together with a report relating to any inquiries made by him into the complaint.

(2) Evidence of anything said or done in the course of conciliation proceedings under section 92 shall not be admissible in subsequent proceedings under this Part relating to the complaint.

**DIVISION 3.—*The Functions of the Board in relation to Complaints.***

**95.** The Minister may refer any matter to the Board for inquiry as a complaint under this Part.

Reference  
of matter  
to the  
Board by  
the Minister.

**96.** The Board shall hold an inquiry into each complaint or matter referred to it under section 91 (2), 94 (1) or 95.

Inquiries  
into  
complaints.

**97.** Where the Board is of the opinion that two or more complaints arise out of the same or substantially the same circumstances or subject-matter, it may hold a single inquiry in relation to those complaints.

Single  
inquiry in  
relation  
to several  
complaints.**98.**



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Joinder of parties by the Board.

**98.** Where, before the holding of an inquiry, or at any stage during the holding of an inquiry, the Board is of the opinion that a person ought to be joined as a party to the inquiry, it may, by notice in writing given to that person, join that person as a party to the inquiry.

Notice of inquiry and rights of parties at inquiry.

**99. (1) The Board—**

- (a) shall give a party to an inquiry, other than a person to whom the Board grants leave to appear as a party to the inquiry, such notice in such manner as the Board determines of the time and place at which it intends to hold the inquiry; and
- (b) shall give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Board.

(2) If a party to an inquiry to whom notice has been given under subsection (1) (a) fails to attend at the time and place specified for the inquiry, the Board may hold the inquiry in the absence of that party.

Parties to an inquiry.

**100.** The parties to an inquiry shall be the Counsellor, the complainant, the respondent, any person joined by the Board as a party to the inquiry and any person to whom the Board grants leave to appear as a party to the inquiry.

Right of appearance and to representation.

**101. (1) A party to an inquiry—**

- (a) is entitled to appear personally or by his solicitor or counsel; and
- (b) may, by leave of the Board, be represented by a person other than a solicitor or counsel.

(2)



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(2) No person, other than a solicitor or counsel, is entitled to demand or receive any fee or reward for representing a party to an inquiry.

**102.** At an inquiry held in respect of a representative complaint, the Board shall determine, as a preliminary matter, whether that complaint should be dealt with as a representative complaint.

Determina-  
tion of  
representa-  
tive com-  
plaints.

**103.** (1) The Board shall not permit a complaint to be dealt with as a representative complaint unless it is satisfied that the complaint is made bona fide and in good faith as a representative complaint.

Matters to  
be consid-  
ered in  
determina-  
tion of  
representa-  
tive com-  
plaints.

(2) In considering whether a complaint is made bona fide and in good faith as a representative complaint, the Board shall satisfy itself—

(a) that—

- (i) the complainant is a member of a class of persons, the members of which class have been affected, or may reasonably be likely to be affected, by the conduct of the respondent;
- (ii) the complainant has in fact been affected by the conduct of the respondent;
- (iii) the class is so numerous that joinder of all its members is impracticable;
- (iv) there are questions of law or fact common to all members of the class;
- (v) the claims of the complainant are typical of the claims of the class;

(vi)



*Anti-Discrimination.*

- (vi) multiple complaints would be likely to produce varying determinations which could have incompatible or inconsistent results for the individual members of the class; and
  - (vii) the respondent has acted on grounds apparently applying to the class as a whole, thereby making relief appropriate for the class as a whole; or
- (b) that notwithstanding that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint.

Amendment  
of represen-  
tative  
complaints.

**104.** Where the Board is satisfied—

- (a) that the complaint could be dealt with as a representative complaint if the class of persons on whose behalf that complaint is lodged is increased, reduced or otherwise altered, the Board may amend the complaint so that the complaint can be dealt with as a representative complaint; or
- (b) that the complaint has been wrongly made as a representative complaint, the Board may amend the complaint by removing the names of the persons or the class of persons on whose behalf that complaint was lodged so that the complaint can be dealt with as a complaint other than a representative complaint.

Ordinary  
complaints  
not  
precluded  
by  
represen-  
tative  
complaints.

**105.** Nothing in this Part shall prevent a person from lodging a complaint, other than a representative complaint, under section 88 (1) or (2), notwithstanding that the conduct in respect of which the complaint is lodged has also been the conduct in respect of which a representative complaint has been lodged.

(iv)

**106.**



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**106. The Board—**

Resolution  
of complaint  
by  
conciliation.

- (a) may endeavour, by all such means as to it seem reasonable, to resolve a complaint the subject of an inquiry by conciliation; and
- (b) shall take all such steps as to it seem reasonable to effect an amicable settlement of a complaint the subject of an inquiry and for this purpose may adjourn an inquiry at any stage to enable the parties to negotiate with a view to settlement of the complaint by amicable arrangements.

**107. In the course of an inquiry, the Board may, in its discretion—**

Evidence  
and findings  
in other  
proceedings.

- (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal and draw any conclusions of fact therefrom that it considers proper;
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the inquiry; and
- (c) receive in evidence any report of the Counsellor that may be relevant to the inquiry if a copy of that report has been made available to every other party to the inquiry.

**108. (1) For the purposes of any inquiry, the Board—**

Application  
of rules of  
evidence,  
etc.

- (a) shall not be bound by the rules of evidence and may inform itself on any matter it thinks fit;
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and

(c)



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*Anti-Discrimination.*

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- (c) may give directions relating to procedure that, in its opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties.

(2) The President shall determine any question relating to the admissibility of evidence and any other question of law or procedure.

Proof of exceptions.

**109.** Where by any provision of this Act or the regulations, conduct is excepted from conduct that is unlawful under this Act or the regulations or that is a contravention of this Act or the regulations, the onus of proving the exception in any inquiry lies upon the respondent.

Application of Royal Commissions Act, 1923, to inquiries held by the Board.

**110.** Subject to this Part, the Board shall, for the purposes of an inquiry held by it, have the powers, authorities, protections and immunities conferred by the Royal Commissions Act, 1923, on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part II of that Act, and that Act, Division 2 of Part II excepted, shall apply to any witness summoned by or appearing before the Board in the same way as it applies to any witness summoned by or appearing before a commission.

Board may dismiss frivolous, etc., complaints.

**111.** (1) Where, at any stage of an inquiry, the Board is satisfied that a complaint is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the complaint should not be entertained, it may dismiss the complaint.

(2) Where the Board dismisses a complaint under subsection (1), it may order the complainant to pay the costs of the inquiry.



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*Anti-Discrimination.*

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**112.** The Board may, on the application of a party to an inquiry at any time after the lodgment of the complaint into which that inquiry is held, make an interim order to preserve—

Making of  
interim  
orders.

(a) the status quo between the parties to the complaint;  
or

(b) the rights of the parties to the complaint,  
pending determination of the matter the subject of the complaint.

**113.** After holding an inquiry, the Board may—

Order or  
other  
decision of  
the Board.

(a) dismiss the complaint the subject of that inquiry;  
or

(b) find the complaint substantiated and do any one or more of the following :—

(i) except in respect of a representative complaint or a matter referred to the Board for inquiry as a complaint pursuant to section 95, order the respondent to pay to the complainant damages not exceeding \$20,000 by way of compensation for any loss or damage suffered by reason of the respondent's conduct;

(ii) make an order enjoining the respondent from continuing or repeating any conduct rendered unlawful by this Act or the regulations;

(iii) except in respect of a representative complaint or a matter referred to the Board for inquiry as a complaint pursuant to section 95, order the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;

(iv)



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- (iv) make an order declaring void in whole or in part and either ab initio or from such other time as is specified in the order any contract or agreement made in contravention of this Act or the regulations; or
- (v) decline to take any further action in the matter.

**Costs.**      **114.** (1) Except as provided by section 111 (2) and subsection (2), each party to an inquiry shall pay his own costs.

(2) Where the Board is of the opinion in a particular case that there are circumstances that justify it doing so, it may make such order as to costs and security for costs, whether by way of interim order or otherwise, as it thinks fit.

**Recovery of amounts payable under an order of the Board.**

**115.** Any amount ordered to be paid by the Board under this Part may be registered as a judgment debt in a court of competent jurisdiction.

**Compliance with order of the Board.**

**116.** A person shall not refuse, neglect or for any reason fail to obey or comply with an order referred to in section 113 (b) (ii) or (iii), or an interim order, of the Board.

Penalty : \$1,000.

**Reasons for decision or order.**

**117.** (1) Where the Board does not state its reasons for any decision or order made in relation to an inquiry, a party to the inquiry may, by notice in writing served on the Board within 7 days after the date of that decision or order, require the Board to state its reasons.

(2) The Board shall, within 14 days after the service of a notice under subsection (1), state its reasons for the decision or order referred to in the notice.

**118.**



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*Anti-Discrimination.*

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**118.** (1) A party aggrieved by a decision or an order of Appeals. the Board may appeal to the Court—

- (a) except as provided in paragraph (b), within 21 days after the date of that decision or order; or
- (b) where a notice has been served on the Board under section 117 (1), within 21 days after the date on which the Board states its reasons for that decision or order under section 117 (2).

(2) The Court, on the hearing of an appeal, shall have the same functions as the Board in hearing and determining the complaint the subject of the appeal.

(3) The Court may, on the hearing of the appeal—

- (a) confirm, vary or quash the decision or order appealed from, or substitute, or make in addition, any decision or order that might have been made by the Board under this Part;
- (b) remit the matter to the Board for re-inquiry or further inquiry; or
- (c) make such order as to costs as it determines.

(4) For the purposes of section 116, an order of the Court of the nature referred to in section 113 (b) (ii) or (iii) shall be deemed to be an order referred to in section 113 (b) (ii) or (iii), as the case may be, of the Board.

**DIVISION 4.—Other Functions of the Board.**

**119.** For the purpose of eliminating discrimination and promoting equality and equal treatment of all human beings, the Board may—

General  
functions  
of the  
Board.

