

## **ANTI-DISCRIMINATION (FURTHER AMENDMENT) BILL, 1981**

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### **EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The following Bills are cognate with this Bill:—

Defamation (Anti-Discrimination) Further Amendment Bill, 1981;

Statutory and Other Offices Remuneration (Anti-Discrimination) Further Amendment Bill, 1981.

The objects of this Bill are to amend the Anti-Discrimination Act, 1977 ("the Act")—

- (a) to render unlawful, in certain circumstances, discrimination against a handicapped person on the ground of his physical impairment;
- (b) to constitute the Equal Opportunity Tribunal and to specify its functions;
- (c) to make further provision with respect to the constitution of the Anti-Discrimination Board;
- (d) to remove the exemption from the provisions of the Act granted to registered clubs in relation to—
  - (i) admission to membership; and
  - (ii) provision of benefits to members; and
- (e) to make other miscellaneous amendments to the Act.

Clause 5 and Schedule 1 insert into the Act a new Part, Part IVA, relating to discrimination against a handicapped person on the ground of his physical impairment.

Division 1 of the proposed Part contains section 49A which specifies the circumstances in which a person discriminates against a handicapped person on the ground of his physical impairment.

Division 2 of the proposed Part contains sections 49B–49I relating to discrimination, on this ground, in work. These provisions render it unlawful for an employer to discriminate against an applicant for employment or an employee; for a principal to discriminate against a prospective commission agent or a commission

agent; for a principal to discriminate against a contract worker; for a firm to discriminate against a prospective partner or a partner; for a trade union to discriminate against an applicant for membership or a member; for a body which confers a professional, trade or similar qualification to discriminate against a person who seeks that qualification; and for an employment agency to discriminate against a person who seeks the services of the agency. Exceptions to certain of the provisions in Division 2 are made in section 49i. The exceptions apply where, because of his physical impairment, a handicapped person would be unable to perform the work concerned or, in order to perform that work, would require services or facilities which it would be unreasonable for the employer or principal to provide.

Division 3 of the proposed Part contains sections 49J-49L relating to discrimination, on this ground, in areas other than work. These provisions render it unlawful for a government educational authority to discriminate against an applicant for admission as a student or a person admitted as a student, with certain exceptions; for a person to discriminate in the provision of goods and services, with certain exceptions; and for a landlord to discriminate in the provision of accommodation, with certain exceptions.

Division 4 of the proposed Part contains sections 49M-49O which specify general exceptions to the proposed Part. These provisions relate to superannuation or provident funds or schemes, insurance and participation in sporting activities.

Clause 5 and Schedule 2 insert into the Act a new Part, Part VIIA, containing sections 69A-69O, relating to the constitution of the Equal Opportunity Tribunal ("the Tribunal"). The Tribunal is to consist of not less than 5 part-time members and not more than 7 part-time members, one of whom is to be legally qualified, appointed by the Governor for terms not exceeding 3 years. The proposed Part contains provisions relating to the vacation of office and the removal from office of members of the Tribunal, the filling of casual vacancies, the remuneration of members, the appointment of acting and alternate members, the constitution of the Tribunal for the purpose of exercising its functions, the procedure at sittings of the Tribunal and the appointment of officers and employees of the Tribunal.

The Tribunal is to exercise the function previously exercised by the Anti-Discrimination Board ("the Board") of holding inquiries into complaints referred to it by the Counsellor for Equal Opportunity and matters referred to it by the Minister (Schedule 2 (1), (7), (9) and (20)).

Parties to an inquiry before the Tribunal may not be legally represented without the leave of the Tribunal (Schedule 2 (11)). The Tribunal may arrange with the Board for an officer of the Board to act at an inquiry as officer assisting the Tribunal (Schedule 2 (12)). Appeals from decisions of the Tribunal lie to the Supreme Court on questions of law only (Schedule 2 (16)).

Clause 5 and Schedule 3 make amendments to the Act relating to the constitution of the Board consequent, in part, upon the constitution of the Tribunal. The President of the Board will not be required to be legally qualified (Schedule 3 (2), (5) (b), (7) and (8)). Provision is made enabling the President to be retired after attaining the

age of 60 years (Schedule 3(3), (5) (c)); for the remuneration of the President (Schedule 3 (5) (a)); and for the appointment of an acting President (Schedule 3 (6)).

Clause 5 and Schedule 4 amend the Act so as to remove the exemption from the provisions of the Act granted to registered clubs in relation to admission to membership and the provision of benefits to members and so as to provide that it shall be unlawful for a registered club to so discriminate on the grounds of—

- (a) race, except where the registered club is constituted to provide benefits for a specified race (Schedule 4 (3));
- (b) sex, except where —
  - (i) the registered club is constituted to provide benefits for members of one sex only; or
  - (ii) it is not practicable for a benefit provided by the registered club to be used simultaneously or to the same extent by both men and women and either the same or an equivalent benefit is provided for the use of men and women separately from each other or men and women are each entitled to a fair and reasonable proportion of the use of the benefit
 (Schedule 4 (4));
- (c) marital status (Schedule 4 (5)); and
- (d) physical impairment in relation to a handicapped person, except where—
  - (i) the registered club is constituted to provide benefits for handicapped persons having a particular physical impairment only; or
  - (ii) in order to use a benefit provided by the registered club or in order not to prevent or restrict the use of such a benefit by other members, the handicapped person would require services or facilities which it would be unreasonable for the registered club to provide
 (Schedule 4 (6)).

Clause 5 and Schedule 5 make miscellaneous amendments to the Act the objects of which are—

- (a) to further specify the circumstances which constitute unlawful discrimination by bodies which confer professional, trade or similar qualifications on persons generally (Schedule 5 (2) (b)) and on the grounds of race (Schedule 5 (6)), sex (Schedule 5 (11)) and marital status (Schedule 5 (19));
- (b) to render unlawful indirect discrimination on the grounds of race (Schedule 5 (4)), sex (Schedule 5 (8) (b)) and marital status (Schedule 5 (16));

- (c) to render unlawful discrimination by a firm against a prospective partner or a partner on the grounds of race (Schedule 5 (5)), sex (Schedule 5 (10)) and marital status (Schedule 5 (18));
- (d) to render unlawful discrimination by an employment agency, in the manner in which it provides its services, on the grounds of race (Schedule 5 (7)), sex (Schedule 5 (12)) and marital status (Schedule 5 (20));
- (e) to provide that discrimination against a woman on the ground of her actual or likely pregnancy is unlawful, except where the woman is pregnant at the time at which her application for employment is determined (Schedule 5 (8) (a), (9) (a), (b));
- (f) to provide that it is not unlawful for an employer, being a private educational authority, to discriminate against an applicant for employment or an employee on the grounds of sex (Schedule 5 (9) (c), (d) and (e)) or marital status (Schedule 5 (17));
- (g) to render unlawful discrimination by a government educational authority against an applicant for admission as a student or a person admitted as a student on the grounds of sex, except where the institution is conducted for members of one sex only (Schedule 5 (14)), and marital status (Schedule 5 (21));
- (h) to make further provision with respect to the circumstances in which it is unlawful to discriminate in the provision of goods and services on the grounds of sex (Schedule 5 (15)) and marital status (Schedule 5 (21));
- (i) to provide that co-operative societies, credit unions, friendly societies and permanent building societies are not exempt from the provisions of the Act (Schedule 5 (22));
- (j) to preserve certain rights of a person appointed as the Counsellor for Equal Opportunity or Director of Equal Opportunity in Public Employment (Schedule 5 (25)—proposed section 68A);
- (k) to require the Counsellor for Equal Opportunity to furnish an annual report to Parliament (Schedule 5 (25)—proposed section 68B); and
- (l) to make other provisions of a minor, consequential and ancillary nature.