- (a) carry out investigations, research and inquiries relating to discrimination and in particular discrimination against a person or persons on the ground of—

(i) age;

(ii)



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- (ii) a characteristic that appertains generally to persons of a particular age;
  - (iii) a characteristic that is generally imputed to persons of a particular age;
  - (iv) religious or political conviction;
  - (v) a characteristic that appertains generally to persons of a particular religious or political conviction;
  - (vi) a characteristic that is generally imputed to persons of a particular religious or political conviction;
  - (vii) physical handicap or condition or mental disability;
  - (viii) a characteristic that appertains generally to persons having that physical handicap or condition or that mental disability;
  - (ix) a characteristic that is generally imputed to persons having that physical handicap or condition or that mental disability;
  - (x) homosexuality;
  - (xi) a characteristic that appertains generally to homosexuals;
  - (xii) a characteristic that is generally imputed to homosexuals;
  - (xiii) membership or non-membership of a trade union; or
  - (xiv) a characteristic that appertains generally to membership or non-membership of a trade union or a characteristic that is generally imputed to members or non-members of a trade union;
- (b) acquire and disseminate knowledge on all matters relating to the elimination of discrimination and the achievement of equal rights;

(c)



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- (c) arrange and co-ordinate consultations, discussions, seminars and conferences;
- (d) review, from time to time, the laws of the State;
- (e) consult with governmental, business, industrial and community groups and organisations in order to ascertain means of improving services and conditions affecting minority groups and other groups which are the subject of discrimination and inequality;
- (f) hold public inquiries; and
- (g) develop human rights programmes and policies.

**120.** (1) The Minister may refer to the Board for report any matter relating to—

Reference of certain matters to the Board by the Minister.

- (a) a law or a proposed law; or
- (b) a practice, an alleged practice or a proposed practice of any person or class of persons,

which conflicts with or may give rise to conflict with this Act or the regulations.

(2) The Board shall conduct an examination into any matter referred to it by the Minister under subsection (1) and report to the Minister its findings and conclusions.

**121.** The Board shall, as soon as possible after the day appointed and notified under section 2 (2), undertake a review of—

Review of legislation, etc.

- (a) the legislation of the State;
- (b) governmental policies and practices; and
- (c) the policies and practices of all superannuation funds and pension schemes whether governmental or otherwise,

with



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with a view to identifying circumstances where discrimination on a ground referred to in this Act occurs, in substance or effect, against any person or class of persons and shall furnish a report of its findings to the Minister within 12 months after that date.

**Annual  
report.**

**122.** (1) The Board shall, on or before the thirtieth day of September each year, prepare and present to the Minister a report on—

- (a) the administration of this Act and the regulations during the period of 12 months ending on the preceding thirtieth day of June; and
- (b) the research undertaken by the Board during that period and any recommendations that the Board considers appropriate for the elimination or modification of legislative provisions that discriminate on a ground referred to in this Act against any person or class of persons.

(2) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after its receipt by him.

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**PART X.**

**MISCELLANEOUS.**

**Effect of  
contraven-  
tion  
of Act.**

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

(2) Nothing in subsection (1) prevents an action for defamation.



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**124.** A person shall not, without lawful excuse, wilfully obstruct, hinder or resist the Counsellor, an officer of the Counsellor, the Registrar or a member of the Board in the exercise of his functions under this Act or the regulations. Obstruction.

Penalty : \$1,000.

**125.** Any penalty imposed by this Act or the regulations may be recovered in a court of petty sessions held before a stipendiary magistrate sitting alone. Recovery of penalties.

**126.** (1) The Minister on the recommendation of the Board, may, by order published in the Gazette, grant an exemption from this Act or the regulations or such parts of this Act or the regulations as are specified in the order in respect of— Granting of exemptions by the Minister.

- (a) a person or class of persons;
- (b) an activity or class of activity; or
- (c) any other matter or circumstance specified in the order.

(2) An exemption granted under subsection (1) shall remain in force for such period, not exceeding 5 years, as is specified in the order and may, by order made in the manner referred to in subsection (1), be extended for a further period not exceeding 5 years.

(3) The power conferred by subsection (1) to make an order includes power, exercisable in the same manner and subject to the same conditions, to vary or revoke any order so made.

**127.** (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2)



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*Anti-Discrimination.*

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(2) Before making a recommendation to the Governor for the making of any regulation, the Minister shall take into consideration any recommendation of the Board with respect to the subject-matter of the proposed regulation.

(3) A regulation shall, unless disallowed by either House of Parliament, take effect upon—

- (a) the expiration of a period of 14 sitting days after the day or the later day it is laid before either such House; or
- (b) a date specified in the regulation which is later than the period determined under paragraph (a).

(4) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) the forms to be used for the purposes of this Act or the regulations;
- (b) the fees to be paid in respect of the lodging of any complaint under Part IX;
- (c) the manner of serving any notice or other document;
- (d) the procedure of the Board at any inquiry; and
- (e) exempting—

- (i) any person or class of persons;
- (ii) any activity or class of activity; or
- (iii) any other matter or circumstance,

specified in the regulations from this Act or such parts of this Act as may be so specified.

(5) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(6) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.



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**128.** (1) The Statutory and Other Offices Remuneration Act, 1975, is amended by inserting at the end of Schedule 1 the words "Counsellor for Equal Opportunity".

Amendment  
of Act No.  
4, 1976.  
Schedule 1.

(2) The Defamation Act, 1974, is amended—

Amendment  
of Act No.  
18, 1974.

(a) by inserting before section 18 the following section :—

Sec. 17D.

17D. (1) There is a defence of absolute privilege for a publication to or by the Counsellor for Equal Opportunity appointed under the Anti-Discrimination Act, 1977, to a member of the Anti-Discrimination Board constituted under that Act, to any officer of that Counsellor, to the Registrar of that Board or to any officer of the Public Service appointed or employed to assist in the execution or administration of that Act, if the publication is made for the purpose of the execution or administration of that Act.

Matters  
arising  
under  
Anti-  
Discrimina-  
tion Act,  
1977.

(2) There is a defence of absolute privilege for the publication of a report—

(a) referred to in section 91 (2) or 94 (1) of the Anti-Discrimination Act, 1977, of the Counsellor for Equal Opportunity appointed under that Act made to the Anti-Discrimination Board constituted under that Act; or

(b) referred to in section 120 (2), 121 or 122 (1) of that Act to the Minister administering that Act.

(b)



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Sch. 2.

(b) (i) by omitting from clause 2 (10) of Schedule 2 the word "or";

(ii) by omitting from clause 2 (11) of Schedule 2 the word "Act." where secondly occurring and by inserting instead the following matter and subclause :—

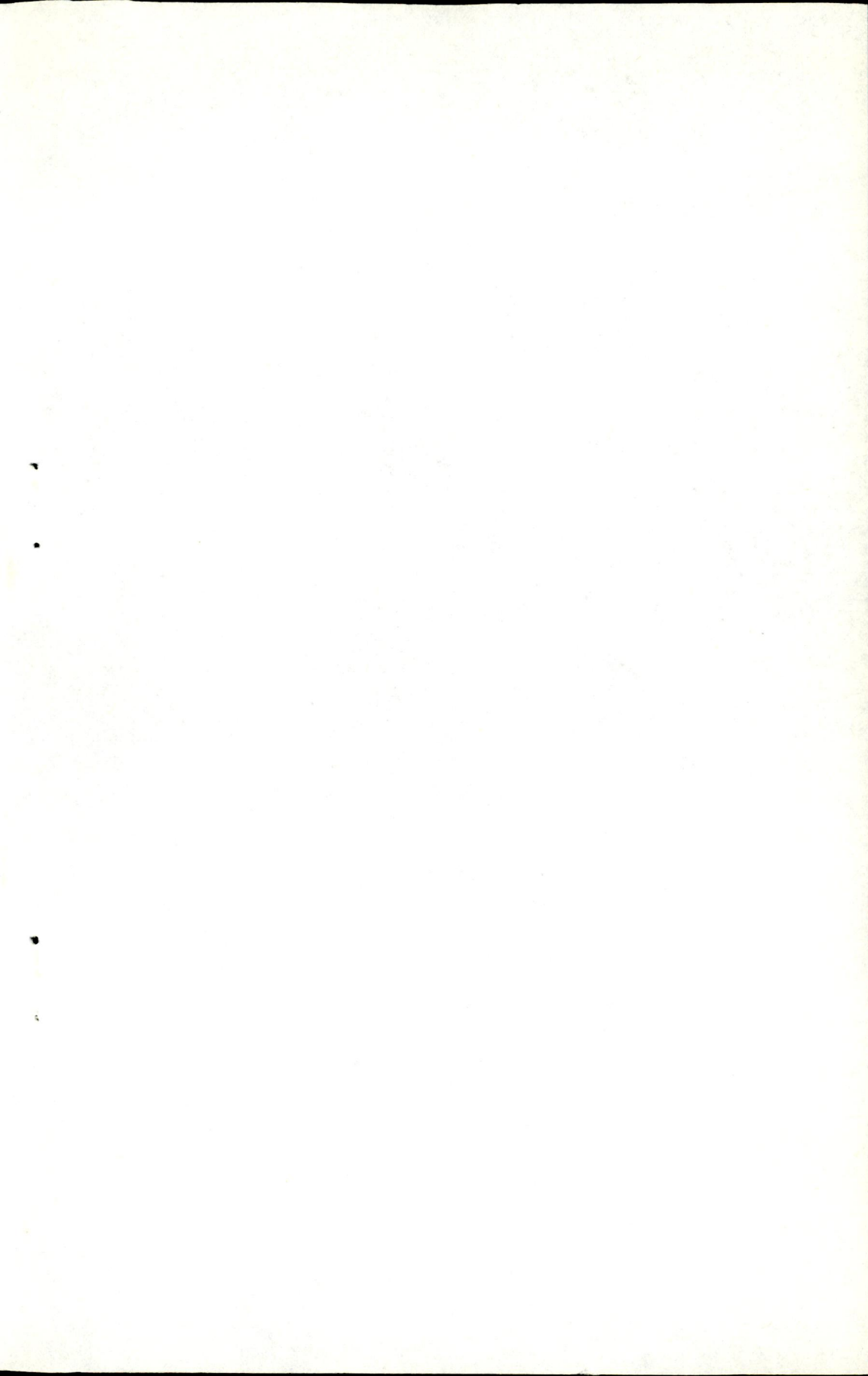
Act; or

(12) proceedings at an inquiry conducted by the Anti-Discrimination Board constituted under the Anti-Discrimination Act, 1977.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1977











*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

**R. E. WARD,**  
*Clerk of the Legislative Assembly.*

*Legislative Council Chamber,  
Sydney, 31 March, 1977.*

## **New South Wales**



ANNO VICESIMO SEXTO

**ELIZABETHÆ II REGINÆ**

\*\*\*\*\*

**Act No. 48, 1977.**

An Act to render unlawful racial, sex and other types of discrimination in certain circumstances and to promote equality of opportunity between all persons. [Assented to, 28th April, 1977.]

**BE**

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

**T. J. CAHILL,**  
*Chairman of Committees of the Legislative Assembly.*



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*Anti-Discrimination.*

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.**

**PRELIMINARY.**

**Short title.**      **1.** This Act may be cited as the "Anti-Discrimination Act, 1977".

**Commence-  
ment.**            **2.** (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Division of  
Act.**            **3.** This Act is divided as follows :—

**PART I.—PRELIMINARY—ss. 1–5.**

**PART II.—RACIAL DISCRIMINATION—ss. 6–22.**

**DIVISION 1.—General—ss. 6, 7.**

**DIVISION 2.—Discrimination in Work—ss. 8–16.**

**DIVISION 3.—Discrimination in Other Areas—ss.  
17–20.**

**DIVISION 4.—Exceptions to Part II—ss. 21, 22.**

**PART**



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PART III.—SEX DISCRIMINATION—ss. 23–38.

DIVISION 1.—*General*—ss. 23, 24.

DIVISION 2.—*Discrimination in Work*—ss. 25–31.

DIVISION 3.—*Discrimination in Other Areas*—ss.  
32–34.

DIVISION 4.—*Exceptions to Part III*—ss. 35–38.

PART IV.—DISCRIMINATION ON THE GROUND OF  
MARITAL STATUS—ss. 39–49.

DIVISION 1.—*General*—s. 39.

DIVISION 2.—*Discrimination in Work*—ss. 40–46.

DIVISION 3.—*Discrimination in Other Areas*—ss.  
47, 48.

DIVISION 4.—*Exception to Part IV*—s. 49.

PART V.—OTHER UNLAWFUL ACTS—ss. 50–53.

PART VI.—GENERAL EXCEPTIONS TO PARTS II TO IV  
—ss. 54–59.

PART VII.—THE COUNSELLOR FOR EQUAL OPPOR-  
TUNITY—ss. 60–69.

PART VIII.—THE ANTI-DISCRIMINATION BOARD—ss  
70–86.

PART



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**PART IX.—THE FUNCTIONS OF THE COUNSELLOR AND THE BOARD—ss. 87–122.****DIVISION 1.—General—s. 87.****DIVISION 2.—The Functions of the Counsellor—ss. 88–94.****DIVISION 3.—The Functions of the Board in relation to Complaints—ss. 95–118.****DIVISION 4.—Other Functions of the Board—ss. 119–122.****PART X.—MISCELLANEOUS—ss. 123–128.****Inter-pretation.****4. (1)** In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“accommodation” includes residential or business accommodation;

“Board” means the Anti-Discrimination Board constituted under this Act;

“commission agent” means an agent who is remunerated by commission;

“contract worker” means an employee who, under a contract of employment, performs work for an employer who has undertaken to perform that work for another person;

“corporation” has the meaning ascribed thereto in the Companies Act, 1961;

“council” has the meaning ascribed thereto in the Local Government Act, 1919, and includes a county council within the meaning of that Act;

“Counsellor” means the Counsellor for Equal Opportunity;

“educational



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

“employment” includes work under a contract for services;

“employment agency” means a person who, for profit or not, provides services for the purpose of finding work or employment for others or for supplying employers with workers or employees;

“functions” includes powers, authorities and duties;

“inquiry”, in relation to the Board, means an inquiry held under section 96;

“marital status” means the status or condition of being—

- (a) single;
- (b) married;
- (c) married but living separately and apart from one's spouse;
- (d) divorced;
- (e) widowed; or
- (f) in cohabitation, otherwise than in marriage, with a person of the opposite sex;

“near relative”, in relation to a person, means his spouse, parent, child, grandparent, grandchild, brother or sister;

“principal” means—

- (a) in relation to a commission agent, a person for whom work is done by that commission agent; or

(b)



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- (b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

“Registrar” means the Registrar of the Board;

“regulation” means a regulation made under this Act;

“services” includes—

- (a) services relating to banking, insurance and the provision of grants, loans, credit or finance;
- (b) services relating to entertainment, recreation or refreshment;
- (c) services relating to transport or travel;
- (d) services of any profession or trade; and
- (e) services provided by a council or public authority;

“trade union” means a trade union within the meaning of the Industrial Arbitration Act, 1940, or a registered organization within the meaning of the Conciliation and Arbitration Act 1904 of the Parliament of the Commonwealth;

“vehicle” includes a ship, an aircraft and a hovercraft.

(2) A reference in this Act to the exercise of a function includes, where that function is a duty, the performance of that duty.

Act binds  
Crown.

5. This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

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PART



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*Anti-Discrimination.*

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PART II.

RACIAL DISCRIMINATION.

DIVISION 1.—*General.*

6. (1) In this Part, "race" includes colour, nationality and ethnic or national origin. Interpretation:  
Pt. II.

(2) For the purposes of this Part, the fact that a race may comprise two or more distinct races does not prevent it from being a race.

7. A person discriminates against another person on the ground of his race if, on the ground of— Racial discrimination.

- (a) his race;
- (b) a characteristic that appertains generally to persons of his race; or
- (c) a characteristic that is generally imputed to persons of his race,

he—

- (d) treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of a different race; or
- (e) segregates him from persons of a different race.

DIVISION 2.—*Discrimination in Work.*

8. (1) It is unlawful for an employer to discriminate against a person on the ground of his race— Discrimination  
against  
applicants  
and  
employees.

- (a) in the arrangements he makes for the purpose of determining who should be offered employment;

(b)



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- (b) in determining who should be offered employment;  
or
- (c) in the terms on which he offers employment.

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

- (a) in the terms or conditions of employment which he affords him;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;  
or
- (c) by dismissing him or subjecting him to any other detriment.

(3) Subsections (1) and (2) do not apply to employment for the purposes of a private household.

**Discrimination  
against  
commission  
agents.**

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

- (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which he engages him as a commission agent.

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

- (a) in the terms or conditions which he affords him as a commission agent;

(b)



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- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- (c) by terminating his engagement or subjecting him to any other detriment.

**10.** It is unlawful for a principal to discriminate against a contract worker on the ground of his race—

Discrimination  
against  
contract  
workers.

- (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

**11.** (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his race—

Trade  
unions.

- (a) by refusing or failing to accept his application for membership; or
- (b) in the terms on which it is prepared to admit him to membership.

(2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his race—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;

(b)



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*Anti-Discrimination.*

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- (b) by depriving him of membership or varying the terms of his membership; or
- (c) by subjecting him to any other detriment.

Qualifying  
bodies.

**12.** It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his race—

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

Employ-  
ment  
agencies.

**13.** It is unlawful for an employment agency to discriminate against a person on the ground of his race—

- (a) by refusing to provide him with any of its services; or
- (b) in the terms on which it offers to provide him with any of its services.

Exception—  
genuine  
occupa-  
tional  
qualifica-  
tion.

**14.** Nothing in this Division applies to or in respect of any work or employment where that work or employment involves any one or more of the following :—

- (a) participation in a dramatic performance or other entertainment in a capacity for which a person of a particular race is required for reasons of authenticity;

(b)



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- (b) participation as an artist's or photographic model in the production of a work of art, visual image or sequence of visual images for which a person of a particular race is required for reasons of authenticity;
- (c) working in a place where food or drink is, for payment or not, provided to and consumed by persons in circumstances in which a person of a particular race is required for reasons of authenticity; or
- (d) providing persons of a particular race with services for the purpose of promoting their welfare where those services can most effectively be provided by a person of the same race.

15. Nothing in this Division applies to or in respect of anything done by an employer in or in connection with the employment in New South Wales of a person not ordinarily resident in New South Wales where that employment is intended to provide him with training in skills to be exercised by him wholly outside New South Wales.

Exception—  
employ-  
ment  
intended  
to provide  
training  
in skills  
to be  
exercised  
outside  
New South  
Wales.

16. Nothing in this Division applies to or in respect of the employment of a person on a ship or an aircraft in New South Wales if that person was engaged for that employment outside New South Wales.

Exception—  
employ-  
ment on  
ship or  
aircraft.

*DIVISION 3.—Discrimination in Other Areas.*

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

Education.

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

(2)



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*Anti-Discrimination.*

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

- (a) by denying him access, or limiting his access, to any benefit provided by the educational authority; or
- (b) by expelling him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of a prescribed educational authority in relation to such circumstances, if any, as may be prescribed.

Access to  
places and  
vehicles.