Clause 6 and Schedule 6 enact certain savings, transitional and other provisions.

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**ANTI-DISCRIMINATION (FURTHER AMENDMENT)  
BILL, 1981**

No. , 1981.

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**A BILL FOR**

An Act to amend the Anti-Discrimination Act, 1977, to render unlawful, in certain circumstances, discrimination on the ground of a person's physical impairment, to constitute and specify the functions of the Equal Opportunity Tribunal and for certain other purposes.

[MR WRAN—25 November, 1980.]

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See also Defamation (Anti-Discrimination) Further Amendment Bill, 1981; Statutory and Other Offices Remuneration (Anti-Discrimination) Further Amendment Bill, 1981.

*Anti-Discrimination (Further Amendment).*

**BE** 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 :—

**5 Short title.**

1. This Act may be cited as the "Anti-Discrimination (Further Amendment) Act, 1981".

**Commencement.**

2. (1) Except as provided by subsections (2) and (3), this  
10 Act shall commence on the date of assent to this Act.

(2) Section 5, in its application to Schedules 2 and 3, section 6 and Schedules 2, 3 and 6, 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.

15 (3) Section 5, in its application to Schedule 4, and Schedule 4, 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.

**Principal Act.**

20 3. The Anti-Discrimination Act, 1977, is referred to in this Act as the Principal Act.

**Schedules.**

4. This Act contains the following Schedules :—

25 SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO DISCRIMINATION ON THE GROUND OF  
PHYSICAL IMPAIRMENT.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO THE EQUAL OPPORTUNITY TRIBUNAL.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO THE CONSTITUTION OF THE ANTI-  
DISCRIMINATION BOARD.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT  
RELATING TO REGISTERED CLUBS.

SCHEDULE 5.—MISCELLANEOUS AMENDMENTS TO THE  
PRINCIPAL ACT.

SCHEDULE 6.—SAVINGS, TRANSITIONAL AND OTHER  
PROVISIONS.

10 **Amendment of Act No. 48, 1977.**

5. The Principal Act is amended in the manner set forth in  
Schedules 1–5.

**Savings, transitional and other provisions.**

6. Schedule 6 has effect.

15 **SCHEDULE 1.**

(Sec. 5.)

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT.**

(1) Section 3—

20 After the matter relating to Part IV, insert :—

**PART IVA.—DISCRIMINATION ON THE GROUND OF  
PHYSICAL IMPAIRMENT—ss. 49A–49O.**

**DIVISION 1.—General—s. 49A.**

**DIVISION 2.—Discrimination in Work—ss. 49B–49I.**

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*Anti-Discrimination (Further Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

5                   DIVISION 3.—*Discrimination in Other Areas—ss.*  
                    49J–49L.

                    DIVISION 4.—*Exceptions to Part IVA—ss. 49M–49O.*

(2) (a) Section 4 (1), definitions of “handicapped person”,  
          “impairment”—

10                   After the definition of “functions”, insert :—

                    “handicapped person” means a person who, as a  
                    result of having a physical impairment to his  
                    body, and having regard to any community  
15                   attitudes relating to persons having the same  
                    physical impairment as that person and to the  
                    physical environment, is limited in his  
                    opportunities to enjoy a full and active life;

                    “impairment”, in relation to the body, means any  
                    defect or disturbance in the normal structure  
20                   and functioning of the body, whether arising  
                    from a condition subsisting at birth or from  
                    an illness or injury;

(b) Section 4 (5)—

                    At the end of section 4, insert :—

25                   (5) A reference in this Act to a person having the  
                    same physical impairment as a handicapped person  
                    includes a reference to a person having a physical  
                    impairment which is substantially the same as the  
                    physical impairment of the handicapped person.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

5 (3) Part IVA—

After Part IV, insert :—

PART IVA.

DISCRIMINATION ON THE GROUND OF PHYSICAL  
IMPAIRMENT.

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DIVISION 1.—*General.*

**Discrimination on the ground of physical impairment.**

49A. (1) A person discriminates against a handicapped person on the ground of his physical impairment if, on the ground of—

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(a) his physical impairment;

(b) a characteristic that appertains generally to persons having the same physical impairment as the handicapped person; or

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(c) a characteristic that is generally imputed to persons having the same physical impairment as the handicapped person,

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 who is not a handicapped person.

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(2) For the purposes of, but without limiting, subsection (1), the fact that a handicapped person who is visually impaired has, or may be accompanied by, a guide dog, shall be deemed to be a characteristic that appertains generally to persons having the same physical impairment

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*Anti-Discrimination (Further Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

5 as the handicapped person, but nothing in this Act affects  
the liability of any such handicapped person for any injury,  
loss or damage caused by his guide dog.

10 (3) A person discriminates against a handicapped  
person on the ground of his physical impairment if he  
requires the handicapped person to comply with a require-  
ment or condition—

- (a) with which a substantially higher proportion of  
persons who are not handicapped persons com-  
ply or are able to comply;
- 15 (b) which is not reasonable having regard to the  
circumstances of the case; and
- (c) with which the handicapped person does not or  
is not able to comply.

DIVISION 2.—*Discrimination in Work.*

20 **Discrimination against applicants and employees.**

49B. (1) It is unlawful for an employer to discriminate  
against a handicapped person on the ground of his physical  
impairment—

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

*Anti-Discrimination (Further Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

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

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

10 (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

15 (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;

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

(c) by a private educational authority.

25 (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.

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*Anti-Discrimination (Further Amendment).*

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

5        **Discrimination against commission agents.**

49C. (1) It is unlawful for a principal to discriminate against a handicapped person on the ground of his physical impairment—

- 10            (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
- 15            (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 who is a handicapped person on the ground of his physical impairment—

- 20            (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
- 25            (c) by terminating his engagement or subjecting him to any other detriment.