**18.** It is unlawful for a person to discriminate against another person on the ground of his race—

- (a) by refusing to allow him access to or the use of any place or vehicle that the public or a section of the public is entitled or allowed to enter or use, for payment or not;
- (b) in the terms on which he is prepared to allow him access to or the use of any such place or vehicle;
- (c) by refusing to allow him the use of any facilities in any such place or vehicle that the public or a section of the public is entitled or allowed to use, for payment or not;
- (d) in the terms on which he is prepared to allow him the use of any such facilities; or
- (e) by requiring him to leave or cease the use of any such place or vehicle or any such facilities.

**19.**



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*Anti-Discrimination.*

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**19.** It is unlawful for a person who provides, for payment **Provision** or not, goods or services to the public or a section of the **of goods** public to discriminate against another person on the ground **and** of his race— **services.**

(a) by refusing to provide him with those goods or services; or

(b) by refusing to provide him with goods or services—

(i) of the like quality;

(ii) in the like manner; or

(iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those goods or services belongs to a section of the public, to that section.

**20.** (1) It is unlawful for a person, whether as principal **Accommo-** or agent, to discriminate against another person on the ground **dation.** of his race—

(a) by refusing his application for accommodation;

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

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

(d)

(2)



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*Anti-Discrimination.*

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(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his race—

- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
- (b) by evicting him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if—

- (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
- (b) the accommodation provided in those premises is for no more than 6 persons.

*DIVISION 4.—Exceptions to Part II.*

Special  
needs.

**21.** Nothing in this Part applies to or in respect of anything done in affording persons of a particular race access to facilities or services to meet the special needs of persons of that race in relation to their education, training or welfare, or any ancillary benefits.

Sport.

**22.** Nothing in this Part applies to or in respect of anything done on the grounds of a person's nationality or place of birth or length of time for which he has been resident in a particular place or area—

- (a) in selecting one or more persons to represent a place or an area in any sport or game; or

(b)



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*Anti-Discrimination.*

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- (b) in pursuance of the rules of any competition in so far as they relate to eligibility to compete in any sport or game.

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**PART III.**

**SEX DISCRIMINATION.**

**DIVISION 1.—General.**

**23. In this Part—**

“man” means a member of the male sex irrespective of his age;

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

**Inter-  
pretation:  
Pt. III.**

**24. (1) A person discriminates against another person on the ground of his sex if, on the ground of—**

**Sex  
discrimina-  
tion.**

(a) his sex;

(b) a characteristic that appertains generally to persons of his sex; or

(c)



*Anti-Discrimination.*

- (c) a characteristic that is generally imputed to persons of his sex,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of the opposite sex.

(2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of the opposite sex are not materially different by reason of the fact that the persons between whom the discrimination occurs are not of the same marital status.

DIVISION 2.—*Discrimination in Work.*

Discrimination  
against  
applicants  
and  
employees.

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

- (a) in the arrangements he makes for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment;  
or
- (c) in the terms on which he offers employment.

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

- (a) in the terms or conditions of employment which he affords him;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;  
or
- (c) by dismissing him or subjecting him to any other detriment.

(3)



*Anti-Discrimination.*

(3) Subsections (1) and (2) do not apply to employment—

- (a) for the purposes of a private household; or
- (b) where the number of persons employed by the employer, disregarding any persons employed within his private household, does not exceed 5.

(4) For the purposes of subsection (3) (b), a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.

**26.** (1) It is unlawful for a principal to discriminate against a person on the ground of his sex—

- (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which he engages him as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of his sex—

- (a) in the terms or conditions which he affords him as a commission agent;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- (c) by terminating his engagement or subjecting him to any other detriment.

(d)

**27.**



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*Anti-Discrimination.*

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**Discrimination  
against  
contract  
workers.**

**27.** It is unlawful for a principal to discriminate against a contract worker on the ground of his sex—

- (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

**Trade  
unions.**

**28.** (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his sex—

- (a) by refusing or failing to accept his application for membership; or
- (b) in the terms on which it is prepared to admit him to membership.

(2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his sex—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;
- (b) by depriving him of membership or varying the terms of his membership; or
- (c) by subjecting him to any other detriment.

**Qualifying  
bodies.**

**29.** It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his sex—

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;

(b)



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*Anti-Discrimination.*

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- (b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

**30.** It is unlawful for an employment agency to discriminate against a person on the ground of his sex— to Employment agencies.

- (a) by refusing to provide him with any of its services; or
- (b) in the terms on which it offers to provide him with any of its services.

**31.** (1) Nothing in this Division renders unlawful discrimination against a woman on the ground of her sex where being a man is a genuine occupational qualification for the job. Exception—genuine occupational qualification.

(2) Being a man is a genuine occupational qualification for a job where any one or more of the following requirements is satisfied :—

- (a) the essential nature of the job calls for a man for reasons of physiology, excluding physical strength or stamina, or, in dramatic performances or other entertainment, for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a woman;
- (b) the job needs to be held by a man to preserve decency or privacy because it involves the fitting of men's clothing;

(c)



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*Anti-Discrimination.*

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- (c) the job requires the holder of the job to enter a lavatory ordinarily used by men while it is used by men;
- (d) the job requires the holder of the job to search men;
- (e) the job requires the holder of the job to enter areas ordinarily used by men while men are in a state of undress or are bathing or showering;
- (f) the job requires the holder of the job to live in premises provided by the employer and—
  - (i) those premises are not equipped with separate sleeping accommodation for women and sanitary facilities which could be used by women in privacy from men; and
  - (ii) it is not reasonable to expect the employer either to equip those premises with accommodation and facilities of that kind or to provide other premises for women;
- (g) the job requires the holder of the job to keep men in custody in a prison or other institution or in part of a prison or other institution;
- (h) the holder of the job provides men with personal services relating to their welfare or education, or similar personal services, and they or a substantial number of them might reasonably object to its being carried out by a woman; or
- (i) the job is one of two to be held by a married couple.

(3) Being a man is a genuine occupational qualification for a prescribed job or a job of a prescribed class or description.

(4)



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*Anti-Discrimination.*

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(4) Nothing in subsection (2) limits the Governor's power to make a regulation for the purposes of subsection (3).

(5) Subsections (1), (2) and (3) apply to discrimination against a man on the ground of his sex in the same way as they apply to discrimination against a woman on the ground of her sex as if a reference therein—

- (a) to a man were a reference to a woman; and
- (b) to a woman were a reference to a man.

(6) Section 21 (a) of the Interpretation Act, 1897, does not apply to this section.

*DIVISION 3.—Discrimination in Other Areas.*

**32.** (1) It is unlawful for a person being the holder of a licence, a permit or an authority under the Liquor Act, 1912, to discriminate against another person on the ground of his sex—

- (a) by refusing to allow him access to or the use of any place where liquor is sold or supplied;
- (b) in the terms on which he is prepared to allow him access to or the use of any such place; or
- (c) by requiring him to leave or cease the use of any such place.

(2) Nothing in subsection (1) affects the operation of section 57.



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*Anti-Discrimination.*

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Provision  
of goods  
and  
services.

**33.** (1) It is unlawful for a person who provides, for payment or not, goods or services to the public or a section of the public to discriminate against another person on the ground of his sex—

(a) by refusing to provide him with those goods or services; or

(b) by refusing to provide him with goods or services—

(i) of the like quality;

(ii) in the like manner; or

(iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those goods or services belongs to a section of the public, to that section.

(2) Where a skill is commonly exercised in a different way in relation to men and women, a person does not contravene subsection (1) by exercising the skill in relation to men only, or women only, in accordance with his normal practice.

Accommo-  
dation.

**34.** (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his sex—

(a) by refusing his application for accommodation;

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

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

(2)



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*Anti-Discrimination.*

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(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his sex—

- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
- (b) by evicting him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if—

- (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
- (b) the accommodation provided in those premises is for no more than 6 persons.

*DIVISION 4.—Exceptions to Part III.*

**35.** Nothing in this Part renders unlawful discrimination by a person against a man on the ground of his sex by reason only of the fact that that person grants to a woman rights or privileges in connection with pregnancy or childbirth. **Pregnancy or child-birth.**

**36.** Nothing in this Part renders unlawful discrimination on the ground of sex in the terms or conditions appertaining to a superannuation or provident fund or scheme. **Super-annuation, etc.**



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*Anti-Discrimination.*

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Insurance,  
etc.

**37.** Nothing in this Part renders unlawful discrimination on the ground of sex with respect to the terms on which an annuity, a life assurance policy, an accident or insurance policy or other policy of insurance is offered or may be obtained where—

(a) the discrimination is—

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

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

(b) the source on which the actuarial or statistical data referred to in paragraph (a) (i) is based is disclosed to the Board, where the Board so requires.

Sport.

**38.** Nothing in this Part renders unlawful the exclusion of persons of the one sex from participation in any sporting activity, not being the coaching of persons engaged in any sporting activity, the administration of any sporting activity or any prescribed sporting activity.

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**PART IV.**

**DISCRIMINATION ON THE GROUND OF MARITAL STATUS.**

**DIVISION 1.—General.**

Discrimina-  
tion on the  
ground of  
marital  
status.

**39.** (1) A person discriminates against another person on the ground of his marital status if, on the ground of—

(a) his marital status;

(b) a characteristic that appertains generally to persons of his marital status; or

(c)



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*Anti-Discrimination.*

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- (c) a characteristic that is generally imputed to persons of his marital status,

he treats him less favourably than in the same circumstances, or in circumstances which are not materially different, he treats or would treat a person of a different marital status.

(2) For the purposes of subsection (1), the circumstances in which a person treats or would treat another person of a different marital status are not materially different by reason of the fact that the persons between whom the discrimination occurs are not of the same sex.

*DIVISION 2.—Discrimination in Work.*

**40.** (1) It is unlawful for an employer to discriminate against a person on the ground of his marital status—

Discrimination  
against  
applicants  
and  
employees.

- (a) in the arrangements he makes for the purpose of determining who should be offered employment;
- (b) in determining who should be offered employment;  
or
- (c) in the terms on which he offers employment.

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

- (a) in the terms or conditions of employment which he affords him;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment;  
or
- (c) by dismissing him or subjecting him to any other detriment.

(3)



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*Anti-Discrimination.*

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(3) Subsections (1) and (2) do not apply to employment—

- (a) for the purposes of a private household; or
- (b) where the number of persons employed by the employer, disregarding any persons employed within his private household, does not exceed 5.

(4) For the purposes of subsection (3) (b), a corporation shall be regarded as the employer of the employees of any other corporation which, with respect to the firstmentioned corporation, is a related corporation within the meaning of the Companies Act, 1961.

Discrimina-  
tion  
against  
commission  
agents.

**41.** (1) It is unlawful for a principal to discriminate against a person on the ground of his marital status—

- (a) in the arrangements he makes for the purpose of determining who should be engaged as a commission agent;
- (b) in determining who should be engaged as a commission agent; or
- (c) in the terms on which he engages him as a commission agent.

(2) It is unlawful for a principal to discriminate against a commission agent on the ground of his marital status—

- (a) in the terms or conditions which he affords him as a commission agent;
- (b) by denying him access, or limiting his access, to opportunities for promotion, transfer or training, or to any other benefits associated with his position as a commission agent; or
- (c) by terminating his engagement or subjecting him to any other detriment.



*Anti-Discrimination.*

**42.** It is unlawful for a principal to discriminate against a contract worker on the ground of his marital status—

Discrimination  
against  
contract  
workers.

- (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;
- (c) by denying him access, or limiting his access, to any benefit associated with the work in respect of which the contract with his employer is made; or
- (d) by subjecting him to any other detriment.

**43.** (1) It is unlawful for a trade union to discriminate against a person who is not a member of the trade union on the ground of his marital status—

Trade  
unions.

- (a) by refusing or failing to accept his application for membership; or
- (b) in the terms on which it is prepared to admit him to membership.

(2) It is unlawful for a trade union to discriminate against a person who is a member of the trade union on the ground of his marital status—

- (a) by denying him access, or limiting his access, to any benefit provided by the trade union;
- (b) by depriving him of membership or varying the terms of his membership; or
- (c) by subjecting him to any other detriment.

**44.** It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession or the carrying on of a trade to discriminate against a person on the ground of his marital status—

Qualifying  
bodies.

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;

(b)



*Anti-Discrimination.*

- (b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification; or
- (c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

**Employment agencies.**

**45.** It is unlawful for an employment agency to discriminate against a person on the ground of his marital status—

- (a) by refusing to provide him with any of its services; or
- (b) in the terms on which it offers to provide him with any of its services.

**Exception—employment of married couple.**

**46.** Nothing in this Division renders unlawful discrimination against a person on the ground of his marital status in relation to a job which is one of two to be held by a married couple.

**DIVISION 3.—Discrimination in Other Areas.**

**Provision of services.**

**47.** It is unlawful for a person who provides, for payment or not, services to the public or a section of the public to discriminate against another person on the ground of his marital status—

- (a) by refusing to provide him with those services; or
- (b) by refusing to provide him with services—
  - (i) of the like quality;

(ii)



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*Anti-Discrimination.*

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(ii) in the like manner; or

(iii) on the like terms,

as are normally provided by that firstmentioned person to the public, or where the person requesting those services belongs to a section of the public, to that section.

**48.** (1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his marital status—

- (a) by refusing his application for accommodation;
- (b) in the terms on which he offers him accommodation; or
- (c) by deferring his application for accommodation or according him a lower order of precedence in any list of applicants for that accommodation.

(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of his marital status—

- (a) by denying him access, or limiting his access, to any benefit associated with accommodation occupied by him; or
- (b) by evicting him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if—

- (a) the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises; and
- (b) the accommodation provided in those premises is for no more than 6 persons.



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*Anti-Discrimination.*

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DIVISION 4.—*Exception to Part IV.*Super-  
annuation,  
etc.

**49.** Nothing in this Part renders unlawful discrimination on the ground of marital status in the terms or conditions appertaining to a superannuation or provident fund or scheme.

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**PART V.****OTHER UNLAWFUL ACTS.**Victimisa-  
tion.

**50.** (1) It is unlawful for a person ("the discriminator") to subject another person ("the person victimised") to any detriment in any circumstances on the ground that the person victimised has—

- (a) brought proceedings against the discriminator or any other person under this Act;
- (b) given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under this Act;
- (c) alleged that the discriminator or any other person has committed an act which, whether or not the allegation so states, would amount to a contravention of this Act; or
- (d) otherwise done anything under or by reference to this Act in relation to the discriminator or any other person,

or by reason that the discriminator knows that the person victimised intends to do any of those things, or suspects that the person victimised has done, or intends to do, any of them.

(2)



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*Anti-Discrimination.*

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(2) Subsection (1) does not apply to the subjecting of a person to a detriment by reason of an allegation made by him if the allegation was false and not made in good faith.

**51.** (1) In this section, "advertisement" includes every form of advertisement or notice, whether to the public or not, and whether in a newspaper or other publication, by television or radio, by display of notices, signs, labels, show-cards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, models or films, or in any other way and the reference to publish or display, in relation to an advertisement, shall be construed accordingly. Advertisements.

(2) It is unlawful for a person to lodge for publication an advertisement that indicates, or could reasonably be understood as indicating, an intention to do an act that is unlawful by reason of this Act.

(3) An advertisement shall not be unlawful for the purposes of this Act only because of the classification or heading under which it is published.

**52.** Where a person causes, instructs, induces, aids or permits another person to do an act that is unlawful by reason of this Act, they both shall be subject, jointly and severally, to any liability arising under this Act in respect of the doing of that act. Aiding unlawful acts.

**53.** An act done in contravention of this Act by a person as the agent or employee of another person shall be deemed, for the purposes of this Act, to be done by his principal or employer as well as by him unless his principal or employer did not, either before or after the doing of the act, authorise him, either expressly or by implication, to do the act. Liability of principals and employers.

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**PART**



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*Anti-Discrimination.*

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## PART VI.

## GENERAL EXCEPTIONS TO PARTS II TO IV.

Acts done  
under  
statutory  
authority,  
etc.

**54.** Nothing in this Act affects anything done by a person in compliance with—

- (a) any other Act, whether passed before or after the date of assent to this Act;
- (b) an instrument made or approved under an Act referred to in paragraph (a);
- (c) an order of the Board;
- (d) an order of a court; or
- (e) an order or award of a court or tribunal having power to fix minimum wages and other terms and conditions of employment (including the payment by an employer of a salary, wage or other remuneration in excess of the amount fixed by such a court or tribunal and whether or not the payment of such salary, wage or other remuneration, but for this provision would constitute unlawful discrimination).

Charities.

**55.** (1) Nothing in this Act affects—

- (a) a provision of a deed, will or other instrument, whether made before or after the day appointed and notified under section 2 (2), that confers charitable benefits or enables charitable benefits to be conferred on persons of a class identified by reference to any one or more of the grounds of discrimination referred to in this Act; or
- (b) an act which is done in order to give effect to such a provision.

(2) In this section, “charitable benefits” means benefits for purposes that are exclusively charitable according to the law in force in any part of Australia.



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*Anti-Discrimination.*

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**56.** Nothing in this Act affects—

**Religious  
bodies.**

- (a) the ordination or appointment of priests, ministers of religion or members of any religious order ;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order ;
- (c) the appointment of any other person in any capacity by a body established to propagate religion ; or
- (d) any other practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

**57.** (1) In this section, "body" means—

**Registered  
clubs and  
voluntary  
bodies.**

- (a) a club registered under Part X of the Liquor Act, 1912 ;
- (b) a club registered under Division 4 of Part IIIA of the Gaming and Betting Act, 1912 ; or
- (c) a body—
  - (i) the activities of which are carried on otherwise than for profit ; and
  - (ii) which is not established by an Act.



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*Anti-Discrimination.*

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(2) Nothing in this Act affects—

- (a) any rule or practice of a body which restricts admission to membership of that body; or
- (b) the provision of benefits, facilities or services to members of that body.

Education  
or religious  
establish-  
ments.

**58.** Nothing in this Act affects—

- (a) any rule or practice of an education or religious establishment which restricts admission to membership of that establishment; or
- (b) the provision of benefits, facilities or services to pupils, students, members or staff of such establishments.

Establish-  
ments pro-  
viding  
housing  
accommo-  
dation, etc.  
for aged  
persons.

**59.** (1) In this section, “institution” means an establishment which provides housing accommodation and ancillary services for aged persons, whether by statute or otherwise.

(2) Nothing in this Act affects—

- (a) any rule or practice of an institution which restricts admission thereto to any class, type, sex, race or age of applicant; or
- (b) the provision of benefits, facilities or services to such persons as are admitted to such institution.

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PART



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*Anti-Discrimination.*

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PART VII.

THE COUNSELLOR FOR EQUAL OPPORTUNITY.

**60.** There shall be a Counsellor for Equal The Opportunity. Counsellor.

**61.** The Counsellor shall be appointed by the Gov- Appointment  
ernor, on the recommendation of the Minister, on such terms of  
and conditions as are specified in the instrument of Counsellor.  
appointment.

**62.** Subject to this Act, the Counsellor holds office for Term of  
such period, not exceeding 7 years, as is specified in the office.  
instrument of his appointment and is eligible for re-  
appointment.

**63.** A person is not eligible for appointment as Persons  
Counsellor if he is— ineligible  
for  
(a) of or above the age of 65 years; or appointment  
as  
(b) a member of the Legislative Council or the Counsellor.  
Legislative Assembly or a member of a House of  
Parliament of another State or of the Common-  
wealth.

**64.** The Counsellor vacates his office— Vacation of  
office.  
(a) on the day on which he attains the age of 65 years;  
(b) if he engages in any paid employment outside the  
duties of his office;

(c)



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- (c) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth;
- (d) if he resigns his office by writing under his hand addressed to the Governor and the Governor accepts the resignation; or
- (e) if he is removed from office by the Governor pursuant to section 65.