**Discrimination against contract workers.**

49D. It is unlawful for a principal to discriminate against a contract worker who is a handicapped person on the ground of his physical impairment—

- 30            (a) in the terms on which he allows him to work;
- (b) by not allowing him to work or continue to work;

*Anti-Discrimination (Further Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

- 5 (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.

10 **Partnerships.**

49E. (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 dis-  
criminate against a handicapped person on the ground of  
15 his physical impairment—

- (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 who is a  
25 handicapped person on the ground of his physical  
impairment—

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

*Anti-Discrimination (Further Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

5 **Trade unions.**

49F. (1) It is unlawful for a trade union to discriminate against a handicapped person who is not a member of the trade union on the ground of his physical impairment—

- 10 (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.

15 (2) It is unlawful for a trade union to discriminate against a handicapped person who is a member of the trade union on the ground of his physical impairment—

- (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  
20 (c) by subjecting him to any other detriment.

**Qualifying bodies.**

25 49G. It is unlawful for an authority or 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, the carrying on of a trade or the engaging in of an occupation to discriminate against a handicapped person on the ground of his physical impairment—

- 30 (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

*Anti-Discrimination (Further Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

- 5 (c) by withdrawing the authorisation or qualification  
or varying the terms or conditions upon which  
it is held.

**Employment agencies.**

10 49H. It is unlawful for an employment agency to dis-  
criminate against a handicapped person on the ground of  
his physical impairment—

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

**Exceptions to certain provisions in this Division.**

20 49I. (1) Nothing in section 49B (1) (b), section 49C  
(1) (b) or section 49E (1) (b) renders unlawful dis-  
crimination by an employer, principal or person against  
a handicapped person on the ground of his physical  
impairment if, with respect to the work required to be per-  
formed in the course of the employment or engagement  
25 concerned, it appeared to the employer, principal or person,  
on such grounds as, having regard to the circumstances  
of the case, it was reasonable to rely, that the handicapped  
person, because of his physical impairment—

- (a) would be unable to carry out that work; or  
30 (b) would, in order to carry out that work, require  
services or facilities which are not required by  
persons who do not have the same physical  
impairment as the handicapped person and

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*Anti-Discrimination (Further Amendment).*

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**SCHEDULE 1—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
continued.**

5                   which, having regard to the circumstances of the  
case, cannot reasonably be provided or accom-  
modated by the employer, principal or person.

10                   (2) Nothing in section 49B (1) (c), (2) (a) or  
(b), section 49C (1) (c), (2) (a) or (b), section 49D (a)  
or (c) or section 49E (1) (c) or (2) (a) renders unlawful  
discrimination by an employer, principal or person against  
a handicapped person on the ground of his physical impair-  
ment in respect of any determination by the employer,  
principal or person of any terms or conditions relating to  
15                   the handicapped person that are reasonable having regard  
to either or both of the following :—

20                   (a) any limitation or restriction that the handicapped  
person's physical impairment would or does im-  
pose on his ability to carry out the work required  
to be performed in the course of the employment  
or engagement concerned;

25                   (b) any services or facilities which would be or are  
required by the handicapped person in order to  
carry out the work referred to in paragraph (a)  
and which would not be or are not required by  
persons who do not have the same physical  
impairment as the handicapped person.

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

30                   49J. (1) It is unlawful for an educational authority to  
discriminate against a handicapped person on the ground of  
his physical impairment—

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

*Anti-Discrimination (Further Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

- 5 (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 who is a handicapped person  
on the ground of his physical impairment—
- 10 (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.
- 15 (3) Nothing in this section applies to or in respect  
of—
- (a) a private educational authority;
- (b) a refusal or failure to accept a handicapped per-  
son's application for admission as a student by  
an educational authority where the educational  
20 authority administers a school, college, university  
or other institution which is conducted solely for  
students who have a physical impairment which  
is not the same as that of the applicant; or
- 25 (c) an educational authority where a handicapped  
person, if admitted as a student by the educa-  
tional authority, would require services or faci-  
ties which are not required by students who do  
not have the same physical impairment as the  
30 handicapped person and which, having regard to  
the circumstances of the case, cannot reasonably  
be provided or accommodated by the educational  
authority.

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*Anti-Discrimination (Further Amendment).*

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**SCHEDULE 1—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
continued.****5      Provision of goods and services.**

49K. (1) It is unlawful for a person who provides, for payment or not, goods or services to discriminate against a handicapped person on the ground of his physical impairment—

- 10            (a) by refusing to provide him with those goods or services; or
- (b) in the terms on which he provides him with those goods or services.

15            (2) Nothing in subsection (1) renders unlawful discrimination by a person against a handicapped person on the ground of his physical impairment if—

- 20            (a) it appeared to the firstmentioned person, on such grounds as, having regard to the circumstances of the case, it was reasonable to rely, that the handicapped person would be unable, because of his physical impairment, to use the goods or services concerned; or
- 25            (b) in respect of the provision of services, the first-mentioned person did all such things as were reasonably practicable, having regard to the circumstances of the case, to assist the handicapped person to use those services but the handicapped person was unable, because of his physical impairment, to use those services.

**30      Accommodation.**

49L. (1) It is unlawful for a person, whether as principal or agent, to discriminate against a handicapped person on the ground of his physical impairment—

- (a) by refusing his application for accommodation;

*Anti-Discrimination (Further Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

- 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 a handicapped person on the ground of his physical impairment—
- (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.
- (4) Nothing in subsection (1) (a) or (b) or (2) (a) renders unlawful discrimination by a person against a handicapped person on the ground of his physical impairment if it appeared to the firstmentioned person, on such

*Anti-Discrimination (Further Amendment).*

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

5 grounds as, having regard to the circumstances of the case,  
it was reasonable to rely, that the handicapped person,  
because of his physical impairment—

(a) would be unable to gain access to the accom-  
modation or benefit associated with the  
10 accommodation, as the case may be; or

(b) would be able to use the accommodation or  
benefit associated with the accommodation, as  
the case may be, only with substantial risk of  
injury to himself.

15 DIVISION 4.—*Exceptions to Part IVA.*

**Superannuation, etc.**

49M. Nothing in this Part renders unlawful discrimi-  
nation against a handicapped person on the ground of his  
physical impairment in the terms or conditions appertaining  
20 to a superannuation or provident fund or scheme.

**Insurance, etc.**

49N. Nothing in this Part renders unlawful discrimi-  
nation against a handicapped person on the ground of his  
physical impairment with respect to the terms on which an  
annuity, a life assurance policy, an accident or insurance  
25 policy or other policy of insurance is offered or may be  
obtained where—

(a) the discrimination is—

(i) based upon actuarial or statistical data  
30 from a source on which it is reasonable  
to rely or, where there is no such data,  
on such other data as may be available;  
and

*Anti-Discrimination (Further Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
DISCRIMINATION ON THE GROUND OF PHYSICAL IMPAIRMENT—  
*continued.*

- 5 (ii) reasonable having regard to the data, if  
any, and any other relevant factors; and
- (b) the source on which the data referred to in para-  
graph (a) (i) is based is disclosed to the Board,  
where the Board so requires, and any other  
10 relevant factors to which regard has been had as  
referred to in paragraph (a) (ii) are disclosed  
to the Board, where the Board so requires.