Removal  
from  
office.

65. The Counsellor may, at any time, be removed from his office by the Governor upon the address of both Houses of Parliament.

Counsellor  
not subject  
to Public  
Service Act,  
1902.

66. The provisions of the Public Service Act, 1902, do not apply to the appointment of the Counsellor and the Counsellor is not subject to those provisions.

Remunera-  
tion and  
allowances.

67. The Counsellor is entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

Acting  
Counsellor.

68. (1) The Minister may appoint an acting Counsellor during the absence of the Counsellor or during a vacancy in his office.

(2)



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(2) An acting Counsellor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

(3) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising an acting Counsellor to act as Counsellor.

(4) A person appointed an acting Counsellor shall, while so acting, be deemed to be the Counsellor and shall have the immunities and functions of the Counsellor.

(5) The Minister may, for any cause which to him seems sufficient, remove an acting Counsellor from office.

**69.** (1) The Governor may appoint and employ, **Staff.** under and subject to the Public Service Act, 1902, such officers and employees as may be necessary to enable the Counsellor to exercise his functions.

(2) A person who is employed for the purposes of subsection (1) is, while he is so employed, an officer of the Counsellor.

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**PART VIII.**

**THE ANTI-DISCRIMINATION BOARD.**

**70.** In this Part—

**Interpre-**  
**tation:**

“meeting”, in relation to the Board, includes an inquiry; **Pt. VIII.**

“member” means a member of the Board and includes the President;

“President” means the President of the Board.

**71.** There shall be an Anti-Discrimination Board. **Constitution of Board.**

**72.**



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**Appointment of members.**     **72.** The Board shall consist of one full-time member and 2 part-time members appointed by the Governor.

**Term of office.**     **73.** A member shall, subject to this Part, hold office for a period of 3 years and is eligible for re-appointment as a member.

**Eligibility for appointment to Board.**     **74.** (1) The full-time member shall be—  
      (a) a judge of the District Court of New South Wales;  
      (b) a member of the Workers' Compensation Commission of New South Wales; or  
      (c) a person who is qualified for appointment as a judge of the District Court of New South Wales or a member of the Workers' Compensation Commission of New South Wales.

(2) A person is not eligible for appointment as a part-time member if he is—

- (a) of or above the age of 65 years; or
- (b) a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth.

**Vacation of office.**     **75.** A member shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if, being the President, he engages in any paid employment outside the duties of his office;

(c)



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- (c) if, being the President, he absents himself from duty for a period exceeding 14 consecutive days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless his absence is occasioned by illness or other unavoidable cause;
- (d) if, being a member other than the President, he is unavailable for duty for a period exceeding 28 days except on leave granted by the Minister (which leave the Minister is hereby authorised to grant), unless his unavailability is occasioned by illness or other unavoidable cause;
- (e) if he is nominated for election as a member of the Legislative Council or the Legislative Assembly or a member of a House of Parliament of another State or of the Commonwealth;
- (f) if he resigns his office by writing under his hand addressed to the Governor; or
- (g) if, being a member other than the President, he is removed from office by the Governor pursuant to section 76.

76. The Governor may for any cause which to him seems sufficient remove any part-time member from office. Removal  
from  
office.

77. On the occurrence of a vacancy in the office of a member, otherwise than by the expiration of the term for which he was appointed, the Governor may appoint a person to hold that office for the residue of his predecessor's term of office, being, where the vacancy occurs in the office of the full-time member, a person qualified for appointment in accordance with section 74. Filling  
casual  
vacancy.

78.



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Member not  
subject to  
Public  
Service  
Act, 1902.

**78.** The provisions of the Public Service Act, 1902, shall not apply to or in respect of the appointment of a member, and a member shall not be subject to the provisions of that Act during his term of office.

Remunera-  
tion of  
part-time  
members.

**79.** A part-time member shall be entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

President.

**80.** (1) The full-time member shall be the President.

(2) The President shall devote the whole of his time to the duties of his office and shall be entitled to be paid—

(a) remuneration of the same amount as is payable in accordance with the Statutory and Other Offices Remuneration Act, 1975, to a judge of the District Court, other than the Chief Judge; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of him.

(3) Where upon the appointment of the President he is the holder of an office referred to in section 74 (1) (a) or (b), his appointment as the President, subject to subsection (2), shall not, nor shall his service as the President, affect his tenure of that office or his rank, title, status, precedence, salary or other rights or privileges as the holder of that office.

(4) The President may only be removed from office in the same manner as a judge of the District Court may be removed from office.

Acting  
President.

**81.** (1) The Minister may at any time appoint a person qualified for appointment as a full-time member in accordance with section 74 (1) to act as President during the absence or illness of the President.

(2)



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(2) A person appointed under subsection (1) shall have and may exercise, while acting as President, the functions of the President.

**82.** (1) The Minister may at any time appoint a person as an alternate member to act during the absence or illness of a part-time member. **Alternate members.**

(2) An alternate member shall have and may exercise, while acting as a member, the functions of the person for whom he is the alternate member.

**83.** Where the President or acting President is qualified in accordance with section 74 (1) (a) or (b), he shall retain his office as a judge of the District Court of New South Wales or a member of the Workers' Compensation Commission of New South Wales, as the case may be, and any period during which he serves as President or acting President shall be computed as part of his service as such a judge or member, as the case may be, for the purposes of the Judges' Pensions Act, 1953. **Preservation of rights of full-time member holding judicial office.**

**84.** (1) In this section, "superannuation scheme" means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act. **Preservation of rights of full-time member previously public servant, etc.**

(2) Subject to subsection (3) and to the terms of his appointment, where a full-time member qualified in accordance with section 74 (1) (c) was, immediately before his appointment as a full-time member—

- (a) an officer of the Public Service; or
- (b) contributor to a superannuation scheme,

he—

- (c) shall retain any rights accrued or accruing to him as such an officer or contributor;

(d)



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- (d) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as a full-time member; and
- (e) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he had continued to be such an officer or contributor during his service as a full-time member, and—

- (f) his service as a full-time member shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he continues to contribute or by which that entitlement is conferred; and
- (g) he shall be deemed to be an officer or employee, and the Board shall be deemed to be his employer, for the purpose of the superannuation scheme to which he is entitled to contribute under this subsection.

(3) A full-time member who, but for this subsection, would be entitled under subsection (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under that scheme shall not be so entitled upon his becoming (whether upon his appointment as a full-time member or at any later time while he holds office as a full-time member) a contributor to any other superannuation scheme, and the provisions of subsection (2) (g) cease to apply to or in respect of him and the Board in any case where he becomes a contributor to such another superannuation scheme.

(4) Subsection (3) does not prevent the payment to a full-time member upon his ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him if he had ceased, by way of resignation, to be an officer or employee for the purposes of that scheme.

(5)



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(5) A full-time member shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

**85.** (1) The procedure for the calling of meetings of the Board and for the conduct of business at those meetings, including the procedure to be followed in an inquiry, shall, subject to this Act, be as determined by the Board. <sup>Meetings of the Board.</sup>

(2) The President shall preside at all meetings of the Board at which he is present.

(3) Three members shall form a quorum at any meeting of the Board and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Board.

(4) A decision of a majority of the members present at a meeting of the Board at which a quorum is present shall be the decision of the Board.

(5) The President or member presiding shall have a deliberative vote and, in the event of an equality of votes, shall have a second or casting vote.

**86.** (1) The Governor may appoint and employ, under and subject to the Public Service Act, 1902, a Registrar of the Board and such officers and employees as may be necessary to enable the Board and the Registrar to exercise their functions.

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

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PART



*Anti-Discrimination.*

## PART IX.

## THE FUNCTIONS OF THE COUNSELLOR AND THE BOARD.

DIVISION 1.—*General.*

Interpre-  
tation:  
Pt. IX.

**87.** In this Part—

“complainant”, in relation to a complaint, means the person or each of the persons by whom that complaint is lodged;

“complaint” means—

(a) a complaint, not being a representative complaint, lodged under section 88 (1) or (2); and

(b) a matter referred to the Board for inquiry as a complaint pursuant to section 95,

and includes a representative complaint;

“Court” means the Supreme Court of New South Wales;

“representative complaint” means a complaint lodged under section 88 (1) by a person on behalf of himself and other persons, or two or more persons on behalf of themselves and other persons, and which is treated by the Board as a representative complaint;

“respondent”, in relation to a complaint, means the person or each of the persons against whom that complaint is lodged.

DIVISION 2.—*The Functions of the Counsellor.*

Making  
of  
complaints.

**88.** (1) A person on his own behalf or on behalf of himself and other persons, or two or more persons on their own behalf or on behalf of themselves and other persons, may lodge a complaint in writing with the Counsellor or the Registrar in respect of any contravention of this Act or the

regulations



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regulations which is alleged to have been committed by any other person or persons, other than a contravention in respect of which a specific penalty is imposed.

(2) A person may lodge a complaint in writing with the Counsellor or the Registrar in respect of any refusal, neglect or failure to obey or comply with an order or interim order of the Board.

(3) A complaint shall be lodged within 6 months after the date on which the contravention of this Act or the regulations which is the subject of that complaint is alleged to have been committed.

(4) Notwithstanding subsection (3), the Counsellor or the Registrar, on good cause being shown, may accept a complaint which is lodged more than 6 months after the date referred to in that subsection.

(5) Where a complaint is lodged with the Registrar, the Registrar shall forthwith refer that complaint to the Counsellor.

**89.** The Counsellor shall investigate each complaint lodged with him under section 88 (1) or (2) or referred to him by the Registrar under section 88 (5). Investigation of complaints by the Counsellor.

**90.** (1) Where, at any stage of his investigation of a complaint, the Counsellor is satisfied that the complaint is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the complaint should not be entertained, he may, by notification in writing addressed to the complainant, decline to entertain the complaint. Counsellor may decline to entertain complaint.