**Sport.**

- 15 49o. Nothing in this Part renders unlawful discrimina-  
tion by a person against a handicapped person on the  
ground of his physical impairment so as to exclude the  
handicapped person from participation in any sporting  
activity, not being the coaching of persons engaged in any  
sporting activity, the administration of any sporting activity  
20 or any prescribed sporting activity.

## (4) Section 119 (a) (vii), (viii), (ix)—

Omit the subparagraphs, insert instead :—

- (vii) mental disability;
- 25 (viii) a characteristic that appertains to persons having  
a mental disability or any particular mental dis-  
ability;
- (ix) a characteristic that is generally imputed to persons  
having a mental disability or any particular mental  
disability;

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*Anti-Discrimination (Further Amendment).*

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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
EQUAL OPPORTUNITY TRIBUNAL.

5 (1) (a) Section 3—

After the matter relating to Part VII, insert :—

PART VIIA.—THE EQUAL OPPORTUNITY  
TRIBUNAL—SS. 69A–69O.

(b) Section 3—

10 In the matter relating to Part IX, after “COUNSELLOR”,  
insert “, THE TRIBUNAL”.

(c) Section 3—

15 From the matter relating to Division 3 of Part IX,  
omit “*Board in relation to Complaints*”, insert instead  
“*Tribunal*”.

(d) Section 3—

From the matter relating to Division 4 of Part IX,  
omit “*Other*”, insert instead “*The*”.

(2) Section 4 (1), definition of “Tribunal”—

20 After the definition of “trade union”, insert :—

“Tribunal” means the Equal Opportunity Tribunal con-  
stituted under this Act;

*Anti-Discrimination (Further Amendment).*

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE EQUAL  
OPPORTUNITY TRIBUNAL—*continued.*

(3) Part VIIA—

5 After Part VII, insert :—

PART VIIA.

THE EQUAL OPPORTUNITY TRIBUNAL.

**Interpretation: Pt. VIIA.**

69A. In this Part—

10 “judicial member” means the judicial member of the  
Tribunal;

“member” means a member of the Tribunal and  
includes the judicial member.

**The Tribunal.**

15 69B. There shall be an Equal Opportunity Tribunal.

**Appointment of members.**

69C. The Tribunal shall consist of not less than 5 part-  
time members and not more than 7 part-time members  
appointed by the Governor, one of whom shall be the  
20 judicial member.

**Term of office.**

69D. A member shall, subject to this Part, hold office for  
a period not exceeding 3 years and is eligible for re-  
appointment as a member.

25 **Eligibility for appointment to Tribunal, etc.**

69E. (1) The judicial member shall be—

(a) a judge of the District Court of New South  
Wales;

30 (b) a member of the Workers’ Compensation Com-  
mission of New South Wales; or

*Anti-Discrimination (Further Amendment).*

**SCHEDULE 2—continued.**

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE EQUAL OPPORTUNITY TRIBUNAL—continued.**

5 (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.

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

15 (3) A person is not eligible for appointment as a member if he is—

(a) 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; or

(b) a member of the Board.

**Vacation of office.**

69F. A member shall be deemed to have vacated his office—

25 (a) if he dies;

(b) if 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;

30

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*Anti-Discrimination (Further Amendment).*

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**SCHEDULE 2—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE EQUAL OPPORTUNITY TRIBUNAL—continued.**

- 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;
- (d) if he resigns his office by writing under his hand addressed to the Governor; or
- 10 (e) if he is removed from office pursuant to section 69G.

**Removal from office.**

15 69G. (1) The judicial member may only be removed from office in the same manner as a judge of the District Court may be removed from office.

(2) The Governor may for any cause which to him seems sufficient remove any member, other than the judicial member, from office.

**Filling casual vacancy.**

20 69H. 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, being, where the vacancy occurs in the office of the judicial member, a person qualified for

25 appointment in accordance with section 69E (1).

**Member not subject to Public Service Act, 1979.**

30 69I. The provisions of the Public Service Act, 1979, shall not apply to or in respect of the appointment of a member, and a member, as such a member, shall not be subject to the provisions of that Act during his term of office.

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*Anti-Discrimination (Further Amendment).*

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**SCHEDULE 2—continued.****AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE EQUAL  
OPPORTUNITY TRIBUNAL—continued.****Remuneration of members.**

- 5        69J. A member, other than the judicial member where  
the judicial member has a qualification referred to in sec-  
tion 69E (1) (a) or (b), shall be entitled to be paid such  
remuneration (including travelling and subsistence allow-  
10        ances) as the Minister may from time to time determine  
in respect of him.

**Acting judicial member.**

- 15        69K. (1) The Minister may at any time appoint a  
person qualified for appointment as the judicial member in  
accordance with section 69E (1) to act as the judicial  
member during the absence or illness of the judicial  
member.

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

20        **Alternate members.**

69L. (1) The Minister may at any time appoint a  
person as an alternate member to act during the absence  
or illness of a member, not being the judicial member.

- 25        (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.

**Constitution of the Tribunal.**

- 30        69M. (1) Except as provided by section 112, the  
Tribunal shall, for the purpose of exercising its functions,  
be constituted by 3 members comprising—

- (a) the judicial member; and
- (b) 2 members selected by the judicial member.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE EQUAL  
OPPORTUNITY TRIBUNAL—*continued.*

5 (2) In proceedings by or against the Tribunal,  
no proof shall be required (until evidence is given to the  
contrary) of—

(a) the constitution of the Tribunal; or

(b) the selection of any member of the Tribunal.

**Procedure at sittings of the Tribunal.**

10 69N. (1) The procedure for constituting a sitting of  
the Tribunal and for the conduct of business at a sitting  
of the Tribunal shall, subject to this Act and the regula-  
tions, be determined by the judicial member.

15 (2) The judicial member shall preside at all sit-  
tings of the Tribunal.

20 (3) At a sitting of the Tribunal, each member pre-  
sent (and by whom the Tribunal is constituted for the pur-  
poses of the sitting) shall have a deliberative vote and, in  
the event of an equality of votes, the judicial member shall  
have a second or casting vote.

25 (4) At a sitting of the Tribunal, the decision on  
any matter arising for the determination of the Tribunal  
of a majority of the members present (and by whom the  
Tribunal is constituted for the purposes of the sitting)  
and voting shall, except as provided by section 108 (2),  
be the decision of the Tribunal.