(2)



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(2) The Counsellor shall, in a notification under subsection (1), advise the complainant of—

- (a) the reason for declining to entertain the complaint; and
- (b) the rights of the complainant under section 91 (1).

Reference of  
complaint to  
Board at  
require-  
ment of  
complain-  
ant.

**91.** (1) Where the Counsellor has given a complainant a notification under section 90 (1), the complainant may, within 21 days after the date of that notification, by notice in writing served on the Counsellor, require the Counsellor to refer the complaint to the Board.

(2) On receipt of a notice under subsection (1), the Counsellor shall refer the complaint to the Board together with a report relating to any inquiries made by him into the complaint.

Resolution  
of complaint  
by  
conciliation.

**92.** (1) Where the Counsellor is of the opinion that a complaint, other than a complaint that he has declined to entertain under section 90 (1), may be resolved by conciliation, he shall endeavour to resolve the complaint by conciliation.

(2) The Counsellor may, by notice in writing, require the complainant and the respondent, or either of them, to appear before him, either separately or together, for the purpose of endeavouring to resolve the complaint by conciliation.

(3) A person shall not fail to comply with the terms of a notice under subsection (2).

Penalty : \$500.

No right to  
representa-  
tion.

**93.** A complainant or respondent in conciliation proceedings before the Counsellor shall not be represented by any other person except by leave of the Counsellor.

**94.**



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*Anti-Discrimination.*

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**94.** (1) Where the Counsellor—

Reference  
of com-  
plaints  
to the  
Board.

- (a) is of the opinion that a complaint cannot be resolved by conciliation;
- (b) has endeavoured to resolve a complaint by conciliation but has not been successful in his endeavours; or
- (c) is of the opinion that the nature of a complaint is such that it should be referred to the Board,

he shall refer the complaint to the Board together with a report relating to any inquiries made by him into the complaint.

(2) Evidence of anything said or done in the course of conciliation proceedings under section 92 shall not be admissible in subsequent proceedings under this Part relating to the complaint.

*DIVISION 3.—The Functions of the Board in relation to Complaints.*

**95.** The Minister may refer any matter to the Board for inquiry as a complaint under this Part.

Reference  
of matter  
to the  
Board by  
the Minister.

**96.** The Board shall hold an inquiry into each complaint or matter referred to it under section 91 (2), 94 (1) or 95.

Inquiries  
into  
complaints.

**97.** Where the Board is of the opinion that two or more complaints arise out of the same or substantially the same circumstances or subject-matter, it may hold a single inquiry in relation to those complaints.

Single  
inquiry in  
relation  
to several  
complaints.

**98.**



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Joinder of parties by the Board.

**98.** Where, before the holding of an inquiry, or at any stage during the holding of an inquiry, the Board is of the opinion that a person ought to be joined as a party to the inquiry, it may, by notice in writing given to that person, join that person as a party to the inquiry.

Notice of inquiry and rights of parties at inquiry.

**99.** (1) The Board—

- (a) shall give a party to an inquiry, other than a person to whom the Board grants leave to appear as a party to the inquiry, such notice in such manner as the Board determines of the time and place at which it intends to hold the inquiry; and
- (b) shall give each party to an inquiry reasonable opportunity to call or give evidence, examine or cross-examine witnesses and make submissions to the Board.

(2) If a party to an inquiry to whom notice has been given under subsection (1) (a) fails to attend at the time and place specified for the inquiry, the Board may hold the inquiry in the absence of that party.

Parties to an inquiry.

**100.** The parties to an inquiry shall be the Counsellor, the complainant, the respondent, any person joined by the Board as a party to the inquiry and any person to whom the Board grants leave to appear as a party to the inquiry.

Right of appearance and to representation.

**101.** (1) A party to an inquiry—

- (a) is entitled to appear personally or by his solicitor or counsel; and
- (b) may, by leave of the Board, be represented by a person other than a solicitor or counsel.

(2)



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(2) No person, other than a solicitor or counsel, is entitled to demand or receive any fee or reward for representing a party to an inquiry.

102. At an inquiry held in respect of a representative complaint, the Board shall determine, as a preliminary matter, whether that complaint should be dealt with as a representative complaint.

Determination of representative complaints.

103. (1) The Board shall not permit a complaint to be dealt with as a representative complaint unless it is satisfied that the complaint is made bona fide and in good faith as a representative complaint.

Matters to be considered in determination of representative complaints.

(2) In considering whether a complaint is made bona fide and in good faith as a representative complaint, the Board shall satisfy itself—

(a) that—

(i) the complainant is a member of a class of persons, the members of which class have been affected, or may reasonably be likely to be affected, by the conduct of the respondent;

(ii) the complainant has in fact been affected by the conduct of the respondent;

(iii) the class is so numerous that joinder of all its members is impracticable;

(iv) there are questions of law or fact common to all members of the class;

(v) the claims of the complainant are typical of the claims of the class;

(vi)



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- (vi) multiple complaints would be likely to produce varying determinations which could have incompatible or inconsistent results for the individual members of the class; and
- (vii) the respondent has acted on grounds apparently applying to the class as a whole, thereby making relief appropriate for the class as a whole; or

- (b) that notwithstanding that the requirements of paragraph (a) have not been satisfied, the justice of the case demands that the matter be dealt with and a remedy provided by means of a representative complaint.

Amendment  
of represen-  
tative  
complaints.

**104.** Where the Board is satisfied—

- (a) that the complaint could be dealt with as a representative complaint if the class of persons on whose behalf that complaint is lodged is increased, reduced or otherwise altered, the Board may amend the complaint so that the complaint can be dealt with as a representative complaint; or
- (b) that the complaint has been wrongly made as a representative complaint, the Board may amend the complaint by removing the names of the persons or the class of persons on whose behalf that complaint was lodged so that the complaint can be dealt with as a complaint other than a representative complaint.

Ordinary  
complaints  
not  
precluded  
by  
represen-  
tative  
complaints.

**105.** Nothing in this Part shall prevent a person from lodging a complaint, other than a representative complaint, under section 88 (1) or (2), notwithstanding that the conduct in respect of which the complaint is lodged has also been the conduct in respect of which a representative complaint has been lodged.

**106.**



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**106. The Board—**

Resolution  
of complaint  
by  
conciliation.

- (a) may endeavour, by all such means as to it seem reasonable, to resolve a complaint the subject of an inquiry by conciliation; and
- (b) shall take all such steps as to it seem reasonable to effect an amicable settlement of a complaint the subject of an inquiry and for this purpose may adjourn an inquiry at any stage to enable the parties to negotiate with a view to settlement of the complaint by amicable arrangements.

**107. In the course of an inquiry, the Board may, in its discretion—**

Evidence  
and findings  
in other  
proceedings.

- (a) receive in evidence the transcript of evidence in any proceedings before a court or tribunal and draw any conclusions of fact therefrom that it considers proper;
- (b) adopt any findings, decision or judgment of a court or tribunal that may be relevant to the inquiry; and
- (c) receive in evidence any report of the Counsellor that may be relevant to the inquiry if a copy of that report has been made available to every other party to the inquiry.

**108. (1) For the purposes of any inquiry, the Board—**

Application  
of rules of  
evidence,  
etc.

- (a) shall not be bound by the rules of evidence and may inform itself on any matter it thinks fit;
- (b) shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms; and

(c)



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- (c) may give directions relating to procedure that, in its opinion, will enable costs or delay to be reduced and will help to achieve a prompt hearing of the matters at issue between the parties.

(2) The President shall determine any question relating to the admissibility of evidence and any other question of law or procedure.

Proof of exceptions.

**109.** Where by any provision of this Act or the regulations, conduct is excepted from conduct that is unlawful under this Act or the regulations or that is a contravention of this Act or the regulations, the onus of proving the exception in any inquiry lies upon the respondent.

Application of Royal Commissions Act, 1923, to inquiries held by the Board.

**110.** Subject to this Part, the Board shall, for the purposes of an inquiry held by it, have the powers, authorities, protections and immunities conferred by the Royal Commissions Act, 1923, on a commissioner and the chairman of a commission respectively, appointed under Division 1 of Part II of that Act, and that Act, Division 2 of Part II excepted, shall apply to any witness summoned by or appearing before the Board in the same way as it applies to any witness summoned by or appearing before a commission.

Board may dismiss frivolous, etc., complaints.

**111.** (1) Where, at any stage of an inquiry, the Board is satisfied that a complaint is frivolous, vexatious, misconceived or lacking in substance, or that for any other reason the complaint should not be entertained, it may dismiss the complaint.

(2) Where the Board dismisses a complaint under subsection (1), it may order the complainant to pay the costs of the inquiry.

**112.**



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**112.** The Board may, on the application of a party to an inquiry at any time after the lodgment of the complaint into which that inquiry is held, make an interim order to preserve—

Making of interim orders.

(a) the status quo between the parties to the complaint; or

(b) the rights of the parties to the complaint,

pending determination of the matter the subject of the complaint.

**113.** After holding an inquiry, the Board may—

Order or other decision of the Board.

(a) dismiss the complaint the subject of that inquiry; or

(b) find the complaint substantiated and do any one or more of the following :—

(i) except in respect of a representative complaint or a matter referred to the Board for inquiry as a complaint pursuant to section 95, order the respondent to pay to the complainant damages not exceeding \$20,000 by way of compensation for any loss or damage suffered by reason of the respondent's conduct;

(ii) make an order enjoining the respondent from continuing or repeating any conduct rendered unlawful by this Act or the regulations;

(iii) except in respect of a representative complaint or a matter referred to the Board for inquiry as a complaint pursuant to section 95, order the respondent to perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant;

(iv)



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- (iv) make an order declaring void in whole or in part and either ab initio or from such other time as is specified in the order any contract or agreement made in contravention of this Act or the regulations; or
- (v) decline to take any further action in the matter.