**Registrar.**

30 69O. (1) A Registrar of the Tribunal and such officers  
and employees as may be necessary to enable the Tribunal  
and the Registrar to exercise their functions may be  
appointed under and subject to the Public Service Act,  
1979.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE EQUAL  
OPPORTUNITY TRIBUNAL—*continued.*

- 5 (2) The office of Registrar may be held in  
conjunction with any other office in the Public Service.
- (4) Section 70, definition of “meeting”—  
Omit the definition.
- (5) Section 85 (1)—  
10 Omit “, including the procedure to be followed in an  
inquiry,”.
- (6) Section 86—  
Omit the section, insert instead :—  
**Officers and employees.**  
15 86. Such officers and employees as may be necessary  
to enable the Board to exercise its functions may be  
appointed under and subject to the Public Service Act,  
1979.
- (7) Part IX, heading—  
After “COUNSELLOR”, insert “,THE TRIBUNAL”.
- 20 (8) Section 89A—  
After section 89, insert :—  
**Application for interim order under s. 112.**  
89A. The Counsellor, at any time after a complaint is  
lodged with him under section 88 (1) or (2) or referred  
25 to him by the Registrar under section 88 (5) and before  
he declines to entertain the complaint, resolves the com-  
plaint by conciliation or refers the complaint to the Tribunal  
under section 94 (1), as the case may be, may apply to  
30 the Tribunal for the making of an interim order under  
section 112 or for the variation or revocation of any such  
order.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE EQUAL  
OPPORTUNITY TRIBUNAL—*continued.*

- (9) Part IX, Division 3, heading—
- 5 Omit “Board in relation to Complaints”, insert instead  
“Tribunal”.
- (10) Section 100—  
Omit “the Counsellor,”.
- (11) Section 101 (1) (a), (b)—
- 10 Omit the paragraphs, insert instead :—
- (a) is entitled to appear personally or where the party  
is a body corporate, by a director, the secretary or  
an agent of the body corporate; and
- 15 (b) may, by the leave of the Tribunal, be represented  
by his or its solicitor or counsel or an agent.
- (12) Section 101A—  
After section 101, insert :—
- Officer assisting the Tribunal.**
- 20 101A. (1) The Tribunal may make arrangements with  
the Board for an officer of the Board to appear at an  
inquiry to assist the Tribunal.
- (2) An officer of the Board assisting the Tribunal  
at an inquiry pursuant to arrangements made under sub-  
section (1) shall, in relation to that inquiry, be subject  
25 to the control and direction of the Tribunal.
- (13) Section 108 (2)—  
Omit “President”, insert instead “the judicial member of  
the Tribunal”.

*Anti-Discrimination (Further Amendment).*

**SCHEDULE 2—continued.**

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE EQUAL OPPORTUNITY TRIBUNAL—continued.**

**(14) Section 112—**

- 5       Omit “Board may,” insert instead “Tribunal or, where the judicial member of the Tribunal is of the opinion that it is expedient that he alone should exercise the functions of the Tribunal under this section, the judicial member, may, on the application of the Counsellor under section 89A or”.

**10 (15) Sections 117A, 117B—**

After section 117, insert :—

**Authentication of documents.**

- 15       117A. Every document requiring authentication by the Tribunal may be sufficiently authenticated if signed by the judicial member of the Tribunal.

**Judicial notice of certain signatures.**

117B. Judicial notice shall be taken of the signature of the judicial member of the Tribunal or the Registrar when appearing on a document issued by the Tribunal.

**20 (16) (a) Section 118 (1)—**

After “Court”, insert “on a question of law”.

**(b) Section 118 (2)–(4)—**

Omit the subsections, insert instead :—

- 25       (2) An appeal shall be made in accordance with the rules of Court.

(3) The Court shall hear and determine the question of law arising on the appeal and shall—

- (a) remit the decision of the Court thereon to the Tribunal; or

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*Anti-Discrimination (Further Amendment).*

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SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE EQUAL  
OPPORTUNITY TRIBUNAL—*continued.*

5 (b) make such other order in relation to the  
appeal as to it seems fit.

(4) The Tribunal and any member of the Tribunal  
shall not be liable to any costs in respect of the  
decision or order of the Tribunal or the appeal.

(17) Part IX, Division 4, heading—

10 Omit “Other”, insert instead “The”.

(18) (a) Section 124—

After “Counsellor,” where secondly occurring, insert  
“a member of the Tribunal.”.

(b) Section 124—

15 After “Board,” insert “an officer of the Board,”.

(19) Section 127 (2)—

Before “Board”, insert “Tribunal or the”.

20 (20) Sections 4 (1), definitions of “inquiry” and “Registrar”;  
37 (b); 49N; 54 (c); 87, definitions of “complaint” and  
“representative complaint”; 88 (2); 91; 94 (1); 95–100;  
102–104; 106–108; 110; 111; 113–117; 118 (1); 127  
(4) (d)—

Omit “Board” wherever occurring, insert instead  
“Tribunal”.

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*Anti-Discrimination (Further Amendment).*

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
CONSTITUTION OF THE ANTI-DISCRIMINATION BOARD.

5 (1) Section 73—

Omit “a period of 3 years”, insert instead “such period, not exceeding 3 years, as is specified in the instrument of his appointment”.

(2) (a) Section 74 (1)—

10 Omit the subsection.

(b) Section 74 (2)—

Omit “part-time”.

(3) (a) Section 75 (f)—

Omit “or”.

15 (b) Section 75 (f1)—

After section 75 (f), insert :—

(f1) if, being the President, he is removed from office by the Governor pursuant to section 80 (4) or is retired from office by the Governor pursuant to section 80 (5); or

20

(4) Section 77—

Omit “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”.

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*Anti-Discrimination (Further Amendment).*

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**SCHEDULE 3—continued.**

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
CONSTITUTION OF THE ANTI-DISCRIMINATION BOARD—continued.**

(5) (a) Section 80 (2) (a)—

5 Omit the paragraph, insert instead :—

(a) remuneration in accordance with the Statutory  
and Other Offices Remuneration Act, 1975;  
and

(b) Section 80 (3)—

10 Omit the subsection.

(c) Section 80 (4), (5)—

Omit section 80 (4), insert instead :—

15 (4) The President may, at any time, be removed  
from his office by the Governor upon the address of  
both Houses of Parliament.

20 (5) The President may be retired from office by  
the Governor after he attains the age of 60 years and,  
if he is so retired, he is entitled to such compensation  
(if any) as the Statutory and Other Offices Remunera-  
tion Tribunal determines.

(6) Section 81—

Omit the section, insert instead :—

**Acting President.**

25 81. (1) The Minister may appoint an acting President  
to act during the absence of the President or during a  
vacancy in his office.

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*Anti-Discrimination (Further Amendment).*

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SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO THE  
CONSTITUTION OF THE ANTI-DISCRIMINATION BOARD—*continued.*

5           (2) An acting President 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.

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

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

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

(7) Section 83—  
Omit the section.

(8) Section 84 (2)—  
Omit "qualified in accordance with section 74 (1) (c)".

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*Anti-Discrimination (Further Amendment).*

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SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
REGISTERED CLUBS.

5 (1) (a) Section 3—

From the matter relating to Division 3 of Part II,  
omit “20”, insert instead “20A”.

(b) Section 3—

10 From the matter relating to Division 3 of Part III,  
omit “34”, insert instead “34A”.

(c) Section 3—

From the matter relating to Division 3 of Part IV,  
omit “48”, insert instead “48A”.

(d) Section 3—

15 From the matter relating to Division 3 of Part IVA,  
omit “49L”, insert instead “49LA”.

(2) Section 4 (1), definition of “registered club”—

Before the definition of “Registrar”, insert:—

“registered club” means—

- 20
- (a) a registered club within the meaning of  
section 4 (1) of the Registered Clubs Act,  
1976; or
  - (b) a club registered under Division 4 of Part  
IIIA of the Gaming and Betting Act, 1912;

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*Anti-Discrimination (Further Amendment).*

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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
REGISTERED CLUBS—*continued.*

## (3) Section 20A—

5 After section 20, insert :—

**Registered clubs.**

20A. (1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of his race—

- 10 (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.

15 (2) It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of his race—

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

25 (3) Nothing in subsection (1) or (2) applies to or in respect of a registered club if the principal object of the registered club is to provide benefits for persons of a specified race defined otherwise than by reference to—

- (a) colour; or
- 30 (b) a description which has the effect of excluding persons of that race who are of a different colour from those persons, or the majority of those persons, who do not come within that description.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
REGISTERED CLUBS—*continued.*

5 (4) In determining whether the principal object  
of a registered club is as referred to in subsection (3),  
regard shall be had to—

- (a) the essential character of the registered club;
- (b) the extent to which the affairs of the registered  
club are so conducted that the persons primarily  
10 enjoying the benefits of membership are of the  
race specified in the principal object; and
- (c) any other relevant circumstance.

(4) Section 34A—

After section 34, insert :—

15 **Registered clubs.**

34A. (1) It is unlawful for a registered club to dis-  
criminate against a person who is not a member of the  
registered club on the ground of his sex—

- 20 (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.

25 (2) It is unlawful for a registered club to discrimi-  
nate against a person who is a member of a registered club  
on the ground of his sex—

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

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*Anti-Discrimination (Further Amendment).*

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SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
REGISTERED CLUBS—*continued.*

5 (3) Nothing in subsection (1) or (2) renders unlawful discrimination by a registered club against a person on the ground of his sex if membership of the registered club is available to persons of the opposite sex only.

10 (4) Nothing in subsection (1) (paragraph (a) excepted) or subsection (2) renders unlawful discrimination by a registered club against a person on the ground of his sex if the discrimination occurs in relation to the use or enjoyment of any benefit provided by the registered club where—

15 (a) it is not practicable for the benefit to be used or enjoyed—

(i) simultaneously; or

(ii) to the same extent,

by both men and women; and

20 (b) either—

(i) the same, or an equivalent, benefit is provided for the use of men and women separately from each other; or

25 (ii) men and women are each entitled to a fair and reasonable proportion of the use and enjoyment of the benefit.

(5) In determining any matter relating to the application of subsection (4), regard shall be had to—

30 (a) the purposes for which the registered club is established;

*Anti-Discrimination (Further Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
REGISTERED CLUBS—*continued.*

- 5 (b) the membership of the registered club, including any class or type of membership;
- (c) the nature of the benefits provided by the registered club;
- (d) the opportunities for the use and enjoyment of those benefits by men and women; and
- 10 (e) any other relevant circumstance.

(5) Section 48A—

After section 48, insert :—

**Registered clubs.**

- 15 48A. (1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club 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 registered club to discriminate against a person who is a member of the registered club on the ground of his marital status—
  - 25 (a) by denying him access, or limiting his access, to any benefit provided by the registered club;
  - (b) by depriving him of membership or varying the terms of his membership; or
  - (c) by subjecting him to any other detriment.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
REGISTERED CLUBS—*continued.*

(6) Section 49LA—

5 After section 49L, insert :—

**Registered clubs.**

10 49LA. (1) It is unlawful for a registered club to discriminate against a handicapped person who is not a member of the registered club on the ground of his physical impairment—

- (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.

15 (2) It is unlawful for a registered club to discriminate against a handicapped person who is a member of the registered club on the ground of his physical impairment—

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

25 (3) Nothing in subsection (1) or (2) applies to or in respect of a registered club if the principal object of the registered club is to provide benefits only for handicapped persons who have a particular physical impairment specified in the principal object.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
REGISTERED CLUBS—*continued.*

- 5 (4) In determining whether the principal object of a registered club is as referred to in subsection (3), regard shall be had to—
- (a) the essential character of the registered club;
  - (b) the extent to which the affairs of the registered club are so conducted that the persons primarily enjoying the benefits of membership are handicapped persons who have the particular physical impairment specified in the principal object; and
  - 10 (c) any other relevant circumstance.
- 15 (5) Nothing in subsection (1) or (2) applies to or in respect of a registered club where a handicapped person would require, in order to use or enjoy any benefit provided by the registered club or in order not to prevent, impair or restrict the use or enjoyment of any such benefit by the other members of the registered club, services or
- 20 facilities which are not required by members of the registered club who do not have the same physical impairment as the handicapped person and which, having regard to the circumstances of the case, cannot reasonably be provided or accommodated by the registered club.
- 25 (7) (a) Section 54 (b) (iii)—  
Omit “or”.
- (b) Section 54 (b) (iv)—  
After “1967;”, insert “or”.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO  
REGISTERED CLUBS—*continued.*

(c) Section 54 (b) (v)—

5 After section 54 (b) (iv), insert :—

10 (v) the articles of association, rules, regulations or  
by-laws of a registered club or any other pro-  
visions made by a registered club in relation  
to the admission to membership, or the rights  
of members, of the registered club, whether  
the articles, rules, regulations, by-laws or other  
provisions were made before, on or after the  
date of assent to this Act;

(8) Section 57 (1)—

15 Omit the subsection, insert instead :—

(1) In this section, “body” means a body, the activities  
of which are carried on otherwise than for profit and which  
is not established by an Act, but does not include—

- 20 (a) a society registered under the Co-operation Act,  
1923;
- (b) a credit union within the meaning of the Credit  
Union Act, 1969;
- (c) a society registered under the Friendly Societies  
Act, 1912; or
- 25 (d) a permanent building society registered under the  
Permanent Building Societies Act, 1967.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 3—

5 From the matter relating to Part II, omit “6–22”,  
insert instead “7–22”.

(b) Section 3—

From the matter relating to Division 1 of Part II, omit  
“ss. 6, 7”, insert instead “s. 7”.

10 (c) Section 3—

From the matter relating to Division 3 of Part III,  
omit “32”, insert instead “31A”.