**Costs.**

**114.** (1) Except as provided by section 111 (2) and subsection (2), each party to an inquiry shall pay his own costs.

(2) Where the Board is of the opinion in a particular case that there are circumstances that justify it doing so, it may make such order as to costs and security for costs, whether by way of interim order or otherwise, as it thinks fit.

**Recovery of amounts payable under an order of the Board.**

**115.** Any amount ordered to be paid by the Board under this Part may be registered as a judgment debt in a court of competent jurisdiction.

**Compliance with order of the Board.**

**116.** A person shall not refuse, neglect or for any reason fail to obey or comply with an order referred to in section 113 (b) (ii) or (iii), or an interim order, of the Board.

Penalty : \$1,000.

**Reasons for decision or order.**

**117.** (1) Where the Board does not state its reasons for any decision or order made in relation to an inquiry, a party to the inquiry may, by notice in writing served on the Board within 7 days after the date of that decision or order, require the Board to state its reasons.

(2) The Board shall, within 14 days after the service of a notice under subsection (1), state its reasons for the decision or order referred to in the notice.

**118.**



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**118.** (1) A party aggrieved by a decision or an order of Appeals. the Board may appeal to the Court—

- (a) except as provided in paragraph (b), within 21 days after the date of that decision or order; or
- (b) where a notice has been served on the Board under section 117 (1), within 21 days after the date on which the Board states its reasons for that decision or order under section 117 (2).

(2) The Court, on the hearing of an appeal, shall have the same functions as the Board in hearing and determining the complaint the subject of the appeal.

(3) The Court may, on the hearing of the appeal—

- (a) confirm, vary or quash the decision or order appealed from, or substitute, or make in addition, any decision or order that might have been made by the Board under this Part;
- (b) remit the matter to the Board for re-inquiry or further inquiry; or
- (c) make such order as to costs as it determines.

(4) For the purposes of section 116, an order of the Court of the nature referred to in section 113 (b) (ii) or (iii) shall be deemed to be an order referred to in section 113 (b) (ii) or (iii), as the case may be, of the Board.

**DIVISION 4.—Other Functions of the Board.**

**119.** For the purpose of eliminating discrimination and promoting equality and equal treatment of all human beings, the Board may— General functions of the Board.

- (a) carry out investigations, research and inquiries relating to discrimination and in particular discrimination against a person or persons on the ground of—

- (i) age;

- (ii)



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- (ii) a characteristic that appertains generally to persons of a particular age;
  - (iii) a characteristic that is generally imputed to persons of a particular age;
  - (iv) religious or political conviction;
  - (v) a characteristic that appertains generally to persons of a particular religious or political conviction;
  - (vi) a characteristic that is generally imputed to persons of a particular religious or political conviction;
  - (vii) physical handicap or condition or mental disability;
  - (viii) a characteristic that appertains generally to persons having that physical handicap or condition or that mental disability;
  - (ix) a characteristic that is generally imputed to persons having that physical handicap or condition or that mental disability;
  - (x) homosexuality;
  - (xi) a characteristic that appertains generally to homosexuals;
  - (xii) a characteristic that is generally imputed to homosexuals;
  - (xiii) membership or non-membership of a trade union; or
  - (xiv) a characteristic that appertains generally to membership or non-membership of a trade union or a characteristic that is generally imputed to members or non-members of a trade union;
- (b) acquire and disseminate knowledge on all matters relating to the elimination of discrimination and the achievement of equal rights;

(c)



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- (c) arrange and co-ordinate consultations, discussions, seminars and conferences;
- (d) review, from time to time, the laws of the State;
- (e) consult with governmental, business, industrial and community groups and organisations in order to ascertain means of improving services and conditions affecting minority groups and other groups which are the subject of discrimination and inequality;
- (f) hold public inquiries; and
- (g) develop human rights programmes and policies.

**120.** (1) The Minister may refer to the Board for report any matter relating to—

Reference of certain matters to the Board by the Minister.

- (a) a law or a proposed law; or
- (b) a practice, an alleged practice or a proposed practice of any person or class of persons,

which conflicts with or may give rise to conflict with this Act or the regulations.

(2) The Board shall conduct an examination into any matter referred to it by the Minister under subsection (1) and report to the Minister its findings and conclusions.

**121.** The Board shall, as soon as possible after the day appointed and notified under section 2 (2), undertake a review of—

Review of legislation, etc.

- (a) the legislation of the State;
- (b) governmental policies and practices; and
- (c) the policies and practices of all superannuation funds and pension schemes whether governmental or otherwise,

with



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*Anti-Discrimination.*

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with a view to identifying circumstances where discrimination on a ground referred to in this Act occurs, in substance or effect, against any person or class of persons and shall furnish a report of its findings to the Minister within 12 months after that date.

Annual  
report.

**122.** (1) The Board shall, on or before the thirtieth day of September each year, prepare and present to the Minister a report on—

- (a) the administration of this Act and the regulations during the period of 12 months ending on the preceding thirtieth day of June; and
- (b) the research undertaken by the Board during that period and any recommendations that the Board considers appropriate for the elimination or modification of legislative provisions that discriminate on a ground referred to in this Act against any person or class of persons.

(2) The Minister shall lay the report, or cause it to be laid, before both Houses of Parliament as soon as practicable after its receipt by him.

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**PART X.**

**MISCELLANEOUS.**

Effect of  
contraven-  
tion  
of Act.

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

(2) Nothing in subsection (1) prevents an action for defamation.

**124.**



*Anti-Discrimination.*

**124.** A person shall not, without lawful excuse, wil- Obstruction.  
fully obstruct, hinder or resist the Counsellor, an officer of the  
Counsellor, the Registrar or a member of the Board in the  
exercise of his functions under this Act or the regulations.

Penalty : \$1,000.

**125.** Any penalty imposed by this Act or the Recovery of  
regulations may be recovered in a court of petty sessions held penalties.  
before a stipendiary magistrate sitting alone.

**126.** (1) The Minister on the recommendation of Granting of  
the Board, may, by order published in the Gazette, grant an exemptions  
exemption from this Act or the regulations or such parts of by the  
this Act or the regulations as are specified in the order in Minister.  
respect of—

- (a) a person or class of persons;
- (b) an activity or class of activity; or
- (c) any other matter or circumstance specified in the order.

(2) An exemption granted under subsection (1)  
shall remain in force for such period, not exceeding 5 years,  
as is specified in the order and may, by order made in the  
manner referred to in subsection (1), be extended for a further  
period not exceeding 5 years.

(3) The power conferred by subsection (1) to  
make an order includes power, exercisable in the same manner  
and subject to the same conditions, to vary or revoke any order  
so made.

**127.** (1) The Governor may make regulations, not Regula-  
inconsistent with this Act, for or with respect to any matter tions.  
that by this Act is required or permitted to be prescribed or  
that is necessary or convenient to be prescribed for carrying  
out or giving effect to this Act.

(2)



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*Anti-Discrimination.*

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(2) Before making a recommendation to the Governor for the making of any regulation, the Minister shall take into consideration any recommendation of the Board with respect to the subject-matter of the proposed regulation.

(3) A regulation shall, unless disallowed by either House of Parliament, take effect upon—

- (a) the expiration of a period of 14 sitting days after the day or the later day it is laid before either such House; or
- (b) a date specified in the regulation which is later than the period determined under paragraph (a).

(4) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) the forms to be used for the purposes of this Act or the regulations;
- (b) the fees to be paid in respect of the lodging of any complaint under Part IX;
- (c) the manner of serving any notice or other document;
- (d) the procedure of the Board at any inquiry; and
- (e) exempting—
  - (i) any person or class of persons;
  - (ii) any activity or class of activity; or
  - (iii) any other matter or circumstance,

specified in the regulations from this Act or such parts of this Act as may be so specified.

(5) The regulations may impose a penalty not exceeding \$500 for an offence arising under the regulations.

(6) Regulations may be made so as to apply differently according to such factors as may be specified in the regulations.



*Anti-Discrimination.*

**128.** (1) The Statutory and Other Offices Remuneration Act, 1975, is amended by inserting at the end of Schedule 1 the words "Counsellor for Equal Opportunity".

Amendment  
of Act No.  
4, 1976.  
Schedule 1.

(2) The Defamation Act, 1974, is amended—

Amendment  
of Act No.  
18, 1974.

(a) by inserting before section 18 the following section :—

17D. (1) There is a defence of absolute privilege for a publication to or by the Counsellor for Equal Opportunity appointed under the Anti-Discrimination Act, 1977, to a member of the Anti-Discrimination Board constituted under that Act, to any officer of that Counsellor, to the Registrar of that Board or to any officer of the Public Service appointed or employed to assist in the execution or administration of that Act, if the publication is made for the purpose of the execution or administration of that Act.

Matters  
arising  
under  
Anti-  
Discrimina-  
tion Act,  
1977.

(2) There is a defence of absolute privilege for the publication of a report—

(a) referred to in section 91 (2) or 94 (1) of the Anti-Discrimination Act, 1977, of the Counsellor for Equal Opportunity appointed under that Act made to the Anti-Discrimination Board constituted under that Act; or

(b) referred to in section 120 (2), 121 or 122 (1) of that Act to the Minister administering that Act.

(b)



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*Anti-Discrimination.*

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- Sch. 2. (b) (i) by omitting from clause 2 (10) of Schedule 2 the word "or";
- (ii) by omitting from clause 2 (11) of Schedule 2 the word "Act." where secondly occurring and by inserting instead the following matter and subclause :—
- Act; or
- (12) proceedings at an inquiry conducted by the Anti-Discrimination Board constituted under the Anti-Discrimination Act, 1977.

*In the name and on behalf of Her Majesty I assent to this Act.*

L. W. STREET,  
*Lieutenant-Governor.*

*Government House,  
Sydney, 28th April, 1977.*