(d) Section 3—

15 From the matter relating to Division 3 of Part IV,  
omit “47, 48”, insert instead “46A–48”.

(2) (a) Section 4 (1), definitions of “private educational  
authority”, “race”—

After the definition of “principal”, insert :—

20 “private educational authority” means a person or  
body administering a school, college, university  
or other institution at which education or  
training is provided, not being—

25 (a) a school, college, university or other  
institution established under the Public  
Instruction Act of 1880, the Technical  
and Further Education Act, 1974, the  
Colleges of Advanced Education Act,  
1975, the New South Wales State  
30 Conservatorium of Music Act, 1965,  
or an Act of incorporation of a  
university; or

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

- 5 (b) an agricultural college administered by  
the Minister for Agriculture;

“race” includes colour, nationality and ethnic or  
national origin;

- (b) Section 4 (3), (4)—

After section 4 (2), insert :—

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

- 15 (4) A reference in this Act to the conferring,  
renewing or extending of an authorisation or a qualifi-  
cation, in relation to an authority or a body which is  
empowered to confer, renew or extend an authorisa-  
tion or a qualification that is needed for or facilitates  
20 the practice of a profession, the carrying on of a trade  
or the engaging in of an occupation, includes a  
reference to the conferring, renewing, extending,  
granting, awarding, approving, issuing or accepting of  
a recognition, registration, enrolment, approval or  
certification by such an authority or such a body or to  
25 the admission of a person to membership of such an  
authority or such a body.

- (3) Section 6—

Omit the section.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

(4) Section 7 (2)—

5 At the end of section 7, insert :—

(2) A person discriminates against another person on the ground of his race if he requires the other person to comply with a requirement or condition—

10

(a) with which a substantially higher proportion of persons not of the same race as the other person comply or are able to comply;

(b) which is not reasonable having regard to the circumstances of the case; and

15

(c) with which the other person does not or is not able to comply.

(5) Section 10A—

After section 10, insert :—

**Partnerships.**

20

10A. (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—

25

(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) 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.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

5 (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;

(b) by expelling him from the firm; or

10 (c) by subjecting him to any other detriment.

(6) Section 12—

Omit “or the carrying on of a trade”, insert instead “, the carrying on of a trade or the engaging in of an occupation”.

(7) (a) Section 13 (a)—

15 Omit “or”.

(b) Section 13 (b)—

Omit “services.”, insert instead “services; or”.

(c) Section 13 (c)—

After section 13 (b), insert :—

20 (c) in the manner in which it provides him with any of its services.

(8) (a) Section 24 (1A)—

After section 24 (1), insert :—

25 (1A) For the purposes of subsection (1), but without limiting the generality of that subsection, the fact that a woman is or may become pregnant is a characteristic that appertains generally to women.

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*Anti-Discrimination (Further Amendment).*

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SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

## (b) Section 24 (3)—

5           After section 24 (2), insert :—

(3) A person discriminates against another person on the ground of his sex if he requires the other person to comply with a requirement or condition—

10           (a) with which a substantially higher proportion of persons of the opposite sex to the sex of the other person comply or are able to comply;

(b) which is not reasonable having regard to the circumstances of the case; and

15           (c) with which the other person does not or is not able to comply.

## (9) (a) Section 25 (1A)—

After section 25 (1), insert :—

20           (1A) Nothing in subsection (1) renders unlawful discrimination by an employer against a woman on the ground of her sex if, at the date on which the woman applied to the employer for employment or, where the employer interviewed the woman in relation to her application for employment, at the date of the  
25           interview, the woman is pregnant.

## (b) Section 25 (2A)—

After section 25 (2), insert :—

30           (2A) Nothing in subsection (2) (c) renders unlawful discrimination by an employer against a woman on the ground of her sex in respect of the dismissal

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

5 by an employer of a woman who is pregnant if, at the  
date on which the woman applied to the employer for  
employment or, where the employer interviewed the  
woman in relation to her application for employment,  
at the date of the interview, the woman was pregnant,  
10 unless, at that date, the woman did not know and  
could not reasonably be expected to have known that  
she was pregnant.

(c) Section 25 (3) (a)—  
Omit “or”.

(d) Section 25 (3) (b)—  
15 Omit “5.”, insert instead “5; or”.

(e) Section 25 (3) (c)—  
After section 25 (3) (b), insert :—  
(c) by a private educational authority.

(10) Section 27A—  
20 After section 27, insert :—

**Partnerships.**

25 27A. (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 dis-  
criminate against a person on the ground of his sex—

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

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*Anti-Discrimination (Further Amendment).*

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SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

- 5 (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  
ground of his sex—

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

(11) Section 29—

- 15 Omit “or the carrying on of a trade”, insert instead “, the  
carrying on of a trade or the engaging in of an occupation”.

(12) (a) Section 30 (a)—

Omit “or”.

(b) Section 30 (b)—

Omit “services.”, insert instead “services; or”.

20 (c) Section 30 (c)—

After section 30 (b), insert :—

- (c) in the manner in which it provides him with  
any of its services.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

(13) Section 31 (2) (a)—

- 5       Omit “physiology”, insert instead “physiognomy or  
physique”.

(14) Section 31A—

Before section 32, insert :—

**Education.**

10       31A. (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

15       (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 sex—

20       (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—

25       (a) a private educational authority; or

(b) a refusal or failure to accept a person’s applica-  
tion for admission as a student by an educational  
authority where the educational authority

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

5 administers a school, college, university or other institution which is conducted solely for students of the opposite sex to the sex of the applicant.

(15) Section 33 (1)—

Omit the subsection, insert instead :—

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

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

15 (b) in the terms on which he provides him with those goods or services.

(16) Section 39 (3)—

After section 39 (2), insert :—

20 (3) A person discriminates against another person on the ground of his marital status if he requires the person discriminated against to comply with a requirement or condition—

25 (a) with which a substantially higher proportion of persons not of the same marital status as the person discriminated against comply or are able to comply;

(b) which is not reasonable having regard to the circumstances of the case; and

(c) with which the person discriminated against does not or is not able to comply.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

(17) (a) Section 40 (3) (a)—

5 Omit “or”.

(b) Section 40 (3) (b)—

Omit “5.”, insert instead “5; or”.

(c) Section 40 (3) (c)—

After section 40 (3) (b), insert :—

10 (c) by a private educational authority.

(18) Section 42A—

After section 42, insert :—

**Partnerships.**

15 42A. (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—

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

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

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

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—

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

(b) by expelling him from the firm; or

10 (c) by subjecting him to any other detriment.

(19) Section 44—

Omit “or the carrying on of a trade”, insert instead “, the carrying on of a trade or the engaging in of an occupation”.

(20) (a) Section 45 (a)—

15 Omit “or”.

(b) Section 45 (b)—

Omit “services.”, insert instead “services; or”.

(c) Section 45 (c)—

After section 45 (b), insert :—

20 (c) in the manner in which it provides him with any of its services.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

(21) Sections 46A, 47—

5 Omit section 47, insert instead :—

**Education.**

46A. (1) It is unlawful for an educational authority to discriminate against a person on the ground of his marital status—

- 10 (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.

15 (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  
20 (b) by expelling him or subjecting him to any other detriment.

(3) Nothing in this section applies to or in respect of a private educational authority.

**Provision of services.**

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

- (a) by refusing to provide him with those services; or  
30 (b) in the terms on which he provides him with those services.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

(22) Section 54 (b)—

5 Omit “paragraph (a);”, insert instead :—

paragraph (a), not being—

- (i) the rules of a society registered under the Co-operation Act, 1923;
- 10 (ii) the rules of a credit union within the meaning of the Credit Union Act, 1969;
- (iii) the rules of a society registered under the Friendly Societies Act, 1912; or
- (iv) the rules of a permanent building society registered under the Permanent Building Societies Act, 1967;
- 15

(23) Section 57 (1)—

Omit “Act.”, insert instead :—

Act,

but does not include—

- 20 (d) a society registered under the Co-operation Act, 1923;
- (e) a credit union within the meaning of the Credit Union Act, 1969;
- (f) a society registered under the Friendly Societies Act, 1912; or
- 25 (g) a permanent building society registered under the Permanent Building Societies Act, 1967.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

(24) Section 58—

5 Omit the section.

(25) Sections 68A, 68B—

After section 68, insert :—

**Preservation of rights of Counsellor previously public servant, etc.**

10 68A. (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.

15 (2) Subject to subsection (3) and to the terms of his appointment, where the Counsellor was, immediately before his appointment as the Counsellor—

(a) an officer of the Public Service; or

(b) a contributor to a superannuation scheme,

he—

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

(d) may continue to contribute to any superannuation scheme to which he was a contributor immediately before his appointment as the Counsellor; and

25 (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 the Counsellor, and—

30 (f) his service as the Counsellor shall be deemed to be service as an officer or employee for the purpose of any law under which those rights

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

5 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 Government of New South Wales 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 person appointed as the Counsellor 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 the Counsellor or at any later time while he holds office as the Counsellor) a contributor to any superannuation scheme, and the provisions of subsection (2) (g) cease to apply to or in respect of him and the Government of New South Wales in any case where he becomes a contributor to such another superannuation scheme.

(4) Subsection (3) does not prevent the payment to the Counsellor 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) A person appointed as the Counsellor shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—  
*continued.*

**Annual report.**

5 68B. (1) The Counsellor shall, on or before 30th September in each year, prepare and present to the Minister a report of his work and activities for the period of 12 months ending on the preceding 30th June.

10 (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.

(26) Section 122A, definition of “race”—  
Omit the definition.

(27) Section 122H—  
15 After “Sections 63–69”, insert “(section 68B excepted)”.

SCHEDULE 6.

(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

**Interpretation: Sch. 6.**

20 1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

“President” means the President of the Anti-Discrimination Board.

**Complaints and matters referred to the Board.**

25 2. A complaint or matter referred under section 91 (2), 94 (1) or 95 of the Principal Act by the Counsellor for Equal Opportunity or the Minister to the Anti-Discrimination Board before the appointed day and in relation to which the Board—

(a) had not, before that day, commenced to hold an inquiry; or

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*Anti-Discrimination (Further Amendment).*

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SCHEDULE 6—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(b) had commenced to hold an inquiry but had not, before that day, completed the inquiry,

5 shall be deemed to be a complaint or matter referred to the Equal Opportunity Tribunal under section 91 (2), 94 (1) or 95, as the case may require, of the Principal Act, as amended by this Act.

**Inquiries pending before the Board.**

3. An inquiry commenced but not completed by the Anti-Discrimination  
15 Board immediately before the appointed day shall be deemed to be an inquiry held by the Equal Opportunity Tribunal, and shall be continued before and disposed of by the Tribunal accordingly.

**Transfer of certain documents to the Tribunal.**

4. The person who, immediately before the appointed day, was the  
15 Registrar of the Anti-Discrimination Board or other officer having the custody of any records of the Board shall, as soon as practicable after that day, forward to the Equal Opportunity Tribunal all documents held by him and relating to an inquiry referred to in clause 3.

**Legal representation of certain persons before the Tribunal.**

20 5. A party to an inquiry referred to in clause 3 who, at that inquiry, appeared before the Anti-Discrimination Board by his solicitor or counsel, shall be deemed to have been granted leave by the Equal Opportunity Tribunal, under section 101 (1) (b) of the Principal Act, as amended by this Act, to be represented at that inquiry before the Tribunal by his  
25 solicitor or counsel, as the case may require.

**Preservation of certain rights of appeal.**

6. Nothing in this Act affects any right of appeal under section 118 of the Principal Act, as in force immediately before the appointed day, which a party to an inquiry had immediately before that day.

30 **Preservation of rights of certain office holder.**

7. Except as provided by clauses 8 and 9, the provisions of Part VIII of the Principal Act, as in force immediately before the appointed day, shall, notwithstanding this Act, continue to apply to and in respect of the person who, immediately before that day, held the office of President and  
35 shall continue so to apply until such time as he ceases to hold that office.

*Anti-Discrimination (Further Amendment).*

SCHEDULE 6—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

**Terms of certain instrument of appointment.**

8. The instrument of appointment of the person who, immediately before  
5 the appointed day, held the office of President, shall, for the purposes of  
section 73 of the Principal Act, as amended by this Act, be deemed to  
specify a term of office of 3 years from the date of his appointment to that  
office.

**Application of certain provisions relating to retirement.**

- 10 9. The amendments made by section 5 and Schedule 3 (1), (3) (b)  
(in so far as they relate to the retirement of the President from office) and  
(5) (c) (in so far as they relate to the retirement of the President from  
office) apply to the person who, immediately before the appointed day,  
held the office of President as well as to a person who, on or after that day,  
15 holds that office.

**Regulations.**

10. (1) The Governor may make regulations containing other provisions  
of a savings or transitional nature consequent on the enactment of this Act.

- (2) A provision made under subclause (1) may take effect as from  
20 the appointed day or a later day.

- (3) To the extent to which a provision referred to in subclause (1)  
takes effect from a date that is earlier than the date of its publication in  
the Gazette, the provision does not operate so as—

- 25 (a) to affect, in a manner prejudicial to any person (other than the  
State or an authority of the State), the rights of that person  
existing before the date of its publication therein; or  
(b) to impose liabilities on any person (other than the State or an  
authority of the State) in respect of anything done or omitted to  
be done before the date of its publication therein.

- 30 (4) A provision made under subclause (1) shall, if the regulations  
under this clause so provide, have effect notwithstanding the foregoing  
clauses of this Schedule.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981

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